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

FARM CREDIT ADMINISTRATION

12 CFR Part 624

RIN 3025–AD43

Margin and Capital Requirements for Covered Swap Entities; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: On July 1, 2020, the Farm Credit Administration (FCA), along with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Federal Housing Finance Agency published an interim final rule amending regulations that require swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants under the Agencies' respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (non-cleared swaps) (Swap Margin Rule). In that publication, the Regulatory Identification Number (RIN) for the FCA was incorrect. This document corrects that error.

DATES: Effective September 1, 2020.

FOR FURTHER INFORMATION CONTACT: Richard A. Katz, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

SUPPLEMENTARY INFORMATION: In FR Doc. 2020–14094, the Margin and Capital Requirements for Covered Swap Entities—Interim Final Rule, appearing on page 39464 in the **Federal Register** of Wednesday, July 1, 2020, the FCA's RIN number in column 2 is corrected to read ''3025–AD43''.

Dated: August 27, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2020–19236 Filed 8–31–20; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0187; Airspace Docket No. 19–ASO–27]

RIN 2120–AA66

Amendment and Removal of Air Traffic Service (ATS) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends 6 jet routes, removes 4 jet routes, and removes 1 high altitude area navigation (RNAV) route in the eastern United States. This action is in support of the Northeast Corridor Atlantic Coast Route Project to improve the efficiency of the National Airspace System (NAS) and reduce dependency on ground-based navigational systems.

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 modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2020–0187 in the **Federal Register** (85 FR 16289; March 23, 2020), amending 9 jet routes, removing 22 jet routes and removing 1 high altitude RNAV route in the eastern United States in support of the Northeast Corridor Atlantic Coast Route Project. The NPRM proposed to amend the following existing routes: J–2, J–14, J–24, J–37, J–39, J–42, J–52, J–61, and J–68. In addition, the NPRM proposed to remove the following existing routes: J–55, J–62, J–79, J–109, J–121, J–150, J–165, J–174, J–191, J–193, J–207, J–209, J–222, J–225, J–230, J–506, J–561, J–563, J–570, J–573, J–582, J–585 and Q–108. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received expressing overall agreement with the proposal.

Jet routes are published in paragraph 2004; and United States Area Navigation Routes are published in paragraph 2006; of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The jet routes and RNAV route listed in this document would be subsequently amended in, or removed, respectively, from 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 Proposal

As the NPRM was published, the United States was undergoing the effects of the world-wide COVID–19 pandemic. The restrictions imposed to confront the pandemic impacted the ability of air traffic control facilities to conduct the required air traffic controller training to amend or remove these routes and the necessary administrative actions to decommission the NAVAIDs.

As a result, the FAA is limiting the scope of this rule to amending the following 6 jet routes: J–2, J–37, J–39, J–55, J–61, and J–121; and removing the 4 existing jet routes and 1 high altitude area navigation (RNAV) route: J–62, J–109, J–230, J–570, and Q–108. The descriptions of these routes are the same as proposed in the NPRM; however, in the original proposal the FAA was to remove J–55 and J–121; due to the impacts of COVID–19 the FAA will amend them as noted in this rule, thus retaining the air navigation services they provide. The remaining routes contained in the NPRM are removed from this rule and will be addressed by separate rulemaking action at a later date.

The J–37 route description information contained in ''The Proposal'' section and in the regulatory text of the NPRM contained an editorial error. Prior to publication of the NPRM, the FAA published a rule for Docket No. FAA–2018–0817 in the **Federal Register** (85 FR 3814, January 23, 2020) amending J–37 by removing the route segment between the Hobby, TX, VOR/DME and the Harvey, LA, VORTAC. The J–37 amendment, effective March 26, 2020, is included in this rule.

Additionally, in the NPRM for this rule, the eastern end point for the J–2 route was defined by the intersection of the Crestview, FL, 091° and the Seminole, FL, 290° radials. Subsequent to the NPRM, the Seminole, FL radial was replaced by the Montgomery, AL, 173° radial to define the intersection. This rule amends that point to read ''the intersection of Crestview, FL, 091° and Montgomery, AL, 173° radials'' (depicted on aeronautical charts as the DEFUN, FL, INT). Also, in the preamble of the NPRM, in describing J–61, the EDDYS, NC fix was incorrectly identified as the WETRO, NC waypoint. The correct reference is included in this rule.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending 6 jet routes, removing 4 jet routes, and removing 1 high altitude area navigation (RNAV) route in the eastern United States. This action will support the Northeast Corridor Atlantic Coast Route Project by amending and removing certain jet route segments that are being replaced by RNAV routing. Additionally, the proposed jet route changes will reduce aeronautical chart clutter by removing unneeded route segments.

The jet route changes are as follows:

J–2: J–2 currently extends between the Mission Bay, CA, VORTAC, and the Taylor, FL, VORTAC. This action removes the segment of the route between the Seminole, FL, VORTAC and the Taylor, FL, VORTAC. As amended, J–2 extends between the Mission Bay VORTAC and intersection of the Crestview, FL, 091° and Montgomery, AL, 173° radials (depicted on aeronautical charts as the DEFUN, FL, INT).

J–37: J–37 currently consist of two separate segments: between the Harvey, LA, VORTAC and the Coyle, NJ, VORTAC; followed by a gap; and then between the Kennedy, NY, VOR/DME, and the Massena, NY, VORTAC. As amended, J–37 will extend in three separate segments: The Harvey, LA, VORTAC and the Montgomery, AL, VORTAC; the Lynchburg, VA, VOR/DME and the Coyle, NJ, VORTAC; and the Kennedy, NY, VOR/DME and the Albany, NY, VORTAC.

J–39: J–39 currently extends between the Crestview, FL, VORTAC, and the Rosewood, OH, VORTAC. This action will remove the portion of the route between the Crestview, FL and the Montgomery, AL, VORTAC. The amended route will extend between Montgomery, AL and Rosewood, OH.

J–55: J–55 currently extends in two parts: Between the Charleston, SC, VORTAC, and INT Hopewell, VA, 030° and Nottingham, MD, 174° radials; followed by a gap in the route, and resuming between the Sea Isle, NJ, VORTAC, and the Presque Isle, ME, VOR/DME. The amended route will extend in two parts: From INT Flat Rock, VA, 212° and Raleigh Durham, NC, 224° radials and INT Hopewell, VA, 030° and Nottingham, MD, 174° radials, and resuming from the Sea Isle, NJ, VORTAC, and the Presque Isle, ME, VOR/DME.

J–61: J–61 currently extends between the intersection of the Dixon, NC, NDB 023° and Nottingham, MD, VORTAC 174° radials (the EDDYS, NC fix), and the Philipsburg, PA, VORTAC. This action will remove the segment between the EDDYS fix, and the Nottingham VORTAC. The amended route will extend between the Westminster, MD, VORTAC, and the Philipsburg VORTAC.

J–62: J–62 currently extends between the Robbinsville, NJ, VORTAC, and INT Hopewell, VA, 030° and Nottingham, MD, 174° radials; followed by a gap in the route, and resuming between the Sea Isle, NJ, VORTAC, and the Presque Isle, ME, VOR/DME. The FAA will remove the entire route. Alternative routing is available via J–222 to J–79.

J–109: J–109 currently extends between the Wilmington, NC, VORTAC, and the Linden, VA, VORTAC. The FAA will delete the entire route.

J–121: J–121 currently extends between the Charleston, SC, VORTAC, and the Kennebunk, ME, VOR/DME. The amended route will extend between the Charleston, SC, VORTAC and INT Sea Isle, NJ, 050° and Cedar Lake, NJ, 091° radials.

J–230: J–230 currently extends between the Robbinsville, NJ, VORTAC, and the Bellaire, OH, VOR/DME. The FAA will delete the entire route.

J–570: J–570 currently extends between the Albany, NY, VORTAC, and the Mirabel, PQ, Canada, VOR/DME, excluding the portion outside of the United States. The FAA will delete the entire route.

In addition to the above jet route changes, the FAA proposes to remove one high altitude RNAV route as follows:

Q–108: Q–108 currently extends between the GADAY, FL, WP and the HKUNA, FL, fix. The FAA will delete the entire route.

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 proposed 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 6 jet routes, removing 4 jet routes, and removing 1 high altitude area navigation (RNAV) route in the eastern 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 2004 Jet Routes

* * * * *

J–2 [Amended]

From Mission Bay, CA; Imperial, CA; Bard, AZ; INT Bard 089° and Gila Bend, AZ, 261°radials; Gila Bend; Tucson, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; San Antonio, TX; Humble, TX; Lake Charles, LA; Fighting Tiger, LA; Semmes, AL; Crestview, FL; to INT Crestview, FL, 091° and Montgomery, AL, 173° radials.

* * * * *

J–37 [Amended]

From Harvey, LA; Semmes, AL; to Montgomery, AL. From Lynchburg, VA; Gordonsville, VA; Brooke, VA; INT Brooke 067° and Coyle, NJ, 226° radials; to Coyle. From Kennedy, NY; Kingston, NY; to Albany, NY.

* * * * *

J–39 [Amended]

From Montgomery, AL; Vulcan, AL, Nashville, TN; Louisville, KY, to Rosewood, OH.

* * * * *

J–55 [Amended]

From INT Flat Rock, VA, 212° and Raleigh-Durham, NC, 224° radials; Raleigh-Durham; INT Raleigh-Durham 035° and Hopewell, VA, 234° radials; Hopewell; INT Hopewell 030° and Nottingham, MD, 174° radials. From Sea Isle, NJ; INT Sea Isle 050°and Hampton, NY, 223° radials; Hampton; Providence, RI; Boston, MA; Kennebunk, ME; to Presque Isle, ME.

* * * * *

J–61 [Amended]

From Westminster, MD; to Philipsburg, PA.

* * * * *

J–62 [Remove]

* * * * *

J–109 [Remove]

* * * * *

J–121 [Amended]

From Charleston, SC; Kinston, NC; Norfolk, VA; INT Norfolk 023° and Snow Hill, MD, 211° radials; Snow Hill; Sea Isle, NJ; INT Sea Isle, NJ 050° and Cedar Lake, NJ 091° radials.

* * * * *

J–230 [Remove]

* * * * *

J–570 [Remove]

* * * * *

Paragraph 2006 United States Area Navigation Routes

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Q–108 [Remove]

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

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–19082 Filed 8–31–20; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 143

[EPA–HQ–OW–2015–0680; FRL–10012–43–OW]

RIN 2040–AF55

Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing changes to existing regulations to protect the public from lead in plumbing materials used in public water systems or residential or nonresidential facilities providing water for human consumption. The changes in this rule codify aspects of the Reduction of Lead in Drinking Water Act of 2011 (RLDWA) and the Community Fire Safety Act of 2013 (CFSA). The RLDWA amended section 1417 of the Safe Drinking Water Act (SDWA), which prohibits the use and introduction into commerce of certain plumbing products that are not ''lead free.'' The RLDWA revised the definition of lead free to lower the allowable maximum lead content of plumbing products; and established a statutory method for calculating lead content. EPA is also establishing new requirements for manufacturers or importers that introduce into commerce products that must meet lead free requirements to certify such products as being in compliance with the lead free requirements in Section 1417 of the SDWA, as well as other changes to existing regulations to assist in implementation of Section 1417 of the SDWA, as amended. EPA expects that these requirements for lead content in plumbing materials used in new installations and repairs will result in fewer sources of lead in drinking water and, consequently, will reduce adverse health effects associated with exposure to lead in drinking water. The **SUPPLEMENTARY INFORMATION** section details EPA's changes to existing regulations as authorized under the SDWA as amended.

DATES: This final rule is effective on October 1, 2020. The compliance date for the product certification requirements in 40 CFR 143.19 is September 1, 2023. For purposes of judicial review, this rule is promulgated as of September 1, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2015–0680. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. This material can be viewed at the Water Docket in the EPA Docket Center, EPA/DC, EPA West William Jefferson Clinton Bldg., Room 3334, 1301 Constitution Ave. NW, Washington, DC. 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 Water Docket is 202–566–2426. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Russ Perkinson, telephone number: 202–564–4901; email address: *perkinson.russ@epa.gov,* Office of Ground Water and Drinking Water, Standards and Risk Management Division (4607), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460. Additional information may also be obtained from the following website: *https://www.epa.gov/dwstandardsregulations/use-lead-free-pipes-fittings-fixtures-solder-and-flux-drinking-water.*

SUPPLEMENTARY INFORMATION:

Abbreviations and Acronyms

AFS—American Foundry Society
ANSI—American National Standards Institute
CBI—Confidential Business Information
CFR—Code of Federal Regulations
CFSA—Community Fire Safety Act of 2013
FAQs—Frequently Asked Questions
NAICS—North American Industry Classification System
NSF—NSF International
O&M—Operations and Maintenance
PMI—Plumbing Manufacturers International
RFA—Regulatory Flexibility Act
RLDWA—Reduction of Lead in Drinking Water Act of 2011
SDWA—Safe Drinking Water Act
SIC—Standard Industrial Classification
UL—Underwriters Laboratories

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I. General Information

The United States has made tremendous progress in lowering children's blood lead levels. As a result of multiple federal laws and regulations, including the 1973 phase-out of lead in automobile gasoline, the 1978 federal regulation banning lead paint for residential and consumer use, the 1991 Lead and Copper Rule (LCR), and the 1995 ban on lead in solder in food cans, the median concentration of lead in the blood of children aged 1 to 5 years dropped from 15 micrograms per deciliter in 1976–1980 to 0.7 micrograms per deciliter in 2013–2014, a decrease of 95 percent.

Although childhood blood lead levels have been substantially reduced as a result of these actions, some children are still exposed to high levels of lead. Sources of lead include lead-based paint, drinking water, and soil contaminated by historical sources. The Federal Action Plan (Action Plan) to Reduce Childhood Lead Exposures and Associated Health Impacts, issued by the President's Task Force on Environmental Health Risks and Safety Risks to Children, December 2018, provides a blueprint for reducing further lead exposure and associated harm through collaboration among federal agencies with a range of stakeholders, including States, Tribes, and local communities, along with businesses, property owners, and parents. The Task Force comprises 17 federal departments and offices, including the Department of Health and Human Services (HHS) and the Department of Housing and Urban Development.

Through the Action Plan, EPA is committed to reducing lead exposures from multiple sources, including paint, ambient air, and soil and dust contamination, especially exposures of sources to children who are among the most vulnerable to the effects of lead. EPA is also focused on conducting critical research and improving public awareness by consolidating and streamlining federal messaging.

To reduce exposure to lead through drinking water, the Action Plan highlights several key actions, including EPA's commitment to updating the Lead and Copper Rule, making regulatory changes in this final rule to protect the public from lead in plumbing materials, and assisting schools and childcare centers with the existing 3Ts approach (Training, Testing and Taking Action) for lead in drinking water. The Action Plan also highlights EPA's continued support to States and communities by providing funding opportunities through the Drinking Water State Revolving Fund and the Water Infrastructure Finance and Innovation Act loan program for updating and replacing drinking water infrastructure. For more information about the Federal Lead Action Plan, see *https://www.epa.gov/sites/production/files/2018-12/documents/fedactionplan_lead_final.pdf.*

The Reduction of Lead in Drinking Water Act of 2011 (RLDWA) amended section 1417 of the Safe Drinking Water Act (SDWA) to revise the definition of ''lead-free'' to: (1) Lower the allowable maximum lead content from 8.0 percent to a weighted average of 0.25 percent of the wetted surfaces of pipes, fittings, and fixtures; and (2) specify a required method for calculating lead content. In addition, the RLDWA created exemptions from the prohibitions in section 1417 of the SDWA (these prohibitions are also referred to as ''lead free requirements'') for plumbing products that are used exclusively for nonpotable services as well as for other specified products. The Community Fire Safety Act of 2013 (CFSA) further amended section 1417 of the SDWA to exempt fire hydrants from these requirements.

A. Does this action apply to me?

The statutory prohibitions on use and introduction into commerce of certain products that are not lead free, which

are codified by this final rule, apply to any ''person'' as defined in the SDWA. This final rule applies to any person who would introduce plumbing products into commerce, such as manufacturers, importers, wholesalers, distributors, re-sellers, and retailers. It also applies to any person who would use plumbing products in the installation or repair of a public water system, such as an installation contractor, or in a residential or nonresidential facility providing water for human consumption, such as a plumber. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is EPA taking?

EPA is codifying revisions to the SDWA's prohibition on use and introduction into commerce of certain products that are not lead free (hereafter referred to as the SDWA lead prohibitions). The SDWA lead prohibitions, first enacted in 1986, were amended in 1996, and most recently in the RLDWA and the Community Fire Safety Act of 2013 (CFSA). This codification will further assure consistent implementation and enforcement of the SDWA lead prohibitions on use and introduction into commerce of certain products that are not lead free. EPA is also establishing requirements to certify plumbing products introduced into commerce to help ensure that only lead free pipes, fittings, and fixtures are used in repairs and new installations of a public water system or in a residential or nonresidential facility providing water for human consumption (*i.e.,* potable use applications).

The SDWA, section 1417(a)(1), prohibits the use of any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux in the installation or repair of any public water system, or any plumbing in a residential or nonresidential facility providing water for human consumption that is not ''lead free'' as defined in section 1417(d). Section 1417(a)(3) of the SDWA further provides that ''it shall be unlawful (A) for any person to introduce into commerce any pipe, or any pipe or plumbing fitting or fixture, that is not lead free, except for a pipe that is used in manufacturing or industrial processing; (B) for any person engaged in the business of selling plumbing supplies, except manufacturers, to sell solder or flux that is not lead free; or (C) for any person to introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.''

The 2011 RLDWA revised section 1417 to redefine lead free in SDWA section 1417(d) to (1) lower the maximum lead content from 8.0 percent to a weighted average of 0.25 percent of the wetted surfaces of pipes, fittings, and fixtures; (2) specify a required method for the calculation of lead content; and (3) eliminate the requirement that lead free products be in compliance with voluntary standards established in accordance with the SDWA, section 1417(e), for leaching of lead from new plumbing fittings and fixtures. In addition, the RLDWA created two categories of exemptions from the prohibitions on the use or introduction into commerce for (1) ''pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption''; and (2) ''toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are 2 inches in diameter or larger.'' (SDWA, sections 1417(a)(4)(A) and (B)). The CFSA further amended section 1417(a)(4)(B) of the SDWA to add fire hydrants to the list of excluded devices. By this regulation, EPA is identifying several additional types of products (*e.g.,* clothes washing machines) that are exempt from the lead free requirements, which will decrease burden for manufacturers without endangering public health and safety.

In addition to codifying the revised requirements under RLDWA and CFSA, EPA is establishing regulations for product certification and information collection to help ensure consistent implementation and enforcement of the SDWA lead prohibitions. The final rule does not require the marking and labeling of lead free pipes, fittings, or fixtures as EPA had initially proposed. Having reviewed public comments on this issue, EPA has reconsidered the matter, and EPA anticipates that the final rule's certification provisions, combined with the widespread practice of voluntary labeling by firms that obtain third party certification, will likely result in the marketing of many potable use plumbing products in a way that communicates the lead free status of the products to the purchaser without the burden of regulatory requirements to do so.

EPA expects that this final rule will result in fewer sources of lead in drinking water and, consequently, will reduce adverse health effects associated with exposure to lead in drinking water.

C. What is EPA's authority for taking this action?

EPA's authority for this final rule is the Safe Drinking Water Act, 42 U.S.C. 300f *et seq.* including sections 1417, 1445, 1450, and 1461 of the SDWA, 42 U.S.C. 300j–6, 300j–4, 300j–9, and 300j–21. The SDWA, section 1450, authorizes EPA Administrator to ''prescribe such regulations as are necessary or appropriate to carry out his functions'' under the SDWA. EPA's current regulations (40 CFR 141.43) codify parts of section 1417 of the SDWA, but they do not reflect the current version of section 1417, as amended by the RLDWA and the CFSA, or the introduction into commerce prohibitions, which were established in the 1996 amendments to the SDWA. This final rule amends those regulations to reflect current law. In addition, EPA is adopting additional regulatory provisions to aid in the implementation and enforcement of the requirements of the SDWA, section 1417, and to identify additional products as exempt.

D. What are the incremental costs and benefits of this action?

EPA conducted an incremental compliance cost analysis of this final rule. For detail on the cost analysis see sections V and VI of this preamble. The Final Rule Technical Support Document (USEPA, 2020) prepared for this final rule is available in the docket for this rule. It contains the detailed economic analysis for this rule including the description of the cost assessment. EPA did not quantify or monetize benefits for this final rule, but a qualitative discussion of the benefits attributable to this final rule can be found in section VII of this preamble and in the Final Rule Technical Support Document.

Total annualized costs for this final rule range from $7 million discounted at three percent to $12 million discounted at seven percent. These costs include administrative requirement costs, third party and self-certification costs, and the costs of responding to EPA data requests.

This final rule will help ensure that only lead free plumbing products and components of public water systems are used in repairs and new installations in potable use applications. The benefits of this final rule are the resulting incremental reduction in exposure to

lead in drinking water. The 2013 Integrated Science Assessment for Lead (USEPA, 2013) and the U.S. Department of Health and Human Services' National Toxicology Program Monograph on Health Effects of Low-Level Lead (National Toxicology Program, 2012) have examined the health effects of lead. In these documents, lead has been associated with adverse cardiovascular effects (both morbidity and mortality effects), renal effects, reproductive effects, immunological effects, neurological effects, and cancer.

II. Background

Lead can be introduced into drinking water by corrosion of plumbing products and components of public water systems (pipes, pipe and plumbing fittings, and fixtures, solder, and flux). The greatest risk associated with lead exposure is to infants, young children, and pregnant women. Scientists have linked lead exposure to lowered IQ in children, as compared with children exposed to lower levels of lead.

In 1986, Congress amended the SDWA to prohibit the use of pipes, solder, or flux that are not ''lead free'' in the installation or repair of public water systems or plumbing in facilities providing water for human consumption. In doing so, Congress intended ''to eliminate the future use of lead in water supply distribution systems.'' H.R. Rep. No. 99–575 (1986) (Conf. Rep.) as reprinted in 1986 U.S.C.A.A.N. 1592, 1602. At the time, the SDWA defined lead free as solder and flux having no more than 0.2 percent lead, and defined lead free pipes as having no more than 8.0 percent lead.

In 1996, Congress further amended the SDWA to clarify that its ''lead free'' prohibition on the use of pipes, solder, and flux also applies to pipe fittings, plumbing fittings, and fixtures (referred to in this document as ''fittings and fixtures''). The goal of the legislation was described similarly to the purpose articulated in the 1986 legislative history: ''The focus of these changes is to prevent the contamination of the drinking water supply by lead that has leached from pipes, faucets, and other fixtures incidental to the delivery of potable water. It is the intent of the Committee that the terms pipe and plumbing fittings, and fixtures in the legislation are in reference to drinking water applications.'' H.R. Rep. 104–632(I), at 39, as reprinted in 1996 U.S.C.A.A.N.1366, 1402. The 1996 amendments also revised the definition of lead free to require new plumbing fittings and fixtures be in compliance with a lead leaching standard established in accordance with section 1417(e) of the SDWA.

The 1996 amendments also made it unlawful for any person to introduce into commerce any pipe, pipe or plumbing fitting, or fixture that is not lead free, except for a pipe that is used in manufacturing or industrial processing. As amended in 1996 SDWA section 1417(a)(3)(B), prohibits ''any person engaged in the business of selling plumbing supplies, except manufacturers, to sell solder or flux that is not lead free,'' and SDWA section 1417(a)(3)(C), makes it unlawful ''for any person to introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing of water for human consumption.''

In 2011, Congress enacted the RLDWA. It revised the definition of lead free by lowering the allowable maximum lead content from 8.0 percent to a weighted average of 0.25 percent of the wetted surfaces of plumbing products. It also revised the definition of lead free to include a statutory method for the calculation of lead content. Additionally, the RLDWA revised the definition of lead free to remove the requirement that new plumbing fittings and fixtures be in compliance with standards established in accordance with the SDWA, section 1417(e), for the leaching of lead from new plumbing fittings, and fixtures.

The RLDWA also established two new categories of exemptions from the prohibitions on the use or introduction into commerce of pipes, pipe fittings, plumbing fittings or fixtures, solder or flux not meeting the statutory definition of lead free. One exemption is for pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services, such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption (SDWA, section 1417(a)(4)(A)). A second exemption was established for toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are 2 inches in diameter or larger (SDWA, section 1417(a)(4)(B)). The RLDWA established a prospective effective date of January 4, 2014, which provided a 3-year timeframe for affected parties to transition to the new requirements. The CFSA further amended SDWA section 1417, to exempt fire hydrants from the prohibitions otherwise applicable under that section.

In anticipation of these changes taking effect, EPA released the ''Summary of the Reduction of Lead Drinking Water Act and Frequently Asked Questions'' to help the public, including manufacturers, retailers, plumbers, and consumers in understanding the changes to the law (USEPA, 2013a). In this Frequently Asked Questions (FAQ) document, EPA stated its intention to further evaluate and refine topics in the FAQ and other issues in a future rulemaking.

On January 17, 2017, EPA published in the **Federal Register** a proposed rulemaking—''Use of Lead Free Pipes, Fittings, Fixtures, Solder and Flux for Drinking Water'' (USEPA, 2017, 82 FR 4805). The proposed rulemaking contained several major provisions. EPA proposed to codify various statutory provisions, including the definition of lead free; the prohibition on introducing into commerce pipes, fittings, or fixtures that are not lead free; and the prohibition on the use of any such products in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption. EPA also proposed labeling requirements to differentiate plumbing materials that are required to meet the lead free requirements from those that are exempt from the requirements. In addition, EPA proposed requirements that lead free products would need to be certified by an American National Standard Institute (ANSI) accredited third party certification body, unless they are made by manufacturers having fewer than 100 employees, in which case they could be self-certified as lead free. Other provisions were included in the proposal to aid in implementation, such as defining certain terms used in the statute or the proposed regulation and provisions to ensure compliance.

In the **Federal Register** publication for the proposed rulemaking (USEPA, 2017, 82 FR 4805 (January 17, 2017)), EPA requested comments on a number of specific questions concerning provisions in the proposal and possible alternative provisions or criteria. In response to requests from the public, EPA extended the 90-day public comment period by an additional 30 days; the comment period closed on May 17, 2017 (82 FR 17406, April 11, 2017). EPA received 25,858 comment submissions, of which 25,751 were identical or nearly identical because they were submitted as part of a mass mailing public comment campaign (5,212 of the 25,751 comments included

unique statements in addition to the identical comment). A detailed listing of public comments received and EPA's responses to comments are available in Docket ID EPA–HQ–OW–2015–0680 at *https://www.regulations.gov.*

III. Summary of Data Used

This final rule is supported by a number of documents. The Technical Support Document and additional records are available in the public record for this final rule under Docket ID No. EPA–HQ–OW–2015–0680 at *https://www.regulations.gov.*

A. Characterization of the Affected Industry

EPA used a number of data sources in the characterization of the plumbing manufacturing industry. GMP Research, Inc., provided a report to EPA in 2014, which included data on the total number of both potable and nonpotable plumbing products sold in 2013, distributed across 40 product subcategories, and the market share of the leading suppliers by each product subcategory that may be subject to EPA's final rule. These data were supplemented with information from various additional sources. Dun & Bradstreet data were obtained for those firms that were identified by the North American Industry Classification System (NAICS) and Standard Industrial Classification (SIC) code classifications as potentially producing products that would be affected by the final rule. Additional data for plumbing manufacturers and fabricators were obtained from ThomasNet, a comprehensive, online database that provides information on manufacturing firms in the United States. EPA also used NSF International's Certified Drinking Water System Components database, which provides a list of manufacturers who use NSF to certify their products to NSF/ANSI Standard 61, including the subset of products that are certified to Annex G of that standard to reflect the 0.25 percent lead content limit, which was later established as a new NSF/ANSI Standard 372. Additional information was gathered from the website of the Plumbing Manufacturers International (PMI), a plumbing industry trade association. EPA used data on the number of employees and annual receipts for firms from the U.S. Census Bureau's Statistics of U.S. Businesses. Information used in the development of industry production growth was obtained from both the GMP Research, Inc., report and projections on United States housing growth from IHS Global Insight. These data sources are referenced in the Final Rule Technical Support Document and other supporting documents available in Docket ID No. EPA–HQ–OW–2015–0680 at *https://www.regulations.gov.*

B. Determining Baseline Industry Practices and Potential Costs of Compliance

EPA conducted calls with representatives of both the PMI and the American Foundry Society (AFS) industry associations and held a stakeholder webinar in 2015 to obtain information on current practices within the plumbing parts manufacturing industry in regard to labeling of product packages, marking of the plumbing products themselves, and the technical feasibility and costs associated with making changes to product labeling and marking. Additionally, PMI and AFS provided information to EPA on product identification methods, including the estimated percentage of products that currently include lead free identification and general cost information for modifications to package labeling and product marking. Information on the feasibility and time requirements for changing production molds in response to potential regulatory requirements was also discussed, along with plumbing product inventory turnover rates. The trade associations also provided information on the use and costs of third party certification in the industry.

In addition, EPA obtained data from various independent and geographically diverse tool and dye firms on the cost of mold modifications. EPA also contacted suppliers to obtain capital equipment and operations and maintenance (O&M) costs to allow the Agency to estimate the economic impact of potential new labeling requirements under the rule. EPA also contacted the eight firms currently accredited to certify plumbing components for compliance with NSF/ANSI Standard 372, to obtain information on the cost of certification and the technical process for testing and certifying products to meet the standard. These calls with PMI and AFS and other data sources are referenced in the Final Rule Technical Support Document and other supporting documents available under Docket ID No. EPA–HQ–OW–2015–0680 at *https://www.regulations.gov.*

IV. Final Rule

This section includes a summary of the requirements of this final rule, the significant changes from the proposed rulemaking, and the rationale for those changes. A detailed listing of public comments received and EPA's responses to comments are available in Docket ID EPA–HQ–OW–2015–0680 at *https://www.regulations.gov.*

A. Applicability and Scope

1. Final Rule Requirements:

This final rule amends the Code of Federal Regulations (CFR) at 40 CFR part 143 by retitling it as Other Drinking Water Regulations; creating a subpart A, to consist of the existing National Secondary Drinking Water Regulations; and creating a Subpart B, Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water, pursuant to, *inter alia,* sections 1417, 1461, and 1450 of the SDWA. EPA has included a Scope/Applicability section in subpart B as 40 CFR 143.10 of this final rule. Subpart B states that ''[t]his subpart establishes regulations pertaining to pipes, pipe or plumbing fittings, or fixtures, solder, or flux pursuant to, *inter alia,* section 1417 and 1461 of the SDWA (42 U.S.C. 300g–6 and 300j–21). It applies to any person who introduces these products into commerce, such as manufacturers, importers, wholesalers, distributors, re-sellers, and retailers. It also applies to any person who uses these products in the installation or repair of a public water system or a residential or nonresidential facility providing water for potable uses.'' The product certification requirements in 40 CFR 143.19 for lead free pipes, fittings, and fixtures in this final rule apply to manufacturers and importers. The terms ''manufacturer'' and ''importer'' are defined in 40 CFR 143.11. A manufacturer is defined as a person or entity who: Processes or makes a product; or has products processed or made under a contractual arrangement for distribution. An importer is any person who introduces into commerce any pipe, fitting, fixture, solder or flux entering the United States; or any ''importer'' as defined in 19 CFR 101.1; or both. EPA does not consider plumbers or entities that design and build public water systems to be manufacturers of pipes, fittings, and fixtures, but rather as persons who use or assemble pipes, fittings, and fixtures in the installation or repair of a public water system or a residential or nonresidential facility providing water for potable uses. This final rule requires that new or replacement pipes, pipe or plumbing fittings, or fixtures, solder and flux used in providing water for potable uses must be lead free, except for certain exemptions.

There are six components of the definition of ''lead free'' in 40 CFR 143.12(a) through (f) of this final rule, based on the statutory definitions of lead free in sections 1417 and 1461 of

the SDWA. In 40 CFR 143.12(a), EPA specifies the maximum allowable lead content as follows: (1) Not containing more than 0.2 percent lead when used with respect to solder and flux; and (2) Not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures. In 40 CFR 143.12(b), this final rule includes the statutorily prescribed calculation of the weighted average lead content. In 40 CFR 143.12(c) and (d), EPA specifies how to use the required calculation method when a coating or liner is used in manufacturing a product. (This final rule defines the terms ''coating'' and ''liner'' in 40 CFR 143.11.) Similarly, in 40 CFR 143.12(e), EPA specifies how to calculate lead content if a fixture consists of any media (*e.g.,* activated carbon, ion exchange resin) contained in filters.

In 40 CFR 143.12(f) of the final rule, EPA defines ''lead free'' for drinking water coolers. In addition to meeting the weighted average of 0.25 percent lead when used with respect to wetted surfaces, additional limits specific to drinking water coolers are placed on their storage tanks and individual parts or components, consistent with the definition of ''lead free,'' and applicable to drinking water coolers in section 1461(2) of the SDWA. This final rule addresses this requirement in 40 CFR 143.12(f) as follows: In addition to the definitions of ''lead free'' in 40 CFR 143.12(a) through (e), no drinking water cooler which contains any solder, flux, or storage tank interior surface, which may come into contact with drinking water is lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead. Drinking water coolers must be manufactured such that each individual part or component that may come in contact with drinking water shall not contain more than 8 percent lead while still meeting the maximum 0.25 percent weighted average lead content of the wetted surfaces of the entire product.

As with all pipes, fittings, or fixtures, this final rule does not require the removal and replacement of existing drinking water coolers that do not meet the maximum 0.25 percent weighted average lead content of the wetted surfaces of the entire product. However, this final rule does require that if any new drinking water coolers are installed, or if existing drinking water coolers are removed and replaced, with a new or replacement device, the new and replacement products must meet the requirements of this final rule.

2. Changes From Proposed Rule and Rationale

Some public commenters requested that EPA clarify that this final rule encompasses products such as those used in municipal drinking water distribution and plumbing products that convey drinking water. EPA added a new section, 40 CFR 143.10 Applicability and Scope, to this final rule to provide a brief description of the rule and to whom it applies. The statutory prohibition on the use or introduction into commerce of pipes, pipe and plumbing fittings, fixtures, solder and flux that are not lead free, and the corresponding requirements described in this final rule applies to any person. ''Person'' is defined under the SDWA to include individuals; corporations; companies; associations; partnerships; municipalities; or State, Federal, or Tribal agencies. The statutory ban on selling solder and flux that are not lead free applies only to ''any person engaged in the business of selling plumbing supplies.'' The use prohibition applies only to use in the ''installation or repair'' of: (1) Any public water system; or (2) any plumbing in a residential or nonresidential facility or location providing water for human consumption.

Section 143.12(e) was added to this final rule to exclude media in filters, such as activated carbon, from the calculation used to determine the wetted surface area of the entire product. This change was made because such filter media should not contain lead, yet the surface area of the filter media would be very large and could be difficult to determine; therefore, including it in the calculation of the weighted average of the lead content of the product would allow other components in the product to contain high levels of lead while still meeting the definition of lead free.

EPA requested comment concerning whether a specific provision needed to be included in this final rule to define ''lead free'' for drinking water coolers because of the different definitions in sections 1417 and 1461 of the SDWA. EPA received several public comments about this issue, most of which supported the inclusion of a specific provision pertaining to drinking water coolers. This final rule includes 40 CFR 143.12(f) to address the specific treatment of drinking water coolers under the SDWA. Section 1461 of the SDWA defines lead free with respect to drinking water coolers to mean that ''each part or component of the cooler which may come into contact with drinking water contains not more than 8 percent lead except that no drinking water cooler that contains any solder, flux or storage tank interior surface that may come into contact with drinking water shall be considered lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead.'' The SDWA, section 1461(2), also authorizes the Administrator to establish more stringent requirements for treating any part or component of a drinking water cooler as lead free ''whenever he determines that any such part may constitute an important source of lead in drinking water.'' A drinking water cooler is a ''fixture'' under this final rule and as that term is generally understood; and, therefore, subject to the definition of lead free in the SDWA, section 1417. The ''parts or components'' in drinking water coolers constitute an important source of lead in drinking water coolers. Accordingly, this final rule defines ''lead free'' for drinking water coolers to give effect to both statutory definitions of lead free. In practice, drinking water coolers need to comply with the most restrictive of the requirements in sections 1417 and 1461 of the SDWA. For clarity and consistency with statutory requirements, EPA addressed the requirements of the SDWA, section 1461, in this final rule by including regulatory text in 40 CFR 143.12(f). If the section 1461 requirements were not incorporated into this rule, a drinking water cooler could potentially have a small part with lead content that is much greater than 8 percent as long as the weighted average lead content of wetted surfaces of the whole device did not exceed 0.25 percent lead. The effect of this change in the rule is to further reduce potential public exposure to lead from any new or replacement drinking water coolers.

Based on public comment, this final rule includes a minor correction to address concerns with placement of the rule in 40 CFR part 143 as it relates to the mandatory nature of this rule. The National Secondary Drinking Water Regulations that are currently already in 40 CFR part 143 are not federally enforceable as stated in existing 40 CFR 143.1. This final rule revises 40 CFR part 143 to designate the National Secondary Drinking Water Regulations as subpart A of part 141 and the lead free requirements in this rule as subpart B. Therefore, EPA also revised the statement about non-enforceability in 40 CFR 143.1, to clarify it only pertains to the National Secondary Drinking Water Regulations by removing ''part'' and

replacing it with ''subpart'' in the first sentence of the paragraph.

B. No Labeling Requirement for Potable Use Products

1. Final Rule Requirements

This final rule does not require any marking or labeling of lead free pipes, fittings, or fixtures on products or packages. However, EPA continues to recommend marking and labeling of lead free products and packages to indicate compliance with the SDWA, section 1417.

2. Changes From Proposed Rule and Rationale

EPA proposed to require that all lead free products be labeled on the package, container or tag, as well as marked directly on the product, unless the product is too small for a legible marking. EPA did not propose a specific phrase to be required on products or packages, but rather a performance standard—that each package, and each product (unless the product is too small), clearly convey to users that the product is in compliance with the lead free requirements of the SDWA.

EPA is not requiring any lead free labeling or marking of potable products in this final rule. Several commenters made the point that labeling is not necessary if third party certification is required, because the certification itself provides adequate assurance of compliance and, therefore, the cost of labeling is not worth any incremental benefits of labeling a product that has been verified as lead free. EPA found that many manufacturers already utilize a combination of product marking and/or package labeling to indicate that the product has been certified to be lead free for marketing reasons and to demonstrate that the products can be used in compliance with State and local plumbing codes. EPA anticipates that this final rule's certification provisions, combined with the widespread practice of voluntary labeling by firms that obtain third party certification, will likely result in the marketing of many potable use plumbing products in a way that communicates the lead free status of the product to the purchaser without the burden of regulatory requirements to do so. Accordingly, the final rule does not require the marking and labeling of lead free pipes, fittings, or fixtures.

C. Exemptions

1. Used Exclusively for Nonpotable Services

a. Final Rule Requirements

The RLDWA established two new categories of exemption from the lead free requirements. One category exempts pipes, pipe fittings, plumbing fittings, or fixtures that are ''used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption.'' EPA has also provided examples of products that could be considered as ''used exclusively for nonpotable services'' in 40 CFR 143.16(a). The second exemption category consists of specifically named product classes. These specifically listed exempt products are codified in this final rule and discussed in section IV.C.2. of this preamble.

b. Changes From Proposed Rule and Rationale

EPA has removed the definition of ''used exclusively for nonpotable services'' that was contained in the proposed rulemaking. The proposed regulation had defined the term ''used exclusively for nonpotable services'' by specifying two ways to meet this exemption: (1) The product is incapable of use in potable services (*e.g.,* is physically incompatible with other products that would be needed to convey water for potable uses); or (2) The product is clearly labeled, on the product, package, container, or tag with a phrase such as ''Not for use with water for human consumption'' or another phrase that conveys the same meaning in plain language. In the final rule, as opposed to defining the term ''used exclusively for nonpotable services,'' EPA has provided examples of products that could be considered as ''used exclusively for nonpotable services'' in 40 CFR 143.16(a).

EPA received numerous comments on the proposed definition with a very wide range of perspectives, examples of which are summarized in this section. Some commenters supported the definition as proposed, with some stating the requirement is critical to human health. Some commenters requested EPA remove the option of qualifying for the exemption through labeling products with a warning, and instead require such products be made physically incompatible with potable water plumbing. Other commenters stated that many fittings and components, such as automotive parts and HVAC valves, are physically compatible with potable use plumbing products because the pipe threads are compatible and that to extend the labeling requirement to anything which could be made to fit onto a potable use plumbing product would drastically increase the rule cost to many manufacturing sectors. Other commenters contended that EPA has no authority to regulate non-potable use products or that such a requirement was beyond the intent of the SDWA. EPA's proposed option to allow the use of labeling to qualify for the ''used exclusively for nonpotable services'' exemption was not a requirement to label exempt products; it was an option EPA proposed be made available to manufacturers that elected to use it in order to establish that pipes, fittings, and fixtures intended, designed and marketed for use in nonpotable services or in applications other than delivery of water products would be considered ''used exclusively for nonpotable services'' and therefore exempt from the prohibitions. It would have been within EPA's authority to finalize such a requirement in order to clarify the meaning of the exemption for regulated entities. However, due to the numerous and widely differing perspectives and reasons expressed by commenters, it became clear that the definition could be interpreted to be both over-inclusive and under-inclusive. Therefore, in the final rule EPA is not including a definition of ''used exclusively for nonpotable services'' but EPA is providing examples of products that could be eligible for the exemption. These examples are not intended to create binding criteria for eligibility (or ineligibility) for the exemption. Therefore, EPA will continue to rely on manufacturers and importers, in the first instance, to determine which products are ''used exclusively for nonpotable services.'' Because any person, including a manufacturer or importer, could be subject to enforcement if the person introduces into commerce non-lead free products that could be used in potable services, it is in such person's interest to make accurate determinations about the potential use of their products in order to maintain compliance with the SDWA. As previously discussed, EPA recognizes that situations exist in which a particular product's primary use in most circumstances is expected to be for nonpotable use, but in which the same product may be anticipated to be used for potable use in some circumstances. Examples may include hose bibs and yard hydrants. The primary use of these products in most situations is likely outdoor watering and irrigation. However, they are sometimes observed to be installed and in use as a source of potable water for cooking and drinking, such as in campgrounds and RV parks. If used for cooking or drinking, the products are not used exclusively for nonpotable services. To

protect public health, EPA advises that manufacturers exercise caution in anticipating how a product that is introduced into commerce may be used in various circumstances. Likewise, EPA advises caution in anticipating product usage by persons involved in the installation or repair of any public water system, or of any plumbing in a residential or nonresidential facility providing water for human consumption. For non-lead free products that are very similar in form to, and that may be confused with, lead free potable use counterparts, EPA recommends that manufacturers, importers, and other suppliers either reformulate the product to be lead free or clearly label the non-lead free product with a phrase such as ''Not for use with water for human consumption.''

2. Specifically Listed Exempt Products

a. Final Rule Requirements

This final rule codifies the statutory exemption for specific products by name in the SDWA, section 1417(a)(4)(B), to include toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, fire hydrants, shower valves, service saddles, and water distribution main gate valves that are 2 inches in diameter or larger. In addition to the specific plumbing devices excluded in the SDWA, the final rule is also excluding clothes washing machines, emergency drench showers, emergency face wash equipment, eyewash devices, fire suppression sprinklers, steam capable clothes dryers, and sump pumps because these products are not designed or used for any potable application as potable uses as defined for this final rule. These products do not provide water for human ingestion. The Use Prohibitions in 40 CFR 143.13 or the Introduction into Commerce Prohibitions in 40 CFR 143.15 do not apply to these specifically exempted products; therefore, these exempt products do not need to meet the definition of lead free in 40 CFR 143.12, and manufacturers and importers of these products do not need to meet the certification provisions in 40 CFR 143.19.

b. Changes From Proposed Rule and Rationale

For the specific product exemptions listed in 40 CFR 143.16(b) and (c), EPA retained the exempted products listed in the proposed rulemaking either because they are explicitly identified as exempt in statute or because the product is not used for any potable purpose. In this final rule, EPA added two product categories to the list of exempt products as follows: ''emergency face wash equipment'' and ''steam capable clothes dryers.''

Emergency face wash equipment may be combined with eyewash devices, and neither the equipment nor the devices are used for a potable purpose that involves the ingestion of water. Steam capable clothes dryers, like clothes washing machines, are used for laundering clothing; they are not used for the ingestion of water, and, therefore, are not used for any potable purpose as defined in this final rule.

EPA is clarifying in this final rule that exempt products do not need to comply with the certification provisions of 40 CFR 143.19. Such products either (A) are not potable use products or (B) are specifically exempted by the RLDWA.

D. Product Certification

1. Final Rule Requirements

The final rule establishes certification requirements for manufacturers and importers to demonstrate that the maximum lead content of the wetted surfaces of their plumbing products (*i.e.,* pipes, fittings, and fixtures) does not exceed a weighted average of 0.25 percent using the method for the calculation of lead content specified in this final rule. This final rule requires manufacturers with 10 or more employees, and importers entering products purchased from or manufactured by manufacturers with 10 or more employees, to obtain third party certification by an ANSI accredited third party certification body to demonstrate that, with some exceptions, any pipe, pipe or plumbing fitting or fixture introduced into commerce meets the definition of lead free. This final rule requires manufacturers with fewer than 10 employees, and importers entering products purchased from or manufactured by manufacturers with fewer than 10 employees, to demonstrate compliance either through third party certification by an ANSI accredited certification body or through self-certification as described later in this section. This final rule also requires manufacturers of all sizes and importers entering goods manufactured by or purchased from entities of all sizes to certify custom fabricated products either through an ANSI accredited certification body or through self-certification as described later in this section. A requirement for recordkeeping pertaining to product certification is described in section IV.E.2. of this preamble.

Third party certified plumbing materials in covered plumbing projects are currently required for certain products under model plumbing codes, which are often adopted in whole or in part by States or municipalities. The most recent version of the single most widely adopted model plumbing code, the *2018 International Plumbing Code* (published in 2017), requires pipe, pipe fittings, joints, valves, faucets, and fixture fittings used to supply water for drinking or cooking purposes to comply with the NSF/ANSI 372 standard for lead content. To meet the NSF/ANSI 372 standard, a product needs to be evaluated by an ANSI accredited third party certification body. These bodies are independent organizations that test a product, review a product's manufacturing process, and determine whether the product complies with specific standards for safety, quality, sustainability, or performance (*e.g.,* NSF/ANSI 372 standard for lead content). ANSI accredited third party certification bodies currently include NSF International, CSA Group, ICC Evaluation Services, International Association of Plumbing and Mechanical Officials Research & Testing (IAPMO R&T), Intertek Testing Services, Truesdail Laboratories, Underwriters Laboratories, and the Water Quality Association.

For manufacturers with fewer than 10 employees and importers entering products manufactured by or purchased from manufacturers with fewer than 10 employees, this final rule provides the flexibility of allowing these entities to demonstrate product compliance either by using an ANSI accredited third party certification body or by self-certification of the products. Firms with fewer than 10 employees are more likely to operate on a limited scale with a lower volume of production, including those that serve only local or regional markets, which would make third party certification not as cost effective as it is for larger firms; the cost of certification per unit produced could be much higher.

Therefore, this final rule provides the option for firms with fewer than 10 employees to self-certify their products. Those eligible manufacturers that opt for the self-certification are required to develop a ''certificate of conformity'' to attest that products meet the lead free requirements. A similar concept is currently in use for certain products regulated by the Federal Communications Commission and the Consumer Products Safety Commission.

For manufacturers and importers eligible for self-certification, this final rule requires the certificate of conformity to be posted to a website with continuing public access in the

United States, unless it is distributed by other means (*e.g.,* electronically or in hard copy) with the product through the distribution channel for final delivery to the end use installer of the product.

The certificate of conformity is required to include the following information: Contact information for the manufacturer and any importer, a listing of products, statements attesting that the products meet the lead free requirements and that the manufacturer's or importer's eligibility to self-certify the product is consistent with the regulation (*e.g.,* the manufacturer has fewer than 10 employees or the product is custom fabricated), a statement indicating how the manufacturer or importer verified conformance, and signatory information. The statement indicating how the manufacturer or importer verified conformance could be a brief overview of the general methodology employed, such as: laboratory testing using X-ray fluorescence, other specific technologies, or confirmation (by some method described in the statement) that all source materials used in manufacture were less than 0.25 percent lead. EPA anticipates that firms will develop the certificate of conformity to work best with their individual circumstances. For example, a manufacturer may list multiple product numbers or models on a certificate of conformity for use with all products within a similar product family, provided that all of the similar products meet the lead free requirements.

EPA anticipates that some firms having fewer than 10 employees will utilize third party certification rather than self-certification in cases where a large quantity of a specific product is produced. Some firms will do so because many State and local plumbing codes require the use of third party certified plumbing products in projects covered by the codes.

This final rule also requires firms that expand to 10 or more employees to obtain third party certification within 12 months, to allow a reasonable transition time for obtaining third party certification of products. Third party certification should be easily attainable in such situations without the need to modify or reformulate products if the products were accurately self-certified as lead free.

The certification requirement will help ensure that only lead free plumbing materials are introduced into commerce or used in new installations or repairs of any public water system or any plumbing in a facility providing water for human consumption. The third party certification requirement leverages the resources of the third party certification bodies as well as manufacturers to help parties in the supply chain ensure that they are not violating the requirements of the RLDWA when they introduce the product into commerce or use it in new installations or repairs. Increasing the number of products that are third party certified will provide small businesses such as plumbers and builders better assurance that they are complying with the federal requirements to use lead free plumbing products. The self-certification requirement, which is applicable to manufacturers with fewer than 10 employees or for custom fabricated products, also helps to ensure that products sold by those smaller manufacturers or those products that are custom fabricated are lead free without imposing a significant burden on the smallest manufacturers.

This final rule also allows any manufacturer of custom fabricated products to opt for self-certification for custom fabricated products. EPA has defined ''custom fabricated product'' in 40 CFR 143.11. For custom fabricated products, EPA anticipates that firms may develop and use a certificate of conformity that covers a range of products within a product family, provided that all the products meet the lead free requirements.

This final rule includes three exclusions from the certification requirement for those products required to be lead free: (A) Product components of assembled pipes, fittings, or fixtures do not need to be individually certified if the entire product in its final assembled form is lead free certified; (B) direct replacement parts for previously installed lead free certified products do not need to be individually certified if the weighted average lead content of the wetted surface area for the part does not exceed the weighted average lead content of the original part; and (C) dishwashers.

2. Changes From Proposed Rule and Rationale

In the proposed rulemaking, EPA proposed certification requirements for manufacturers and importers to demonstrate that the maximum lead content of the wetted surfaces of their plumbing products do not exceed a weighted average of 0.25 percent, using the method for the calculation of lead content established in the statute. For products that are required to meet the SDWA section 1417 lead free requirements, EPA proposed to require manufacturers with 100 or more employees or importers sourcing products from or representing manufacturers with 100 or more employees to demonstrate compliance with the lead free definition by obtaining third party certification by an ANSI accredited third party certification body. EPA proposed to require manufacturers with fewer than 100 employees, or importers sourcing products from or representing foreign manufacturers with fewer than 100 employees, to demonstrate compliance either through third party certification by an ANSI accredited certification body or through self-certification as described later in this section. As evidenced by California's product testing program, there has been significant noncompliance with California's definition of lead free, which was the basis of the RLDWA lead free definition (CalEPA, 2013). A third party certification requirement leverages the resources of the third party certifiers as well as the supply chain to help the market police itself and assure compliance. This final rule also lowers the maximum number of employees allowed for a manufacturer or importer to self-certify products to apply to manufacturers with fewer than 10 employees, and importers entering products purchased from or manufactured by manufacturers with fewer than 10 employees.

EPA made this change after taking into consideration issues raised in public comments regarding both the proposed requirements for labeling and marking (pertaining to section IV.B of this preamble) and the proposed requirements for self-certification. After careful review of comments, EPA determined that the objectives achieved through labeling and marking can more effectively be achieved through requiring more widespread use of third party product certification. EPA proposed labeling and marking requirements with the intent of clearly conveying to users that a product is in compliance with the lead free requirements of the SDWA. However, the third party certification requirement assures users in the supply chain that they are not violating the requirements of the RLDWA when they introduce a product into commerce or use it in new installations or repairs. Thus, the final rule does not require any marking or labeling of lead free pipes, fittings, or fixtures on products or packages. Rather, this objective of the rule is achieved by relying more heavily on third party certification.

EPA is ensuring that there will not be a significant impact on small entities by allowing the self-certification option for firms with fewer than 10 employees or for any custom fabricated product.

Reducing the employee threshold for self-certification from less than 100 employees in the proposed rulemaking to less than 10 employees in the final rule, will reduce the number of self-certified products in the market. EPA chose this cut-point to avoid imposing a burden on the smallest firms that would be disproportionate to the incremental benefits of third party certification as compared to self-certification. The employee threshold of 100 would have allowed a much larger share of the market to avoid third party certification, reducing the benefits of a widely applicable regulatory requirement for third party certification. Increasing the number of products that are third party certified will provide small businesses such as plumbers and builders better assurance that they are complying with the federal requirements to use lead free plumbing products. The self-certification requirement, which is applicable to manufacturers with fewer than 10 employees or for custom fabricated products, also helps to ensure that products sold by those smaller manufacturers or those products that are custom fabricated are lead free without imposing a significant burden on the smallest manufacturers.

EPA received a number of comments supporting a requirement for third party certification of products and opposing any provisions allowing for self-certification. The comments opposing any self-certification were submitted from a wide range of sources (*e.g.,* plumbing manufacturing industry representatives, public water system interests, consumer advocacy groups, and individuals). Many of these comments object to the use of manufacturer size or employee numbers as a criterion for self-certification for various reasons. Many of these comments state that because many plumbing codes require the use of third party certified products, many firms with less than 100 employees presumably already have their products certified by a third party in order to be in conformance with plumbing codes and sell in these areas. For example, the most recent version of the model plumbing code, the 2018 International Plumbing Code, requires pipe, pipe fittings, joints, valves, faucets, and fixture fittings used to supply water for drinking or cooking purposes to comply with the NSF/ANSI 372 standard for lead content. As a result, products sold in States or municipalities that have adopted such a model plumbing code are likely to be certified, regardless of the size of the firm.

Some commenters stated that small businesses that had already committed to third party certification of their products would be harmed by competitors that undercut prices by self-certifying products. Other comments expressed concern that a small entity exemption from third party certification could lead to abuse by over-seas providers that already present a more challenging category of manufacturer for regulators to monitor and that this could harm U.S. manufacturers. Thus, those commenters believe that there is no need to allow firms having fewer than 100 employees to self-certify their products and that doing so would create unfair market conditions and the introduction of products that are not lead free.

Some commenters addressing the proposed product label and marking requirements, indicated that EPA should not require product labeling or marking, but rather should rely more heavily on third party certification to implement the intent of the rule. Several commenters made the point that labeling is not necessary if third party certification is required, because the certification itself provides adequate assurance of compliance and, therefore, the cost of labeling is not worth any incremental benefits of labeling a product that has been verified as lead free. One comment states opposition to any use of self-certification but indicates that if EPA nevertheless allows self-certification in some cases, it should do so at a lower employee threshold to reduce the volume of products eligible to be self-certified. This commenter asserts that as proposed, almost one fifth of the total volume of products produced would be eligible to be self-certified. In contrast, very few comments requested that self-certification be allowed for any firm and only one comment suggested a higher employee threshold level be specified. Of the very few comments that cited a need for self-certification, almost all suggested the use of criteria such as product characteristics (*e.g.,* product complexity or type of material) rather than employee numbers to determine eligibility.

In making this change to the size of the firms that are eligible for self-certification from firms with fewer than 100 employees to firms with fewer than 10 employees, EPA has considered these comments and has also sought to avoid significant burdens upon the smallest plumbing manufacturers, those with less than 10 employees. EPA made this decision in tandem with the decision to not require the marking and labeling of lead free pipes, fittings, or fixtures as EPA had initially proposed. EPA anticipates that the certification provisions in the final rule, which increase the volume of third party certified products, combined with the widespread practice of voluntary labeling by firms that obtain third party certification, will likely result in the marketing of more potable use plumbing products in a way that communicates the lead free status of the product to the purchaser without the burden of regulatory requirements for labeling.

EPA analyzed the costs of requiring third party certification for all firms regardless of the number of employees. Based on this analysis of the costs, EPA determined that requiring third party certification for all manufacturers would have resulted in a significant impact upon a substantial number of small manufacturers. Therefore, EPA is not requiring third party certification for all size firms. EPA specifically requested comment on the appropriate break point for number of employees, *e.g.,* based on other categories of Census Bureau's Statistics of U.S. Business, for allowing self-certification. Census Bureau statistics include firm size categories for less than the following number of employees: 500, 100, 20, 10, and 5. EPA evaluated each of these potential firm size category break points. A summary of this analysis is included in the Final Rule Technical Support Document, Section 6.4 (USEPA, 2020). Based on this cost analysis, EPA determined that the most appropriate break point for self-certification eligibility is firms having fewer than 10 employees, which avoids significant impacts on small manufacturers.

Manufacturers having fewer than 10 employees often may serve only local or regional markets and are more likely to operate on a limited scale with a low product volume per firm, reducing the cost effectiveness of third party certification. EPA determined that the use of this break point would not be expected to result in significant cost impacts—*i.e.,* costs exceeding 1 percent of revenues for any small businesses. In comparing this impact to that of the proposed rulemaking, EPA found that the proposed rulemaking would have impacted 29 small entities (2% of the total number of small entities) with costs exceeding 1 percent of revenues, whereas the final rule is expected to impact no small entities (0% of small entities) with costs exceeding 1 percent of revenues. Note that the 1 percent of revenue threshold is based on EPA's Regulatory Flexibility Act guidance and represents a revenue level that if exceeded could result in a significant impact on a small business. However, if

third party certification had been required for all firms regardless of the number of employees, and assuming no product marking or labeling were required, EPA projected that 37 percent of small businesses would have been impacted with costs exceeding 1 percent of revenues. EPA estimated that manufacturers of covered products having fewer than 10 employees account for 39 percent (representing 855 manufacturers) of the total number of such manufacturers (2,193 manufacturers), but only produce 1 to 2 percent of the total volume of products. In contrast, EPA estimated that manufacturers of covered products having fewer than 100 employees account for 72% of the total number of such manufacturers and produce an estimated 5 to 18 percent of total product volume. EPA did not find that the economic impacts on firms with fewer than 10 employees would justify the incremental benefits of third party certification for the estimated 1 to 2 percent volume of covered products produced by these firms. EPA determined that, for these firms, the option to self-certify in the final rule is effective in assuring lead free products are produced, because many of the firms with fewer than 10 employees may operate in limited local or regional markets, may be custom fabricators, or may be assemblers of products made from certified components.

This final rule includes the addition of a provision specifying that any manufacturer or importer, regardless of employee numbers, is eligible to self-certify custom fabricated products rather than obtaining certification from an accredited third party certification body. For clarity, a definition of ''custom fabricated product'' is included in 40 CFR 143.11 of this final rule. EPA requested comment in the proposal concerning whether self-certification should be allowed as an option based on whether a product is mass produced or custom fabricated. EPA received one comment stating that self-certification should be allowed for custom fabricated products and that custom fabrication should be defined. In evaluating the comment, EPA determined that third party certification for custom fabricated products is impractical because obtaining the certification could take significant time and custom fabricated products are often needed for repairs when there is no existing product available for use. Moreover, third party certification for custom fabricated products is not as cost effective as it is for mass produced products; the cost per unit produced would almost certainly be much higher for custom fabricated products. Therefore, the final rule allows self-certification for any custom fabricated product (that meets the definition of such a product defined in this final rule) regardless of the firm's number of employees.

In the proposed rulemaking, manufacturers and importers using the self-certification process would have been required to post the certificate of conformity on a website with continuing public access in the United States. In this final rule, manufacturers and importers may elect to distribute an electronic or hard copy version of the certificate of conformity through the distribution channel for final delivery to the end use installer of the product if it is not posted to a website. EPA has provided this flexibility in the final regulation to firms with fewer than 10 employees, because EPA determined that some firms with fewer than 10 employees do not maintain a website. For administrative ease, the final rule provides this flexibility to all manufacturers and importers who use the self-certification process for custom fabricated products as well. In addition, providing a copy of the certificate of conformity to end use installers is also an effective means of communicating the lead free status of a product to all the parties in the supply chain. A public comment requested the need for EPA to specify a transition period for entities that may expand their number of employees to greater than the level allowable to self-certify products, and therefore would be no longer eligible for self-certification of non-custom fabricated products. Based on the comment, EPA included a provision in 40 CFR 143.19(c)(1) to provide for a 12 month transition period of time.

Three provisions were added to this final rule to allow certain exclusions from the certification requirement for those products required to be lead free. These products excluded from certification requirements include: (A) Product components of assembled pipes, fittings, or fixtures do not need to be individually certified if the entire product in its final assembled form is lead free certified; (B) direct replacement parts for previously installed lead free certified products do not need to be individually certified if the weighted average lead content of wetted surface area for the part does not exceed the weighted average lead content of the original part; and (C) dishwashers.

EPA added the first two provisions in response to comments that the RLDWA recognizes the concept of area weighted average lead content, and, therefore, that the third party certification requirements apply only to the entire final end use product assembly and not individual sub-components, including any repair parts or repair kits. EPA agrees with commenters that the method for calculating lead content in the statutory definition of lead free contemplates that an assembled product could satisfy the requirement even if some components of the assembled product would exceed the maximum weighted average lead content of 0.25 percent if they were evaluated separately. Similarly, EPA agrees with commenters that certification of direct replacement parts for previously installed lead free certified products is unnecessary, provided that the lead content of the wetted area for the replacement part does not exceed such lead content of the original part. EPA has added the third provision excluding dishwashers from certification requirements based on consideration of information provided in public comment. In the proposal, EPA solicited comment on the product certification provisions of the proposed rulemaking and asked if any product certification should be required. A commenter opposed mandatory third party/self-certification requirements, stating they were unnecessary for home appliances, including dishwashers. The commenter provided information from manufacturers representing about 80% of the dishwashers shipped in 2013. EPA had examined this information previously and concluded that ''dishwashers as a class appear to easily meet the definition of lead free (a weighted average of 0.25%)'' for wetted surfaces. The commenter also stated that the water film remaining on dishes at the end of the rinse cycle of a dishwashing machine is minimal. The commenter argued that the information provided should support an exemption from the requirements of the rule. After considering this information, EPA has determined that certification is not warranted to confirm that dishwashers are in compliance with the lead free requirements of the Reduction of Lead in Drinking Water Act. In view of the information previously submitted to EPA in 2013 about component materials used and the comparative surface areas of the components in dishwashers, the Agency has determined that it is not necessary for a manufacturer to undertake a certification process to demonstrate that these devices meet the lead free requirements. EPA also notes that exposure to water remaining on items cleaned in a dishwasher is relatively low in comparison to other

potable use products. EPA agrees with the commenter that the water film remaining on dishes at the end of the rinse cycle of a dishwashing machine is minimal and reduces the risk of exposure to lead resulting from water remaining on washed items that may be ingested. In addition, due to the large surface area of low-lead components (*e.g.,* the plastic or stainless steel tub), it is unlikely for dishwashers to exceed the RLDWA lead limit compared with other potable use product types. Even if other component parts, such as fittings, were to contain lead, these components have a minor surface area compared with the wetted surface of the entire dishwasher device, which is consistent with the conclusion noted above that dishwashers as a class appear to easily meet the maximum weighted average lead content threshold of 0.25 percent. Therefore, the final rule provides an exclusion from product certification requirements for dishwashers.

EPA contacted eight ANSI accredited certification bodies prior to publication of the proposed rulemaking to obtain estimated cost for certifying products to ANSI/NSF Standard 372 and to obtain information on any time limits on the validity of the certification before renewal would be required by the certifying bodies. As EPA explained in the proposed rulemaking, while the period of time before the expiration of a certificate varies among certification bodies, the longest period of time is five years (USEPA, 2017; 82 FR 4817, January 17, 2017). Accordingly, EPA chose the minimum document retention time of five years from the date of last sale so as to be consistent with the maximum effective duration time for a third party product certification.

E. Other Regulatory Requirements and Clarifications

1. Definitions

a. Final Rule Requirements

To clarify the requirements, set forth in the RLDWA and this final rule, EPA defined terms in 40 CFR 143.11 such as ''pipes,'' ''fittings,'' ''fixtures,'' ''solder,'' ''flux,'' and several subcategories of these components, which are terms used in the statute, but are not defined within section 1417 of the SDWA. EPA included these and other definitions to provide clarity to provisions of this final rule. Other terms defined in this final rule include: ''accredited third party certification body,'' ''Administrator,'' ''affiliated,'' ''alloy,'' ''coating,'' ''custom fabricated product,'' ''drinking water cooler,'' ''importer,'' ''introduce into commerce,'' ''lead free,'' ''liner,'' ''manufacturer,'' ''nonpotable services,'' ''person,'' ''pipe fitting,'' ''plumbing fitting,'' ''point-of-use treatment device,'' ''potable uses,'' ''product,'' ''public water system,'' United States,'' and ''water distribution main.'' EPA defines ''product'' to mean a pipe, fitting, or fixture. This term was defined to reduce the number of repetitive references to pipes, fittings, and fixtures that would otherwise be necessary throughout this final rule. For similar reasons of conciseness, EPA defined ''fitting'' to mean a pipe fitting or plumbing fitting.

By removing section 1417(d)(3) from the definition of lead free in the 2011 amendments to the SDWA, Congress eliminated distinctions between ''pipes,'' ''pipe fittings,'' ''plumbing fittings,'' and ''plumbing fixtures.'' As a general matter, EPA finds that Congress intended that the prohibitions in Section 1417 broadly apply to pipes and plumbing materials that may provide water for human consumption with the goal of minimizing or eliminating lead in the wetted surfaces of these conveyances, thus reducing exposures to lead in tap water. Therefore, in the case of the definitions of ''fixture,'' ''pipe fitting,'' and ''plumbing fitting,'' this final rule contains broad working definitions that also include illustrative examples of these plumbing and water system products. EPA included some plumbing appliances or devices, such as drinking water coolers, water heaters, and water pumps, as examples in the definition of ''fixture.'' EPA did so because these products are often used in systems that supply potable water. These examples in the definitions are not intended to limit or exclude other types of pipes, fittings, or fixtures that are not specifically listed.

b. Changes From Proposed Rule and Rationale

Additional definitions were added to this final rule for clarity. These definitions included ''point of use treatment device'' and ''public water system,'' because these terms are defined in 40 CFR part 141, where this final rule was previously located, but would not otherwise be defined in 40 CFR part 143, subpart B.

''Water meters'' were added to the list of example products included in the definition of ''fixture'' to clarify that these in-line devices comprising numerous internal parts are required to meet the definition of lead free in their assembled form, and that it is not the case that each individual component contained therein must meet lead free requirements. EPA revised the definition of ''nonpotable services'' (''all uses of water that are not potable uses'') to refer to ''all product uses and applications that are not potable uses'' because some nonpotable uses of the products do not involve the use of water. Based on public comment, the definition of ''pipe'' was expanded to include permanently attached end fittings, which EPA finds is a common product form. The definition of ''pipe fitting'' was amended to remove washers as one of several examples of those products. Washers may be components of plumbing fittings, or fixtures, but EPA does not consider individual washers to be pipe fittings. Manifolds were added to the definition of ''plumbing fitting'' because these products are becoming more commonplace as a means to control directional flow of potable water in homes and other buildings. In calculating the ''wetted surface area of the product,'' surfaces that are not exposed to liquid water, such as those surfaces in refrigerator ice dispensers, would not be ''wetted'' and, therefore, should not be considered in the calculation. In addition, because ice is either cubed or crushed, there is limited contact between the surface of the ice and the surface of the cubed or crushed ice as it sits in the bin or passes through the discharge chute. Including ice bins and ice discharge chutes in the calculation of the wetted surface area of combination ice and water dispensers would dilute the calculated wetted average lead content of the other components that are ''wetted'' and, therefore, are more likely to be a source of lead.

In 40 CFR 143.11, a definition of ''custom fabricated product'' was added to this final rule to clarify the products for which self-certification is an option for manufacturers and importers described in 40 CFR 143.19, Required Certification of Products.

In 40 CFR 143.11, the definition of ''importer'' was modified to mean any person who introduces into commerce any pipe, any pipe or plumbing fitting or fixture, or any solder or flux entering the United States; or any ''importer'' as defined in 19 CFR 101.1; or both. This change from the definition in proposed rulemaking was made to harmonize the definition of this final rule with that included in 19 CFR 101.1 by cross referencing it. That definition in Title 19 is as follows: ''*Importer*'' means the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf. The importer may be:

(1) The consignee, or

(2) The importer of record, or

(3) The actual owner of the merchandise, if an actual owner's

declaration and superseding bond has been filed in accordance with 40 CFR 141.20 of this chapter, or

(4) The transferee of the merchandise, if the right to withdraw merchandise in a bonded warehouse has been transferred in accordance with subpart C of part 144 of this chapter.

2. Recordkeeping Provisions

a. Final Rule Requirements

This final rule requires manufacturers or importers to maintain documentation to substantiate product certification for at least five years from the date of the last sale of the product by the manufacturer or importer. The manufacturer or importer must keep records for all products certified by an accredited third party certification body, which include, at a minimum, documentation of certification, of dates of certification, and of expiration. This documentation must be provided upon request to the Administrator as specified in 40 CFR 143.20(b). For self-certified products, manufacturers or importers must maintain, at a primary place of business within the United States, certificates of conformity and sufficient documentation to confirm that products meet the lead free requirements of this subpart. Sufficient documentation may include detailed schematic drawings of the products (indicating dimensions), records of calculations of the weighted average lead content of the product, documentation of the lead content of materials used in the manufacture of the product, and other documentation used in verifying the lead content of a plumbing device. This documentation and certificates of conformity must be provided upon request to the Administrator as specified in 40 CFR 143.20(b) and must be maintained for at least five years after the last sale of the product by the manufacturer or importer.

b. Changes From Proposed Rule and Rationale

The proposed rulemaking would have required manufacturers or importers of certified products to maintain documentation to substantiate product certification for an unspecified length of time. In this final rule, EPA is requiring manufacturers and importers to maintain such documentation for at least five years from the date of the last sale of the product by the manufacturer or importer (in response to comments requesting that EPA specify a time limit for document retention because it could otherwise be interpreted to be an on-going, continuous requirement). EPA contacted the eight ANSI accredited certification bodies prior to publication of the proposed rulemaking to obtain estimated cost for certifying products to ANSI/NSF Standard 372 and to obtain information on any time limits on the validity of the certification before renewal would be required by the certifying bodies. As EPA explained in the proposed rulemaking, while the period of time before the expiration of a certificate varies among certification bodies, the longest period of time is five years. (USEPA, 2017; 82 FR 4817, January 17, 2017). Accordingly, EPA chose the minimum document retention time of five years from the date of last sale to be consistent with the maximum effective duration time for a third party product certification.

3. Compliance Provisions

a. Final Rule Requirements

To effectively enforce the lead free requirements of the SDWA and the regulatory provisions, this final rule provides EPA with the ability to obtain, on a case-by-case basis, certain compliance-related information from manufacturers, importers, wholesalers, and retailers and others subject to SDWA section 1417, such as information related to the calculation of the weighted average of wetted surfaces, schematics of fittings/fixtures, and certification documentation. This final rule contains a provision in 40 CFR 143.20(b) providing the EPA Administrator with explicit authority to request such information on a case-by-case basis and a requirement for entities to provide the information requested to the Administrator. This provision is based on the statutory authority contained in section 1445(a)(1) of the SDWA. This final rule also includes a provision in 40 CFR 143.20(a) indicating that noncompliance with the SDWA or this subpart may be subject to enforcement. Enforcement actions may include seeking injunctive or declaratory relief and civil penalties or criminal penalties. This provision is based on authorities including section 1414 of the SDWA and section 1001 of Title 18.

b. Changes From Proposed Rule and Rationale

Clarification changes were made to the language in 40 CFR 143.20 of the proposed rulemaking to further specify that enforcement actions may also seek declaratory relief in addition to injunctive relief. These provisions will help EPA to effectively enforce the requirements of SDWA section 1417 and of this final rule.

4. State Enforcement of Use Prohibitions

a. Final Rule Requirements

This final rule contains language in 40 CFR 143.14 to clarify that SDWA section 1417(b)'s direction for States to enforce the use prohibition on pipe, pipe fittings, or fixtures, any solder, or any flux that are not lead free is a condition of receiving a full Public Water System Supervision (PWSS) grant allocation. Under the SDWA, section 1417(b)(1), the State enforcement provision applies only to the use prohibition in section 1417(a)(1); it does not apply to the introduction into commerce prohibition in section 1417(a)(3) of the SDWA, nor does it apply to the final rule requirements for product certification.

b. Changes From Proposed Rule and Rationale

No changes were made in 40 CFR 143.14 from the proposed rulemaking. The regulatory provision is based on the statutory direction in section 1417(b) of the SDWA for States to enforce the statutory use prohibition through State or local plumbing codes or such other means as the State may determine to be appropriate. Similar regulatory language in current 40 CFR 141.43 is being replaced by this final rule.

5. Removal of Lead Leaching Standard From Definition of Lead Free

a. Final Rule Requirements

The final rule does not include a requirement for certification of plumbing fittings and fixtures to a lead leaching standard.

b. Changes From Proposed Rule and Rationale

No changes were made to the proposed rulemaking. Many comments were received requesting that EPA require the lead leaching standard and associated certification requirements that were incorporated into the definition of lead free in section 1417(d) of the SDWA, prior to the amendment by the 2011 RLDWA. These comments were made in a mass public comment campaign submitted by 24,751 signatories as well as in some other individual comments, including two submitted by members of Congress. Some commenters suggested that EPA should require products to be certified to the NSF/ANSI 61 Standard to address lead leaching.

The 2011 RLDWA revised section 1417 to redefine lead free in SDWA section 1417(d) to lower the maximum lead content from 8.0 percent to a weighted average of 0.25 percent of the wetted surfaces of plumbing products; established a statutory method for the

calculation of lead content; and eliminated the requirement that plumbing fittings and fixtures be in compliance with voluntary standards established in accordance with SDWA section 1417(e) for leaching of lead from new plumbing fittings and fixtures. While EPA supports the industry's voluntary use of a lead leaching standard and certification to that standard, a requirement for plumbing fittings and fixtures to be in compliance with it is not necessary or appropriate to implement section 1417 of the SDWA, because the requirement was specifically eliminated in the 2011 RLDWA.

F. Implementation Schedule

1. Final Rule Requirements

The RLDWA, including the revised definition of lead free, has been in effect since January 4, 2014. See the **DATES** section of this document for effective and compliance dates for this final rule.

2. Changes From Proposed Rule and Rationale

No change was made to the compliance date for the rule's certification requirement. The proposed compliance date for labeling requirements was removed because EPA is not finalizing those requirements.

V. Costs

The primary cost estimate for this rule calculated according to the E.O. 13771 accounting standards—that is, as an annualized value over a perpetual time horizon, in 2016$, discounted to its 2016-equivalent using a 7% discount rate is $7.1 million. The quantitative cost estimates in the Final Rule Technical Support Document (USEPA, 2020) primarily focus on the discretionarily-imposed costs, and thus reflect a post-statute baseline. Because this rule codifies the RLDWA's statutory requirements, assessment relative to a pre-statute is also appropriate (and required by OMB Circular A–4). In analyses such as this one, in which impacts are assessed relative to multiple baselines, it is important to compare costs relative to the same baseline. EPA lacked data to conduct a quantitative pre-statutory baseline of costs but has included a qualitative discussion of the pre-statutory baseline in the Technical Support Document.

Based on state and industry action prior to the RLDWA and economic theory, EPA's best estimate of the pre-statutory baseline (the world in the absence of the Federal RLDWA) is that states across the nation would have continued to implement their own lead-free standards, and industry would have made the decision to manufacture and market a single lead-free line of product meeting these state standards, if possible. There is also the possibility that these state standards might have varied leading to a patchwork of lead-free standards that would have been costly to comply with. Therefore, the most likely outcome of the self-implementing portions of the statute that created a single national standard, and in turn those components repeated in this rule, was a reduction in production costs due to increased conformity in lead free requirements.

EPA collected data from public sources and private data vendors to develop the estimated rule costs to plumbing manufacturing firms. Annual production of potable use products is 1.3 billion units.

There are 2,193 firms producing plumbing products impacted by this final rule, which are spread across 14 NAICS codes. Table V.1 summarizes information for the segment of the industry that produces potable use products. Table V.1 also breaks down production into product subcategories and provides EPA's estimated annual production values for each subcategory, the NAICS code assigned to the subcategory, and the number of manufacturers in the subcategory.

TABLE V.1—PRODUCT SUBCATEGORIES, PRODUCTION, NAICS AND NUMBER OF MANUFACTURERS EPA IDENTIFIED FOR POTABLE USE PRODUCTS

Product category	Product name	Units produced annually (2013)	NAICS for product	Number of manufacturers for product
Pipe and Fittings	Copper Tube (<4″ in diameter)	233,049,645	332996	213
	PEX Pipe (<4″ in diameter)	348,583,587	326122	27
	CPVC Pipe (<4″ in diameter)	148,219,048	326122	48
	Copper Fittings (<4″ in diameter)	93,219,858	332913	119
	Brass Fittings (<4″ in diameter)	80,026,241	332913	523
	PEX Fittings (<4″ in diameter)	99,620,061	332913	47
	CPVC Pipe Fittings (<4″ in diameter)	59,287,619	332913	63
	Small and Mid-Diameter PVC Pipe	58,257,345	326122	143
	PVC Pipe Fittings	14,927,862	332913	103
Faucets and Mixers	Kitchen and Bar Faucet Market	8,531,915	332913	74
	Lavatory Faucet	18,635,258	332913	74
Kitchen Sinks and Accessories.	Kitchen Sink	4,730,496	332999	24
	Sink Strainer	11,036,332	332999	24
Residential Water Filtration Products.	Point-of-entry Residential Water Filtration Market	1,236,699	333318	713
	Point-of-use Countertop Water Filtration Market	72,857	333318	694
	Point-of-use Under the Sink Water Filtration Market	261,702	333318	704
	Point-of-use Faucet Mount Water Filtration Market	1,707,194	333318	694
Stop Valves, Stainless Steel Braided Hoses, Inline Valves.	Stop Valve Market	9,455,319	332911	23
	Stainless Steel Braided Hose Market	9,424,559	333999	204
	Residential Inline Valve Market	30,597,771	332919	204
Water Heaters and Boilers	Combi Boiler Market	55,527	333999	15
	Residential Gas Tankless Water Heater Market	410,831	335228	20
	Residential Gas Storage Water Heaters	4,338,506	335228	11
	Residential Electric Storage Water Heaters	4,061,277	335228	11
	Residential Indirect Fired Water Heater Market	133,647	335228	10
	Residential Electric Tankless Water Heater Market	276,398	335228	19
	Residential Solar Storage Water Heater Market	21,819	335228	42
	Residential Oil Water Heaters	31,692	335228	1
	Commercial Gas Storage Water Heater Market	89,706	335228	11

TABLE V.1—PRODUCT SUBCATEGORIES, PRODUCTION, NAICS AND NUMBER OF MANUFACTURERS EPA IDENTIFIED FOR POTABLE USE PRODUCTS—Continued

Product category	Product name	Units produced annually (2013)	NAICS for product	Number of manufacturers for product
	Commercial Electric Storage Water Heater Market	70,071	335228	15
Water Coolers/Drinking Fountains/Bubblers.	Water Cooler/Drinking Fountain/Bubbler Market	557,244	333415	5
Household Appliances	Refrigerators with Water Dispenser/Ice Making Machinery	4,540,527	335222	7
	Dishwasher Market	5,537,416	335228	5
	Water Softener Market	3,444,782	333318	98
Household & Commercial Appliances.	Coffee Makers	234,247	333318	40
Other	Aerator	27,167,173	332913	3
	Backflow preventers/Vacuum Breakers	32,202	332913	11
	Gaskets/O-rings	5,433,435	339991	13
	Pumps	1,808,369	333911	19
	Water Meters/End Point Meters	7,053,100	334514	68

Source: Final Rule Technical Support Document, Exhibits 3–3 and 3–9 (USEPA, 2020).

EPA developed cost estimates for the final rule along with three additional regulatory alternatives. The four alternatives that were considered are presented in Table V.2. Alternative C is the regulatory option selected for the final rule. The Final Rule Technical Support Document (USEPA, 2020) provides more detailed information on the costing methodology and a discussion of the uncertainties and limitations of this assessment.

TABLE V.2—COMPARISON OF FINAL RULE TO ALTERNATIVES CONSIDERED

Alternatives considered	Description
A	• Product marking and package labeling for potable use products. • Third party certification required for all firms.
B: Proposed Rule	• Product marking and package labeling for potable use products. • Self-certification or third party certification for <100 Employees. • Third party certification only for ≥100 Employees.
C: FINAL RULE	• No required product marking, no required package labeling for potable use products. • Self-certification or third party certification for <10 Employees and for custom fabricated products. • Third party certification only for ≥10 Employees (unless custom fabricated product).
D	• Product marking or package labeling for potable use products. • Third party certification or self-certification for all firms.

A. Initial Administrative and Initial Implementation Costs

The analysis for initial administrative and implementation costs was conducted at the level of the manufacturing firm. For the final rule, EPA estimated that it would take each firm an average of 8 hours to read and understand the rule. This time estimate, when multiplied by an average labor rate of $71.72 and the number of firms affected by the rule (2,193), results in a total cost of $1.26 million, which was then annualized at 3 percent and 7 percent discount rates.

Table V.3 provides the initial rule implementation annualized cost ranges by firm size category. The values were discounted at both the 3 and 7 percent rates over the 25-year period of analysis. Annual total initial implementation costs range from $0.07 to $0.11 million.

TABLE V.3—FINAL RULE INITIAL ADMINISTRATIVE AND INITIAL IMPLEMENTATION ANNUALIZED COSTS, IN MILLIONS

[2014$]

Manufacturer size based on number of employees	Read and understand the rule and initial rule implementation	
	Discount rate	
	3%	7%
<10	$0.027	$0.039
10–99	0.023	0.033
100–499	0.011	0.016
≥500	0.008	0.012
All Sizes	0.070	0.101

Source: Final Rule Technical Support Document, Exhibit 4–5 (USEPA, 2020).

B. Labeling Potable Use Products

The final rule does not require any product marking or package labeling of potable use products to indicate lead free status; therefore, there is no cost for marking or labeling. EPA did consider alternative options that would have required product marking or package labeling or both. Table V.4 provides a summary of product labeling costs for this final rule with the other alternatives that were considered for comparative purposes for the various regulatory options that EPA considered. Since the final rule has no labeling costs, the methodology for estimating these costs for various alternatives is not provided in this document. However, it is included in the Technical Support Document for the Proposed Rule (USEPA, 2016) available in the docket for this rule.

TABLE V.4—TOTAL ANNUALIZED PRESENT VALUE COSTS FOR LEAD FREE LABELING OF POTABLE USE PRODUCTS ON PRODUCT AND PACKAGE FOR FINAL RULE AND ALTERNATIVES CONSIDERED, MILLIONS

[2014$]

Alternatives considered	3% Discount rate in millions (2014$)	7% Discount rate in millions (2014$)
A: Product and package messaging	$8.69–10.34	$11.32–13.60
B: Product and package messaging	8.69–10.34	11.32–13.60
C: FINAL RULE:		
No product messaging; No package messaging	0	0
D: Product or package messaging	1.17–1.28	1.14–1.26

Source: Proposed Rule Technical Support Document, Exhibits 4–13a and 4–13b (USEPA, 2016).

C. Product Certification

To develop total compliance costs for third party certification, EPA had to determine the regulatory baseline. This baseline represents the current industry practice with regard to third party certification. EPA compiled information on plumbing manufacturers' use of third party certification by reviewing current State laws requiring certification for NSF Standards 61 and 372; reviewing the International and Uniform Plumbing Codes; contacting the two primary industry trade groups, PMI and AFS; and acquiring information from industry third party certifiers. Based on the collected information, EPA assumed that 90 percent of manufacturers with 100 or more employees already use an accredited third party agency to certify that their products are lead free. As with potable use product labeling, third party certification costs are a major driver of overall cost to manufacturers; therefore, EPA developed lower and upper bound cost scenarios based on baseline compliance assumptions for firms having less than 100 employees. Fifty to 75 percent of plumbing manufacturers having fewer than 100 employees are assumed to use third party certification bodies. Table V.5 summarizes the third party certification baseline assumptions EPA used in the development of regulatory costs. Under all regulatory alternatives considered, certification costs would be attributable to only those manufacturers that do not already use these third party certification bodies.

TABLE V.5—ESTIMATED PERCENTAGE OF MANUFACTURERS THAT DO NOT ALREADY USE THIRD PARTY CERTIFICATION BODIES

Manufacturer size (number of employees)	Percentage of manufacturers that currently do not use third party certifying bodies and to which certification costs would apply	
	Lower bound (%)	Upper bound (%)
<10	25	50
10–99	25	50
100–499	10	10
≥500	10	10

Source: Final Rule Technical Support Document, Exhibit 4–6 (USEPA, 2020).

Third party certifying firms usually conduct the certification process according to product families. For NSF/ANSI Standard 372, products of the same material formulation and similar configuration are considered one product family. Thus, certifying costs were developed on a product family basis. EPA estimated that each firm produces an average of three product families based on an assessment of firm website data for manufacturers across all potable use product subcategories.

Certification costs can be broken down into initial assessment and testing costs and annual renewal costs. Most of the accredited, third party certification bodies offer an annual renewal based on an audit process for a set number of years after the initial certification year. To derive initial and renewal certification unit costs, EPA contacted the eight ANSI accredited, third party certification bodies to obtain estimated costs for certifying products to ANSI/NSF Standard 372. The certification bodies were asked to provide estimates for four representative product categories (faucets, fittings, valves, and pipes), which are intended to represent the range in complexity of plumbing products.

Four certification bodies provided quotes of sufficient specificity or comparable scope to be used in

estimating initial certification costs. Costs varied based on the product type and certifying body. EPA used the average of these quotes across firms and product types to derive a composite estimated cost of $6,000 for an initial certification of a single product family. Five of the eight certification bodies provided estimates for annually renewing the third party certification to NSF/ANSI Standard 372. Costs varied based on the product type and certification body. One of the responding certification bodies required re-certification annually. The other four certification bodies require renewal on a less frequent basis, the longest being every five years. EPA determined a 5-year cost stream for each of the third party certifiers and computed a per product family average annual renewal cost of $3,200. In addition to the certifiers' fees, EPA assumed a $224 annualized cost for recordkeeping on the part of the plumbing manufacturing firms.

The final rule and Alternatives B and D allow for some firms to self-certify to comply with the lead free requirements. EPA estimated that each manufacturer would require 40 hours of labor to initially develop the certificate of conformity (the rule requirement for the certificate of conformity can be found in section IV.D of this preamble), which certifies a product family as being compliant with the lead free requirements. The unit cost per product family is $1,122. The labor burden for the annual renewal of the self-certification per product family is estimated to be 16 hours. This time is used to update the certificate of conformity and to perform recordkeeping activities. This means that the unit cost of annual self-recertification is $449 per product family for the final rule, as well as for Alternatives A and D.

Table V.6 provides EPA's estimated total annual cost ranges for potable use product certification requirements of the final rule and other alternatives that were considered. Unit certification costs were multiplied by the number of firms and average number of product families. The final rule requires third party certification for firms with 10 or more employees and gives the option of self-certification to firms with fewer than 10 employees. Annualized certification cost for the final rule ranges from $6.67 million to $12.24 million. EPA did not assess any cost savings to firms that would no longer choose to have products third party certified because EPA assumed that firms that were already having their products third party certified would continue doing so after rule implementation.

TABLE V.6—TOTAL ANNUALIZED PRESENT VALUE COSTS FOR DEMONSTRATION OF COMPLIANCE REQUIREMENTS FOR FINAL RULE AND ALTERNATIVES CONSIDERED, MILLIONS

[2014$]

Alternatives considered	3% Discount rate in millions (2014$)	7% Discount rate in millions (2014$)
A: Third party certification only	$11.20–$20.90	$11.56–$21.58
B: Proposed Rule Third party for ≥100; Choice of self-certification for <100	2.82–4.14	2.93–4.31
C: FINAL RULE Third party for ≥10; Choice of self-certification for <10 and for custom fabricated products	6.66–11.82	6.89–12.23
D: Third party certification or self-certification	1.52–2.84	1.59–2.98

Source: Final Rule Technical Support Document, Exhibits 4–12a and 4–12b (USEPA, 2020).
Note: Under Alternatives B, C, and D, all manufacturers eligible for self-certification are assumed to select the less costly choice of self-certification.

D. Response to EPA Data Request Costs

Under all four of the final regulatory alternatives that were considered, manufacturers will be required to respond to EPA's requests for product information (see section IV.E.2 of this preamble for a detailed description of the data request provision). EPA assumed that firms would spend an average of 20 hours responding to each data request, resulting in a unit cost of approximately $1,400. As part of the cost assessment, EPA multiplied the per unit cost by 10 unique data requests per year, starting in the fourth year after promulgation of the final rule and continuing over the 25-year period of analysis. Seventy percent of requests would be to firms with 500 or more employees, 20 percent of requests would be to firms with 100 to 499 employees, 5 percent of requests would be to firms with 10 to 99 employees, and firms with fewer than 10 employees would receive the remaining 5 percent. This breakdown of requests between firm size categories roughly corresponds to the proportion of total products produced by firms in each of the size categories. Table V.7 shows the total annualized costs of EPA data request responses by firm size category. Total data request costs range from approximately $12,400 a year discounted at 3 percent to about $11,900 a year when discounted at 7 percent.

TABLE V.7—TOTAL ANNUALIZED PRESENT VALUE COSTS FOR RESPONDING TO DATA REQUESTS, IN MILLIONS

[2014$]

Manufacturer size based on number of employees	3% Discount rate	7% Discount rate
<99	$0.0006	$0.0006
100–499	0.0025	0.0024
≥500	0.0087	0.0083
All Sizes	0.0124	0.0119

Source: Final Rule Technical Support Document, Exhibit 4–14 (USEPA, 2020).

VI. Economic Impact Analysis

EPA assessed the social costs and the projected economic impacts of the final rule and the other regulatory alternatives that were considered. This section provides an overview of the methodology that EPA used to assess the social costs and the economic impacts of the final rule and summarizes the results of these analyses. The Final Rule Technical Support Document (USEPA, 2020), which is available in the docket, provides more details on these analyses, including discussions of uncertainties and limitations.

A. Annualized Social Costs Estimates

EPA estimated the total annualized social costs to plumbing manufacturers by summing the final rule and regulatory alternatives' component costs, which include administrative requirement costs, the cost to potable use product manufacturers for both labeling on the product and on the product's packaging, third party and self-certification costs, and the costs of responding to EPA data requests. EPA annualized the stream of future costs using both the 3 percent (the social discount rate) and 7 percent (opportunity cost of capital) discount rates. EPA annualized one-time costs over the period of analysis, 25 years. Capital and O&M costs recurring not on an annual basis were annualized over a specific useful life, implementation, and/or event recurrence period (*e.g.,* 10 years for mold modifications), using discount rates of 3 and 7 percent. EPA added up the annualized capital, initial one-time costs, and the annual and non-annual portion of O&M costs to derive total annualized compliance costs, where all costs are expressed on an equivalent constantly recurring annual cost basis.

Table VI.1 presents the total annualized compliance costs of the final rule and regulatory alternatives that were considered. As shown in the table, total annualized compliance costs for the final rule are estimated to range between $7 million to $12 million. Estimated annualized costs for other alternatives considered ranged from $3 million and $36 million for Alternatives D and A, respectively.

TABLE VI.1—TOTAL ANNUALIZED SOCIAL COSTS FOR FINAL RULE AND ALTERNATIVES CONSIDERED

[Millions, 2014$]

Alternatives considered [1]	3% Discount rate	7% Discount rate
A: Label product and packaging; third party certification for all manufacturers	$20.1–$31.6	$23.1–$35.5
B: Proposed Rule: Label product and packaging; third party certification for manufacturers ≥100 employees and third party or self-certification for those <100	11.8–14.8	14.5–18.3
C: FINAL RULE: No labeling product or package; third party certification for manufacturers ≥10 employees and third party or self-certification for those <10 and for custom fabricated products	6.7–11.9	7.0–12.3
D: Label product or packaging; third party or self-certification for all manufacturers	2.9–4.5	3.0–4.6

Source: Final Rule Technical Support Document, Exhibit 4–16 (USEPA, 2020).

[1] Table includes annualized costs for rule implementation, certification of potable use products, and EPA requests for data. Lead-related messaging for potable use products and products eligible for the "used exclusively" exemption that was in the proposed rule is included in Alternatives A, B, and D only, but not applicable for the final rule C.

B. Economic Impacts—Cost-to-Revenue Analysis

To provide an assessment of the impact of the rule on manufacturing firms, EPA used a cost-to-revenue analysis. The cost-to-revenue analysis compares the total annualized compliance cost of each regulatory alternative considered with the revenue of the impacted entities. This same analysis is also used under the Regulatory Flexibility Act (RFA) to determine whether a rule has the potential to have a significant impact on a substantial number of small entities.

To conduct the cost-to-revenue test, EPA developed a list of 2,193 manufacturers that participate in the production of specific types of products that are principally used for potable use and those that might not be used exclusively for nonpotable services. These firms were assigned to a NAICS code based on the type of product they manufacture. Firm size distributional information, based on number of employees, available from the U.S. Census Bureau's Statistics of U.S. Businesses for the year 2012 was then used to parse the number of entities in each NAICS code into a number of small business and large firm categories. In this way, EPA derived the number of firms in each of the 14 NAICS codes broken down by the seven employee size categories each (*i.e.,* 0–4, 5–9, 10–19, 20–99, 100–499, 500+ to the Small Business Administration (SBA) small business threshold, and large firms above the SBA threshold). Computation of total average firm cost under each of the NAICS/employee entity size categories was developed by applying the estimated unit fixed and variable costs to each regulatory alternative considered. To calculate total average variable costs for each size category, unit variable costs must be adjusted by the units produced and firms producing in each of the NAICS/employee size categories. To determine the number of units produced per NAICS/employee size category, EPA used information from the U.S. Census Bureau's Statistics of U.S. Businesses. The Census Bureau does not provide units produced for each of the NAICS employee size categories, so EPA used the percent of firm receipts by size category as a proxy. The approximated units per size category were then divided by the estimated number of entities in the category (derivation of the number of entities per NAICS/employee size category was previously described) giving average units produced per firm. Average units per firm for each size category was multiplied by unit variable cost to get total variable cost for each NAICS/employees size category. The Census does not provide revenue values by NAICS and employee sizes; consequently, EPA used data on total annual receipts (assuming receipts is an unbiased estimator) by NAICS/employee size categories as a close (although more conservative) approximation of revenue. The total receipts information was divided by the number of firms per category to approximate average revenue.

EPA then compared the computed average annual costs with the average revenue for each of the NAICS/employee size categories. If average cost exceeded revenue by 1 percent, all firms assigned to that category were assumed to incur impacts. Likewise, if average annual cost exceeded revenue by 3 percent in a NAICS/employee size category, all entities in that category

were assumed to be impacted at the 3 percent level. Impacted firms were summed across NAICS codes and employee size categories to assess the total impact to the industry.

Table VI.2 summarizes the cost-to-revenue analysis results for the final rule as compared with the three other regulatory alternatives that were considered. The table shows only the largest impact scenarios analyzed, based on upper bound compliance cost estimates and a 7 percent discount rate. For the lower bound cost and 3 percent discounted impact results, see the Final Rule Technical Support Document (USEPA, 2020). For the final rule (which includes rule implementation costs, third party certification costs for firms with 10 or more employees and third party or self-certification costs for firms with fewer than 10 employees, and data request costs), EPA estimates that all plumbing manufacturing firms subject to the regulations will incur annualized costs amounting to less than 1 percent of revenue. No small manufacturers had impacts between 1 and 3 percent of revenue. The analysis of the final rule also found that no large entity had impacts between 1 and 3 percent of revenue.

TABLE VI.2—SUMMARY OF COST-TO-REVENUE ECONOMIC IMPACT ANALYSIS FOR FINAL RULE AND ALTERNATIVES CONSIDERED

[Upper bound scenario, small entities 7% discount rate, large entities 3% discount rate]

Alternatives considered	Description [1]	Small entities (7% discount rate)					Large entities (3% discount rate)				
		Count [2]			Percentage		Count [2]			Percentage	
		Total	≥1%	≥3%	≥1%	≥3%	Total	≥1%	≥3%	≥1%	≥3%
A	Product and Package Costs for Potable, Product or Package Costs for "Used Exclusively" Exempt Product, 3rd Party Cert for all manufacturers.	1,976	783	27	40	1	217	0	0	0.0	0.0
Proposed Rule B	Product and Package Costs for Potable, Product or Package Costs for "Used Exclusively" Exempt Product, 3rd Party Cert for ≥100 employees, Self or 3rd Party Cert for <100 employees.	1,976	29	0	2	0	217	0	0	0.0	0.0
FINAL RULE C	No Product or Package Costs, 3rd Party Cert for ≥10 employees, Self or 3rd Party Cert <10 employees and custom fabricated products.	1,976	0	0	0.0	0.0	217	0	0	0.0	0.0
D	Product or Package Costs for Potable, Product or Package Costs for "Used Exclusively" Exempt Product, Self or 3rd Party Cert for all manufacturers.	1,976	0	0	0.0	0.0	217	0	0	0.0	0.0

Source: Final Rule Technical Support Document, Exhibit 6–7 (USEPA, 2020).

[1] All alternatives considered also include implementation and data request costs. For Alternatives B and C, EPA assumes that manufacturers <100 employees or <10 employees, respectively, choose the least-cost option of self-certification. For Alternative D, EPA assumes all manufacturers pick the least cost option of self-certification. In addition, for Alternative D, EPA assumes manufacturers choose the least cost option for labeling, which is usually package labeling except when the products do not have packaging.

[2] Counts of impacted entities are rounded up to 1 if they fall between 0 and 1.

VII. Benefits

EPA did not quantify the expected reduction in adverse health effects associated with the final regulation nor with the enactment of the RLDWA. The adoption of lead free plumbing materials likely occurred as a result of plumbing manufacturing industry response to requirements enacted in some states as early as 2006 (see the Final Rule Technical Support Document for more discussion). The changes made by plumbing manufacturers to reduce lead content of plumbing materials likely resulted in much greater lead exposure reductions than this regulation. EPA believes that there will be benefits of the final regulations from

the improved implementation of the requirements of the RLDWA and greater consistency in assuring that plumbing products are lead free, which will minimize the likelihood that non-lead free products would be sold or used for potable use applications. This improved implementation and consistency in conformity may result in some reductions to drinking water lead ingestion, however EPA cannot estimate the magnitude of those reductions. EPA qualitatively assessed the health effects associated with reductions in lead ingestion using two main sources: (1) The EPA ''Integrated Science Assessment for Lead'' (USEPA, 2013b); and (2) the National Toxicity Program's Monograph on Health Effects of Low-level Lead (USHHS, 2012). These two sources have both documented the association between lead and adverse cardiovascular effects, renal effects, reproductive effects, immunological effects, neurological effects, and cancer. EPA's Integrated Risk Information System (IRIS) Chemical Assessment Summary provides additional health effects information on lead (USEPA, 2004). For a more detailed explanation of the health effects associated with lead for children and adults see Chapter 5 and Appendix C of the Technical Support Document for the Final Rule (USEPA, 2020).

VIII. Statutory and Executive Orders Review

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 because it raises novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an economic analysis of the potential costs and benefits associated with this action. The economic analysis is included in the ''Technical Support Document for the Final Rule: Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water,'' which is available in Docket ID No. EPA–HQ–OW–2015–0680, and is briefly summarized in section V of this preamble.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 regulatory action. Details on the estimated costs of this final rule can be found in EPA's analysis of the potential costs and benefits associated with this action in sections V through VII of this preamble and in the Technical Support Document for the Final Rule.

C. Paperwork Reduction Act (PRA)

The information collection activities in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR number. 2040–NEW. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized in this section. The information collection requirements are not enforceable until OMB approves them.

The PRA requires EPA to estimate the burden on manufacturers complying with the final rule. For the first three years after publication of the final rule in the **Federal Register**, manufacturers will incur burdens to conduct the following rule compliance activities:

- Reading and understanding the rule requirements.
- Obtaining certification of products from an accredited third party certification body to document compliance with the lead free requirements as set forth in the SDWA.
- Maintaining record costs associated with the initial certification (conducted by an accredited, third party certification body) that potable use products meet the requirements of NSF/ANSI Standard 372.
- Preparing the initial certificate of conformity and maintaining records for potable use products that are self-certified by the manufacturer as being lead free.

Respondents/affected entities: The respondents include manufacturers and importers entering products purchased from or manufactured by manufacturers of plumbing products for potable use.

Respondent's obligation to respond: Mandatory (Safe Drinking Water Act Section, 42 U.S.C. 300f *et seq.*)

Estimated number of respondents: 2,193 firms.

Frequency of response: Once for obtaining initial third party or self-certification activities to indicate that a product meets the lead free requirements and occasionally, as needed, for EPA requests for information.

Total estimated burden: Estimates for average annual burden ranges from 42,990 to 77,838 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: Estimates for average annual costs range from $6.69 million to $11.58 million (per year) and include $5.23 to $9.14 million in annualized capital or operation and maintenance.

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 EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, EPA will announce the approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities in this final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are the manufacturing firms involved in the production of pipe, pipe or plumbing fitting or fixture, flux or solder, which are utilized in public water systems, or any plumbing in a residential or nonresidential facility or location that provides water for human consumption, and that meet the SBA's size standards for small businesses. Firms providing these types of plumbing products span fourteen different North American Industrial Classification System (NAICS) categories. The SBA small business definitions used in the analysis of this final rule vary across NAICS categories and range from firms with fewer than 500 employees to firms with fewer than 1,250 employees (See Table VIII.1).

TABLE VIII.1—SBA SMALL ENTITY SIZE STANDARDS BY NAICS CODE

NAICS code	SBA size standard
326122	750
332911	750
332913	1000
332919	750
332996	500
332999	750
333318	1000
333415	1250
333911	750
333999	500
334514	750
335222	1250
335228	1000
339991	500

EPA has determined that 1,976 out of 2,193 plumbing product manufacturers potentially subject to this final rule meet the small business definitions. EPA's analysis of projected impacts on small

entities is described in detail in section VI.B (Economic Impacts) of this preamble. EPA projects that none of the 1,976 affected small entities would experience an impact of costs exceeding 1 percent of revenue and no small entities would incur compliance costs exceeding 3 percent of revenue. Details of this analysis are presented in Chapter 6 of the Final Rule Technical Support Document, available in the docket, for the final rule.

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 final rule places no federal mandates on State, local, or Tribal governments. The mandated annual cost to the private sector is estimated to be between $6.7 and $12.3 million and the highest single year nominal cost is $15.4 million, which is below the $100 million UMRA threshold.

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. It would not have substantial direct effects on Tribal governments, 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. This final rule contains no federal mandates for Tribal governments and does not impose any enforceable duties on Tribal governments. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may be disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements specific standards established by Congress in statute. While Executive Order 13045 does not apply, EPA does anticipate that the product certification requirements associated with this final rule will limit the use of leaded plumbing products, thereby reducing the exposure of children to lead in drinking water.

I. Executive Order 13211: Actions 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. This rule implements statutory requirements for lead content limits of pipes, fittings, and fixtures for installation or repair of public water systems and plumbing that supplies potable water and provides for verification of lead content. The lead content of these manufactured materials would not have a significant impact on the supply, distribution, or use of energy

J. National Technology Transfer and Advancement Act (NTTAA)

This action involves technical standards. EPA is establishing a requirement that can be satisfied, depending on the size of the regulated entity or whether products are custom fabricated or not, either by self-certifying compliance with the SDWA lead prohibition or by achieving a voluntary standard that mirrors the SDWA requirements, such as the NSF/ANSI 372 standard. While EPA is not specifying a technical standard under this final rule, EPA is establishing the use of several technical standards that meet the new definition of lead free as a means of demonstrating compliance with this rule.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA has determined that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, or indigenous peoples as described in Executive Order 12898 (59 FR 7629, February 16, 1994), because this action does not establish any specific regulatory requirements that would affect these communities. Instead, it is a final rule that codifies existing requirements set forth by Congress regarding the allowable levels of lead in plumbing products, and includes additional provisions intended to aid in the implementation of those requirements.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined in 5 U.S.C. 804(2). 2018.

IX. References

2018 International Plumbing Code, 2017. International Code Council, Inc. Chapter 6. August 2017. Available for viewing on the internet at: *https://codes.iccsafe.org/content/IPC2018/chapter-6-water-supply-and-distribution*

CalEPA (California Environmental Protection Agency). 2013. 2011 Report of Lead in Plumbing Sampling. Second Annual Report. February 2013. Available on the internet at: *https://dtsc.ca.gov/wp-content/uploads/sites/31/2017/05/LIP-FEB2013.pdf*

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USEPA, 2013a. Summary of the Reduction of Lead in Drinking Water Act and Frequently Asked Questions. December 2013. Available on the internet at *regulations.gov*: *https://www.regulations.gov/document?D=EPA-HQ-OW-2015-0680-0250*

USEPA, 2013b. Final Report: Integrated Science Assessment for Lead. EPA 600–R–10–075F. June 2013. Available on the internet at: *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=255721*

USEPA, 2016. Technical Support Document for the Proposed Rule: Use of Lead Free Pipes, Fittings, Fixtures, Solder and Flux for Drinking Water. EPA 815–R–16–009. December 2016.

USEPA, 2017. Use of Lead Free Pipes, Fittings, Fixtures, Solder and Flux for Drinking Water—Proposed Rule. **Federal Register**. Vol. 82, No. 10. P. 4805. January 17, 2017.

USEPA, 2020. Technical Support Document for the Final Rule: Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water. EPA 810–R–20–001. June 2020.

List of Subjects

40 CFR Part 141

Environmental protection, Chemicals, Indian—lands, Intergovernmental

relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 143

Environmental protection, Chemicals, Indian—lands, Water supply.

Andrew Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR parts 141 and 143 as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

■ 1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 2. Revise the heading for Subpart E to read as follows:

Subpart E—Special Regulations, Including Monitoring

§ 141.43 [Removed]

■ 3. Remove § 141.43.

PART 143—OTHER SAFE DRINKING WATER ACT REGULATIONS

■ 4. The authority citation for part 143 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

■ 5. Revise the heading for part 143 as set forth above.

§§ 143.1 through 143.4 [Designated as subpart A]

■ 6. Designate §§ 143.1 through 143.4 as subpart A, and add a heading for newly designated subpart A to read as follows:

Subpart A—National Secondary Drinking Water Regulations

§ 143.1 [Amended]

■ 7. Amend § 143.1 by removing the text ''part'', and adding in its place ''subpart'', by removing the text ''These regulations'', and adding its place ''The regulations in this subpart'', and removing ''The regulations'' and adding its place ''The regulations in this subpart''.

§§ 143.5 through 143.9 [Added and Reserved]

■ 9. Add and reserve §§ 143.5 through 143.9.

■ 10. Add subpart B, consisting of §§ 143.10 through 143.20, to read as follows:

Subpart B—Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water

Sec.
143.10 Applicability and Scope.
143.11 Definitions.
143.12 Definition of lead free and calculation methodology.
143.13 Use prohibitions.
143.14 State enforcement of use prohibitions.
143.15 Introduction into commerce prohibitions.
143.16 Exemptions.
143.17 Reserved.
143.18 Required labeling of solder and flux that is not lead free.
143.19 Required certification of products.
143.20 Compliance provisions.

Subpart B—Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water

§ 143.10 Applicability and Scope.

(a) This subpart establishes regulations pertaining to pipes, pipe or plumbing fittings, or fixtures, solder and flux, pursuant to, *inter alia,* sections 1417 and 1461 of the Safe Drinking Water Act (42 U.S.C. 300g–6 and 300j–21). It applies to any person who introduces these products into commerce, such as manufacturers, importers, wholesalers, distributors, re-sellers, and retailers. It also applies to any person who uses these products in the installation or repair of:

(1) A public water system; or

(2) A residential or nonresidential facility providing water for human consumption.

(b) Reserved.

§ 143.11 Definitions.

The following definitions apply to this subpart:

Accredited third party certification body means those bodies that are accredited by the American National Standards Institute (ANSI) to provide product certification to meet the lead free requirements of not more than a weighted average of 0.25 percent lead content when used with respect to the wetted surfaces, consistent with section 1417 of the Safe Drinking Water Act and § 143.12, such as certification to the NSF/ANSI 372 standard.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his or her authorized representative.

Affiliated means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified. Affiliated persons or entities include but are not limited to: A parent company and all wholly or partially owned subsidiaries of a parent company, or two or more corporations or family partnerships that have overlap in ownership or control.

Alloy means a substance composed of two or more metals or of a metal and a nonmetal.

Coating means a thin layer of material such as paint, epoxy, zinc galvanization, or other material usually applied by spraying or in liquid form to coat internal surfaces of pipes, fittings, or fixtures.

Custom fabricated product means a product that:

(1) Is manufactured on a case-by-case basis to accommodate the unique needs of a single customer;

(2) Does not have a Universal Product Code (UPC) assigned to the product;

(3) Is not stocked by and is not available through inventory from a manufacturer, importer, wholesaler, distributor, retailer, or other source for distribution; and

(4) Is not cataloged in print or on the internet with a specific item number or code.

Drinking water cooler means any mechanical device, affixed to drinking water supply plumbing, which actively cools water for human consumption.

Fitting means a pipe fitting or plumbing fitting.

Fixture means a receptacle or device that is connected to a water supply system or discharges to a drainage system or both. Fixtures used for potable uses shall include but are not limited to:

(1) Drinking water coolers, drinking water fountains, drinking water bottle fillers, dishwashers;

(2) Plumbed in devices, such as point-of-use treatment devices, coffee makers, and refrigerator ice and water dispensers; and

(3) Water heaters, water meters, water pumps, and water tanks, unless such fixtures are not used for potable uses.

Flux means a substance used for helping to melt or join metals such as by removal of oxides and other coatings or residues from the metals before joining by using solder or other means.

Importer means any person who introduces into commerce any pipe, any pipe or plumbing fitting or fixture, or any solder or flux entering the United States; or any ''importer'' as defined in 19 CFR 101.1; or both.

Introduce into commerce or introduction into commerce means the sale or distribution of products or offering products for sale or distribution in the United States.

Liner means a rigid lining such as a plastic or copper sleeve that is:

(1) Sealed with a permanent barrier to exclude lead-bearing surfaces from water contact; and

(2) Of sufficient thickness and otherwise having physical properties necessary to prevent erosion and cracking for the expected useful life of the product.

Manufacturer means a person or entity who:

(1) Processes or makes a product; or

(2) Has products processed or made under a contractual arrangement for distribution, using the person's or entity's brand name or trademark.

Nonpotable services means all product uses and applications that are not potable uses.

Person means an individual; corporation; company; association; partnership; municipality; or State, federal, or Tribal agency (including officers, employees, and agents of any corporation, company, association, municipality, State, Tribal, or federal agency).

Pipe means a conduit, conductor, tubing, or hose and may also include permanently attached end fittings.

Pipe fitting means any piece (such as a coupling, elbow, or gasket) used for connecting pipe lengths together or to connect other plumbing pieces together or to change direction.

Plumbing fitting means a plumbing component that controls the volume and/or directional flow of water, such as kitchen faucets, bathroom lavatory faucets, manifolds, and valves.

Point-of-use treatment device means point-of-use treatment device as defined in § 141.2 of this chapter.

Potable uses, for purposes only of this subpart, means services or applications that provide water for human ingestion, such as for drinking, cooking, food preparation, dishwashing, teeth brushing, or maintaining oral hygiene.

Product means a pipe, fitting, or fixture.

Public water system means a public water system as defined in § 141.2 of this chapter.

Solder means a type of metal that is used to join metal parts such as sections of pipe, without melting the existing metal in the parts to be joined. Solder is usually sold or distributed in the form of wire rolls or bars.

State means state as defined in § 142.2 of this chapter.

United States includes its commonwealths, districts, States, Tribes, and Territories.

Water distribution main means a pipe, typically found under or adjacent to a roadway, that supplies water to buildings via service lines.

§ 143.12 Definition of lead free and calculation methodology.

(a) ''Lead free'' for the purposes of this subpart means:

(1) Not containing more than 0.2 percent lead when used with respect to solder and flux; and

(2) Not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures.

(b) The weighted average lead content of a pipe, pipe fitting, plumbing fitting, or fixture is calculated by using the following formula: For each wetted component, the percentage of lead in the component is multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component is added together, and the sum of these weighted percentages constitutes the weighted average lead content of the product. The lead content of the material used to produce wetted components is used to determine compliance with paragraph (a)(2) of this section. For lead content of materials that are provided as a range, the maximum content of the range must be used.

(c) If a coating, as defined in § 143.11, is applied to the internal surfaces of a pipe, fitting or fixture component, the maximum lead content of both the coating and the alloy must be used to calculate the lead content of the component.

(d) If a liner, as defined in § 143.11, is manufactured into a pipe, fitting or fixture, the maximum lead content of the liner must be used to calculate the lead content of the component.

(e) If a fixture contains any media (*e.g.,* activated carbon, ion exchange resin) contained in filters, the media are not to be used in determining the ''total wetted surface area of the entire product'' in paragraph (b) of this section.

(f) In addition to the definitions of ''lead free'' in paragraphs (a) through (e) of this section, no drinking water cooler, which contains any solder, flux, or storage tank interior surface, which may come into contact with drinking water, is lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead. Drinking water coolers must be manufactured such that each individual part or component that may come in contact with drinking water shall not contain more than 8 percent lead while still meeting the maximum 0.25 percent weighted average lead content of the wetted surfaces of the entire product.

§ 143.13 Use prohibitions.

(a) No person may use any pipe, any pipe or plumbing fitting or fixture, any solder or any flux that is not lead free as defined in § 143.12 in the installation or repair of:

(1) Any public water system; or

(2) Any plumbing in a residential or nonresidential facility providing water for human consumption.

(b) Paragraph (a) of this section shall not apply to leaded joints necessary for the repair of cast iron pipes.

§ 143.14 State enforcement of use prohibitions.

As a condition of receiving a full allotment of Public Water System Supervision grants under section 1443(a) of the Safe Drinking Water Act, States must enforce the requirements of section 1417(a)(1) of the Safe Drinking Water Act and § 143.13 through State or local plumbing codes, or such other means of enforcement as the State may determine to be appropriate.

§ 143.15 Introduction into commerce prohibitions.

(a) No person may introduce into commerce any pipe, or any pipe or plumbing fitting or fixture, that is not lead free, except for a pipe that is used in manufacturing or industrial processing;

(b) No person engaged in the business of selling plumbing supplies in the United States, except manufacturers, may sell solder or flux that is not lead free; and

(c) No person may introduce into commerce any solder or flux that is not lead free, unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

§ 143.16 Exemptions.

The prohibitions in §§ 143.13 and 143.15 and the product certification requirements in § 143.19 shall not apply to the products listed in paragraphs (a) through (c) of this section:

(a) Pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption. Additional products that could be ''used exclusively for nonpotable services'' include:

(1) Products that are clearly labeled, on the product, package, or tag with a phrase such as: ''Not for use with water for human consumption'' or another phrase that conveys the same meaning in plain language;

(2) Products that are incapable of use in potable services (*e.g.,* physically incompatible) with other products that would be needed to convey water for potable uses; or

(3) Products that are plainly identifiable and marketed as being solely for a use other than the conveyance of water (these other uses include conveyance of air, chemicals other than water, hydraulic fluids, refrigerants, gasses, or other non-water fluids).

(b) Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, fire hydrants, service saddles, and water distribution main gate valves (provided that such valves are 2 inches in diameter or larger).

(c) Clothes washing machines, emergency drench showers, emergency face wash equipment, eyewash devices, fire suppression sprinklers, steam capable clothes dryers, and sump pumps.

§ 143.17 [Reserved]

§ 143.18 Required labeling of solder and flux that is not lead free.

Solder and flux that is not ''lead free'' as defined in § 143.12(a)(1) must bear a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

§ 143.19 Required certification of products.

(a) Manufacturers or importers that introduce into commerce products that must meet the lead free requirements of section 1417 of the Safe Drinking Water Act and § 143.12 must ensure, except as provided in paragraphs (a)(1) through (3) of this section, that the products are certified to be in compliance as specified in paragraphs (b) and (c) of this section by September 1, 2023, or prior to product introduction into commerce, whichever occurs later. Such manufacturers or importers must maintain documentation to substantiate the certification for at least 5 years from the date of the last sale of the product by the manufacturer or importer.

(1) Product components of assembled pipes, fittings, or fixtures do not need to be individually certified if the entire product in its final assembled form is lead free certified.

(2) Direct replacement parts for previously installed lead free certified products do not need to be individually certified if the weighted average lead content of wetted surface area for the part does not exceed such lead content of the original part.

(3) Dishwashers do not need to be certified.

(b) Certification of products must be obtained by manufacturers or importers from an accredited third party certification body, except as provided in paragraph (c) of this section. The manufacturer or importer must keep records for all products certified by an accredited third party certification body that include, at a minimum, documentation of certification, of dates of certification, and of expiration. This documentation must be provided upon request to the Administrator as specified in § 143.20(b).

(c) Products may be self-certified by manufacturers or importers as provided in paragraph (c)(1) or (c)(2) of this section. Such manufacturers or importers electing to self-certify products must comply with paragraphs (d) through (g) of this section.

(1) Manufacturers having fewer than 10 employees, or importers entering products purchased from or manufactured by manufacturers having fewer than 10 employees, may elect to self-certify products in lieu of obtaining certification from an accredited third party certification body. The number of employees includes any persons employed by the manufacturer and any of its affiliated entities. The number of employees must be calculated by averaging the number of persons employed, regardless of part-time, full-time, or temporary status, by an entity and all of its affiliated entities for each pay period over the entity's latest 12 calendar months or averaged over the number of months in existence if less than 12 months. Any such firms that subsequently expand employment to 10 or more employees, based on the most recent 12-month average number of persons employed, are no longer eligible to self-certify products and must obtain third party certification within 12 months of having 10 or more employees.

(2) Manufacturers or importers may elect to self-certify any custom fabricated product in lieu of obtaining certification from an ANSI accredited third party certification body, regardless of the number of persons employed by the manufacturer.

(d) In order for eligible manufacturers or importers to self-certify products, such manufacturers or importers must attest that products are in compliance with the definition of ''lead free'' in § 143.12 by developing and maintaining a ''certificate of conformity.'' The certificate of conformity must be:

(1) Signed by a responsible corporate officer; a general partner or proprietor; or an authorized representative of a responsible corporate officer, general partner, or proprietor; and

(2) Posted to a website with continuing public access in the United States, unless it is distributed by other means (*e.g.,* electronically or in hard copy) with the product through the distribution channel for final delivery to the end use installer of the product.

(e) The certificate of conformity must be in English and include:

(1) Contact information for the manufacturer or importer to include:

(i) The entity or proprietor name;

(ii) Street and mailing addresses;

(iii) Phone number; and

(iv) Email address;

(2) For products imported into the United States, the contact information must also be included for the manufacturer;

(3) A brief listing of the products to include, when applicable, unique identifying information such as model names and numbers;

(4) A statement attesting that the products meet the lead free requirements of the Safe Drinking Water Act and 40 CFR part 143, subpart B, and also that the manufacturer or importer is eligible to self-certify the product consistent with this regulation;

(5) A statement indicating how the manufacturer or importer verified conformance with the Safe Drinking Water Act and 40 CFR part 143, subpart B; and

(6) The signature, date, name, and position of the signatory; and, if the signatory is an authorized representative of a responsible corporate officer, a general partner, or a proprietor, the name and position of the officer, partner, or proprietor.

(f) Manufacturers or importers that self-certify products must maintain, at a primary place of business within the United States, certificates of conformity and sufficient documentation to confirm that products meet the lead free requirements of this subpart. Sufficient documentation may include detailed schematic drawings of the products indicating dimensions, records of calculations of the weighted average lead content of the product, documentation of the lead content of materials used in manufacture, and other documentation used in verifying the lead content of a plumbing device. This documentation and certificates of conformity must be provided upon request to the Administrator as specified in § 143.20(b) and must be maintained

for at least five (5) years after the last sale of the product by the manufacturer or importer.

(g) The certificate of conformity and documentation must be completed prior to a product's introduction into commerce.

§ 143.20 Compliance provisions.

(a) Noncompliance with the Safe Drinking Water Act or this subpart may be subject to enforcement. Enforcement actions may include seeking injunctive or declaratory relief, civil penalties, or criminal penalties.

(b) The Administrator may, on a case-by-case basis, request any information, such as records deemed necessary to determine whether a person has acted or is acting in compliance with section 1417 of the Safe Drinking Water Act and this subpart. Information, such as records requested, must be provided to the Administrator at a time and in a format as may be reasonably determined by the Administrator.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0182; FRL–10011–47]

Citrus Tristeza Virus Expressing Spinach Defensin Proteins 2, 7, and 8; Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends and extends a temporary exemption from the requirement of a tolerance for residues of the *Citrus tristeza* virus expressing spinach defensin proteins 2, 7, and 8 alone or in various combinations on citrus fruit (*Citrus* spp., *Fortunella* spp., Crop Group 10–10) when applied/used as a microbial pesticide in accordance with the terms of Experimental Use Permit (EUP) No. 88232–EUP–2. Southern Gardens Citrus submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting extension of the temporary tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of *Citrus tristeza* virus expressing spinach defensin proteins 2, 7, and 8 alone or in various combinations. The temporary tolerance exemption expires on August 31, 2023.

DATES: This regulation is effective August 31, 2020. Objections and requests for hearings must be received on or before November 2, 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–2019–0182, 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: Jean Overstreet, Acting Director, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government 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–2019–0182 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 November 2, 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–2019–0182, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

II. Background and Statutory Findings

In the **Federal Register** of June 28, 2019 (84 FR 30976) (FRL–9995–27), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 9G8741) by Southern Gardens Citrus, 1820 County Road 833, Clewiston, FL 33440. The petition requested that 40 CFR 180.1337 be amended to extend a temporary exemption from the requirement of a tolerance for residues of *Citrus tristeza* virus expressing spinach defensin proteins 2, 7, and 8 in or on the commodities in fruit, citrus group 10–10 from August 31, 2020, to August 31, 2023. That document contains a summary of the petition prepared by the petitioner Southern Gardens Citrus, which is available in the docket, *http://www.regulations.gov.* One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit VII.C.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe '' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require 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 . . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability, and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The pesticide chemical is a genetically altered *Citrus tristeza* virus that expresses spinach defensin proteins 2 (SoD2), 7 (SoD7), and 8 (SoD8) to combat citrus greening disease. Although EPA did not receive data on the altered virus itself, EPA has sufficient data to evaluate each component of the pesticide individually—*i.e.,* the *Citrus tristeza* virus and the spinach defensin proteins 2, 7, and 8. Assessing overall risk based on the virus and spinach defensin proteins' individual risks is reasonable because the antimicrobial spinach defensin proteins are unlikely to change the host range of the plant virus and the plant virus is unlikely to affect the toxicity or allergenicity profile of the antimicrobial spinach defensin proteins.

Citrus whole fruits and juices have been an important part of the American and international diets for centuries. ''History of Citrus,'' All Foods Natural (2013) (available online at: *http://www.allfoodnatural.com/article/history-of-citrus.html*). The U.S. human population has been exposed to the *Citrus tristeza* (*C. tristeza*) virus in citrus products for at least two decades since its discovery as being widespread in the Florida citrus industry in the mid-1990s. No adverse effects from this exposure in people have been reported. This lack of adverse effects is consistent with the fact that *C. tristeza* is a plant virus, and plant viruses do not cause disease in humans; human intestines commonly harbor plant viruses without any adverse effect. (Ref. 1.)

Spinach defensin proteins are naturally found in every spinach plant, and oral exposure to the spinach plant provides exposure to these proteins. There is a long history of mammalian consumption of the entire spinach plant (both raw and cooked) as food, without causing any known deleterious human health effects or any evidence of toxicity. Spinach plant leaves have long been part of the human diet, and there have been no findings that indicate toxicity or allergenicity of spinach proteins.

Diverse defensin proteins are expressed by most eukaryotic species to combat various bacterial and fungal organisms. Bioinformatic sequence comparisons to assess the toxicity potential of spinach defensin 2 (SoD2), spinach defensin 7 (SoD7), and spinach defensin 8 (SoD8) were conducted for this tolerance exemption extension and yielded no potential significant toxicity matches. Furthermore, literature searches did not produce any papers that showed any mammalian toxicity associated with spinach or spinach defensins. In addition, available data demonstrate that SoD2, SoD7, and SoD8 proteins have very low oral toxicity. In an acute oral toxicity study conducted with a single dose of 5,000 milligram/kilogram (mg/kg) of microbial-produced SoD2 protein, no evidence of toxic or adverse effects was observed. Due to the high similarity between SoD2, SoD7, and SoD8, the toxicity assessment is applicable to all three proteins.

Because SoD2, SoD7, and SoD8 are proteins, EPA also evaluated their potential for allergenicity. An updated bioinformatics analysis was conducted for this EUP extension in which sequence comparisons were made between the novel proteins from spinach against those of known and putative allergens in a search of the *AllergenOnline.org* database based on the 35% amino acid identity criterion established by Codex (Ref. 2). The analysis (Ref. 3) indicated that there are no sequence homology matches that are of concern with known allergens based on the Codex criterion.

In an *in vitro* study, microbial produced SoD2 and SoD7 proteins were rapidly and extensively hydrolyzed in stimulated gastric and intestinal conditions in the presence of pepsin (at pH 1.2) and pancreatin, respectively. Both microbial-produced SoD2 and SoD7 proteins demonstrated half-lives of approximately five minutes when subjected to pepsin digest, and both proteins were completely proteolyzed to amino acids and small peptide fragments in less than one minute in the presence of 0.15 milligram/liter (mg/ml) pancreatin. These results indicate that both the SoD2 and SoD7 proteins are highly susceptible to degradation in conditions similar to the human digestive tract.

An evaluation of the similarities of SoD8 compared to SoD2 and SoD7 proteins to estimate SoD8 protein digestibility was conducted. The sequences are homologous, but SoD8 is longer on both N and C terminal ends. The proteins were found to be nearly

identical in major overlapping sequences, while SoD8 has one more pepsin cleavage site compared to SoD2 and SoD7. This analysis indicates that SoD8 should be digested very similarly to SoD2 and SoD7.

Based on the source, bioinformatics, and digestibility of these proteins, EPA concludes that these spinach defensin proteins will not pose any allergenicity concerns. In sum, EPA concludes that due to the lack of toxicity and pathogenicity concerns for *C. tristeza* and any toxicity or allergenicity concerns for the spinach defensin proteins 2, 7, and 8, the altered *C. tristeza* virus expressing these spinach defensin proteins does not pose any toxicity, pathogenicity, or allergenicity concerns. Therefore, EPA did not identify any points of departure for regulating exposure, and a qualitative assessment was conducted. For further information about EPA's assessment of the *Citrus tristeza* virus that has been genetically altered to express spinach defensin proteins 2 (SoD2), 7 (SoD7), and 8 (SoD8), see the *C. tristeza* SoD2, SoD7, and SoD8 March 2016 Human Health Review found in Docket ID EPA–HQ–OPP–2016–0034 and the August 2020 review found in Docket ID No. EPA–HQ–OPP–2019–0182.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for residue from genetically engineered *C. tristeza* expressing spinach defensins SoD2, SoD7, and SoD8 (*i.e.,* including 88232–EUP–1), and exposure from non-occupational sources.

The Agency anticipates that there may be dietary exposure to *Citrus tristeza* virus expressing spinach defensin proteins 2, 7, and 8 (either alone or in combinations with each other) from the consumption of citrus products treated with this pesticide. Significant dietary exposure to spinach defensin proteins 2, 7, and 8 (either alone or in combinations with each other) from use of this pesticide is not expected due to the very low expression of the defensin proteins from the *C. tristeza* vector. Dietary exposure to spinach defensins from consumption of treated citrus products containing them will be far below the amount consumed from raw and cooked spinach. Recent U.S. consumption statistics indicate that, on average, 2 lbs. of spinach are consumed per person per year in the United States. ''Spinach Profile,'' Agricultural Marketing Resource Center (June 2013). (*http://www.agmrc.org/commodities_products/vegetables/spinach-profile/*). EPA has also approved another experimental use permit (88232–EUP–1) involving use of defensin proteins SoD2 and SoD7, to which people may be exposed. A total of 75 kg of SoD proteins was authorized for treatment of 720 acres in Florida and Texas. May 6, 2015 (80 FR 25943) (FRL–9926–99) and August 28, 2015 (80 FR52270) (FRL–9931–26). In terms of nonpesticidal dietary exposure, the U.S. population will continue to be exposed to *C. tristeza* virus through infected citrus plants and will continue to be exposed to these spinach defensin proteins through consumption of spinach plants. Exposure to the *C. tristeza* vector and spinach defensin proteins is likely; however, risk via consumption is unlikely due to the low toxicity and high digestibility of the active ingredients.

Residues in drinking water from use of this pesticide will be extremely low or non-existent since the pesticide will be present only in the vascular tissue of citrus trees and is applied under the bark; therefore, it is highly unlikely that any environmental exposure will occur.

The Agency does not expect there to be any non-occupational exposure to this pesticide chemical residue. Exposure via the skin or inhalation is not likely since the viral vector will be phloem limited in citrus trees, and very little phloem is present in citrus fruit, which essentially eliminates these exposure routes or reduces these exposure routes to negligible.

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

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

Citrus tristeza virus expressing spinach defensin proteins 2, 7, and 8 (either alone or in combinations with each other) is not toxic and does not have a common mechanism of toxicity with any other substances. Consequently, section 408(b)(2)(D)(v) does not apply.

VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that, in considering the establishment of a tolerance or tolerance exemption for a pesticide chemical residue, EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. This additional margin of exposure (safety) is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF).

In applying this provision, EPA either retains the default value of 10X or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor. Based on the information discussed in Unit III, EPA concludes that there are no threshold effects of concern to infants, children, or adults from exposure to the spinach defensing proteins SoD2, SoD7, and SoD8. As a result, EPA concludes that no additional margin of exposure (safety) is necessary to protect infants and children and that not adding any additional margin of exposure (safety) will be safe for infants and children.

Based on the discussion in this document and supporting documents, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the residues of *C. tristeza* expressing spinach defensin proteins SoD2, SoD7, and SoD8. Such exposure includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on a lack of toxicity and anticipated low likelihood of allergenicity of the *C. tristeza* expressing spinach defensin proteins SoD2, SoD7, and SoD8.

VII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation based on the lack of any toxicity or allergenicity of the *C. tristeza* virus expressing spinach defensin proteins 2, 7, and 8.

B. Response to Comments

One comment was received in response to the Notice of Filing. The submitted comment suggested that *Citrus tristeza* virus expressing spinach defensin proteins 2, 7, and 8 could be correlated with Creutzfeldt-Jakob disease and dementia.

Creutzfeldt-Jakob disease (CJD) is caused by misfolding of human protein PrP, which can occur genetically, sporadically, or through infection, not from exposure to *Citrus tristeza* or SoD nucleic acids or proteins. Inherited form is not caused by any external infectious agent but by mutation in the gene. The epidemiological evidence strongly suggests that sporadic form of CJD is also not acquired from an external infectious source. Infectious CJD is associated with exposure to the tissues of an affected person via surgical procedures or medical treatments, or dietary exposure to bovine spongiform encephalopathy via consumption of contaminated beef meat or other products. Presently, there is no concern about any association between CJD and *Citrus tristeza* or SoD nucleic acids or proteins.

Dementia is a symptom rather than a disease and can occur as a result of multiple diseases and disorders, in particular, as a result of CJD. There is no evidence at all that any form of dementia can be associated with CTV or SoD nucleic acids or protein consumption or exposure by other routes.

EPA has no evidence of the consumption *Citrus tristeza* virus or spinach has led to adverse outcomes. The U.S. human population has been exposed to the *Citrus tristeza* virus in citrus products for at least two decades since its discovery as being widespread in the Florida citrus industry in the mid-1990s. Also, there is a long history of mammalian consumption of the entire spinach plant (both raw and cooked) as food, without causing any known deleterious human health effects or any evidence of toxicity. Furthermore, diverse defensin proteins are expressed by most eukaryotic species to combat various bacterial and fungal organisms.

VIII. Conclusion

Therefore, the expiration date for the current temporary exemption for residues of *Citrus tristeza* virus expressing spinach defensin proteins 2, 7, and 8 associated with Experimental Use Permit No. 88232–EUP–2 is extended from August 31, 2020, to August 31, 2023.

IX. References

1. U.S. Environmental Protection Agency. Meeting Minutes of the FIFRA Scientific Advisory Panel Meeting Held December 6–8, 2005 on Plant-Incorporated Protectants Based on Virus Coat Protein Genes: Science Issues Associated with the Proposed Rule, *http://www.regulations.gov.* Docket No. EPA–HQ–OPP–2005–0249–12.
2. Codex Alimentarius Commission. 2003. Alinorm 03/34: Appendix III. Guideline for the conduct of food safety assessment of foods derived from recombinant DNA plants. Annex IV. Annex on the assessment of possible allergenicity, Rome, Italy.
3. Updated bioinformatics analysis for extension of experimental use permit 88232–EUP–2 and extension of the associated temporary tolerance exemption for *Citrus tristeza* virus expressing spinach defensin proteins 2, 7 and 8 at 40 CFR part 180.1337 for additional 3 years. Memorandum from N. Baranova through J. Kough to K. Welch, dated June 23, 2020. *http://www.regulations.gov.* Docket No. EPA–HQ–OPP–2019–0182.

X. Statutory and Executive Order Reviews

This action modifies an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), 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 exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

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

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

XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: August 26, 2020.

Jean Overstreet,

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

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Revise § 180.1337 to read as follows:

§ 180.1337 Citrus tristeza virus expressing spinach defensin proteins 2, 7, and 8; exemption from the requirement of a tolerance.

A temporary exemption from the requirement of a tolerance is established for residues of the microbial pesticide *Citrus tristeza* virus expressing spinach defensin proteins 2, 7, and 8 (either alone or in combinations with each other) in or on the commodities listed in fruit, citrus group 10–10, when used in accordance with the terms of Experimental Use Permit No. 88232–EUP–2. This temporary exemption from the requirement of a tolerance expires on August 31, 2023.

[FR Doc. 2020–19351 Filed 8–28–20; 4:15 pm]

BILLING CODE 6560–50–P

OFFICE OF MANAGEMENT AND BUDGET

41 CFR Part 201

Federal Acquisition Supply Chain Security Act

AGENCY: Office of Management and Budget, OMB.

ACTION: Interim final rule with request for comments.

SUMMARY: As authorized by the Federal Acquisition Supply Chain Security Act of 2018 (FASCSA), the Federal Acquisition Security Council (FASC) is issuing this interim final rule to implement the requirements of the laws that govern the operation of the FASC, the sharing of supply chain risk information, and the exercise of its authorities to recommend issuance of removal and exclusion orders to address supply chain security risks.

DATES: Effective September 1, 2020. Written comments must be received on or before November 2, 2020.

ADDRESSES: Interested parties should provide comments via electronic mail to the following inbox: *OFCIO@omb.eop.gov.* The Office of Management and Budget is located at 725 17th Street NW, Washington, DC 20503. No physical copies will be accepted.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. Comments submitted in response to this notice may be made publically available and are subject to disclosure under the Freedom of Information Act. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information, or any information that you would not want publicly disclosed. Summary information of the public comments received, including any specific comments, may be posted on *regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa N. Barr, 202–395–3015, *Lisa.N.Barr@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Information and communications technology and services (ICTS) are essential to the proper functioning of U.S. government information systems. The U. S. government's efforts to evaluate threats to and vulnerabilities in ICTS supply chains have historically been undertaken by individual or small groups of agencies to address specific supply chain security risks. Because of the scale of supply chain risks faced by government agencies, and the need for better coordination among a broader group of agencies, there was an organized effort within the executive branch to support Congressional efforts in 2018 to pass new legislation to improve executive branch coordination, supply chain information sharing, and actions to address supply chain risks.

The Federal Acquisition Supply Chain Security Act of 2018 (FASCSA or Act) (Title II of Pub. L. 115–390), signed into law on December 21, 2018, established the Federal Acquisition Security Council (FASC). The FASC is an executive branch interagency council, chaired by a senior-level official from the Office of Management and Budget (OMB), and includes representatives from the General Services Administration (GSA); Department of Homeland Security (DHS); Office of the Director of National Intelligence (ODNI); Department of Justice; Department of Defense (DoD); and Department of Commerce (Commerce).

Pursuant to subsection 202(d) of the FASCSA, the FASC is required to prescribe this IFR to implement subchapter III of chapter 13 of title 41, U.S. Code. This IFR is organized in three subparts. Subpart A explains the scope of this IFR, provides definitions for relevant terms, and establishes the membership of the FASC. Subpart B establishes the role of the FASC's Information Sharing Agency (ISA). DHS, acting primarily through the Cybersecurity and Infrastructure Security Agency, will serve as the ISA. The ISA will standardize processes and procedures for submission and dissemination of supply chain information, and will facilitate the operations of a Supply Chain Risk Management (SCRM) Task Force under the FASC. This FASC Task Force (hereafter referred to as ''Task Force'') will be comprised of designated technical experts that will assist the FASC in implementing its information sharing, risk analysis, and risk assessment functions. Subpart B also prescribes mandatory and voluntary information sharing criteria and associated information protection requirements. Subpart C provides the criteria and procedures by which the FASC will evaluate supply chain risk from sources and covered articles and recommend issuance of orders requiring removal of covered articles from executive agency information systems (removal orders) and orders excluding sources or covered articles from future procurements (exclusion orders). Subpart C also provides the process for issuance of removal orders and exclusion orders and agency requests for waivers from such orders.

II. Analysis of Part 201

Subpart A—General

Subpart A establishes regulations generally applicable to the operations of the FASC. Subpart A, § 201.101(a) summarizes the scope of subparts A, B, and C, which generally govern the activities of federal agencies, and not non-federal entities. § 201.101(b) clarifies that nothing in these regulations require non-federal entities to share supply chain risk information with the federal government. In addition, because subpart C provides for the issuance of exclusion orders and removal orders, which affect the supply and use of products and services supplied by non-federal entities,

§ 201.101(b)(2) explains that subpart C does not require the removal or a covered article from a non-federal information system or the exclusion of a covered article from procurement by a non-federal entity except to the extent that an exclusion order or a removal order applies to a prime contractor or subcontractor of a federal agency. This applicability to non-federal entities is addressed in § 201.303(e).

Subpart A, § 201.102 provides definitions applicable to the part. Subpart A, § 201.103 describes the membership of the FASC, the authority of the FASC to request information from executive agencies, and the authority of the FASC to establish a program office, committees, working groups, or other constituent bodies. These bodies are authorized to perform any function lawfully delegated to them by the FASC.

Subpart B—Supply Chain Risk Information Sharing

Subpart B identifies DHS as the executive agency for information sharing (or the ISA) and provides for the creation and establishment of a supply chain risk management and information sharing Task Force under the FASC. The ISA will facilitate and provide the administrative support to the FASC Task Force and serve as the liaison to the FASC. The Task Force will develop processes and procedures to be approved by the FASC that describe: (1) How the ISA and Task Force will operate and support the FASC; (2) how federal and non-federal entities submit supply chain risk information to the FASC, including any necessary requirements for information handling, protection and classification; (3) how to share information to support supply chain risk analyses under § 1326 of the Act, recommendations issued by the FASC, and covered procurement actions under § 4713 of the Act; (4) how to provide information to the FASC and to executive agencies regarding removal orders and covered procurement actions; and (5) any other processes and procedures describing the operations of the FASC as determined by the FASC Chairperson. Subpart B, § 201.202 describes additional details of the mechanics of submitting information to the FASC (including mandatory and voluntary submissions) and dissemination of information by the FASC.

Subpart C—Removal Orders and Exclusion Orders

Subpart C describes the process by which the FASC will evaluate one or more sources and/or one or more covered articles to determine whether to recommend that the Secretary of Homeland Security, Secretary of Defense, and/or Director of National Intelligence issue a removal order and/or an exclusion order. Initiation of the process can begin either by referral of the FASC or any member of the FASC; upon the written request of any U.S. Government body; or based on information submitted to the FASC by any individual or non-federal entity that the FASC determines to be credible.

The FASC will evaluate sources and covered articles pursuant to a common set of non-exclusive factors that are listed in this IFR. Allowing for the evaluation of additional information provides the FASC with the needed flexibility to evaluate additional considerations and information on a case-by-case basis.

As part of the analysis of sources and/or covered articles, the FASC will conduct appropriate due diligence regarding the information that it is considering. This due diligence may include reviewing any information made available to the FASC; ensuring, to the extent possible, that the information is credible or that the level of confidence in the information is appropriately taken into consideration; and examining other relevant publicly-available information as necessary and appropriate. In addition, the FASC will consult with the National Institute of Standards and Technology (NIST), before recommending issuance of an exclusion or removal order, to ensure that recommended orders do not conflict with existing federal standards and guidelines.

If the FASC does not find that recommending a removal or exclusion order is warranted, risk information received and analyzed by the FASC may be shared, as appropriate, pursuant to the procedures in Subpart B.

If the FASC decides to issue a recommendation, that recommendation will include the information necessary for the Secretary of Homeland Security, the Secretary of Defense, or the Director of National Intelligence, as appropriate, to determine whether to issue an exclusion order and/or a removal order. The recommendation must include the risk information and summaries specified in Subpart B, § 201.202(e). The recommendation will be directed to the Secretary of Homeland Security, Secretary of Defense, and/or Director of National Intelligence based on the scope of federal systems, identified in 41 U.S.C. 1323(c)(5), for which the FASC is recommending removal or exclusion from future procurements. The FASC or its designee will provide notice of the recommendation, along with the contents specified in Subpart C, § 201.302(b), to any source named in the recommendation. This due process procedure is intended to provide the named source(s) with the information needed for the source(s) to respond to the recommendation. If named source(s) wishes to respond to the notice, the source(s) should prepare a thorough and complete written response, submitting the response as directed in the notice. The FASC encourages source(s) to provide any information that it believes relevant in responding to the recommendation, including additional technical information about the covered article(s), details about the relationship between the source(s) and any foreign government, and a detailed mitigation proposal that the source(s) believes would satisfy the concerns identified in the notice. The source(s) should submit such information and materials in writing before any request for a meeting to enable the FASC and the Secretary of Homeland Security, Secretary of Defense, and Director of National Intelligence, as applicable, to fully consider the source's written submission. The FASC may choose to rescind the recommendation based on the information provided by the source(s). The FASC does not intend to publicly disclose communications with the source(s) except to the extent required by law. The FASC welcomes comment on the adequacy or specific improvements to these procedures.

The Secretary of Homeland Security, the Secretary of Defense, or the Director of National Intelligence, as applicable, will review the recommendation and accompanying risk information and materials provided by the FASC, and any information and response submitted by a source, and determine whether to issue a removal order, an exclusion order, or both, for the agencies and systems within the scope of the authority of 41 U.S.C. 1323(c)(5)(A)(i)–(iii). If one of these officials or an authorized designee issues an exclusion order or removal order, the named source(s) will be notified, among other required and discretionary notifications.

Once a removal or exclusion order is issued, all agencies to which the order applies would be required to comply with the order pursuant to 41 U.S.C. 1323(c)(7) and 44 U.S.C. 3554(a)(1)(B)(vi). If orders applying to the same source(s) or covered articles were issued by the Secretaries of Homeland Security and Defense and the Director of National Intelligence (*i.e.,* effectively an executive branch-wide removal and/or exclusion order), the Administrator of General Services and officials at other executive agencies

responsible for management of the Federal Supply Schedules, government-wide acquisition contracts, and multi-agency contracts would facilitate implementation of such orders by removing the covered articles or sources identified in the orders from such contracts.

The regulation provides procedures for agencies to submit requests to the issuing official for an exception to an issued order. An agency may request an exception to an issued order for various reasons, such as need for additional time to comply with the order, or for a complete waiver based on issues of national security. The FASC will establish procedures for requesting waivers and criteria for approving or disapproving such requests, as appropriate.

All issued exclusion and removal orders must be reviewed at least annually pursuant to procedures which will be established by the FASC. Furthermore, an authorized official of the issuing agency may modify or rescind an issued exclusion or removal order, so long as a modified order does not apply more broadly than the order before modification.

III. Request for Comment

The FASC invites comments on all aspects of this IFR. Any non-public (oral and written) communications with FASC officials regarding the substance of this rule would be considered an ex-parte presentation, and a summary of the substance of the ex-parte presentation will be placed on the public record and become part of this docket. Not later than two (2) business days after an oral communication or meeting, the party which engaged in such communication or meeting must submit a memorandum to OMB summarizing the substance of the communication. OMB reserves the right to supplement the memorandum with additional information as necessary, or to request that the party making the filing do so, if a FASC official believes that important information was omitted or characterized incorrectly. Any written presentation provided in support of the oral communication or meeting will also be placed on the public record and become part of this docket. Such ex-parte communications must be submitted to this docket as provided in the **ADDRESSES** section above and clearly labeled as an ex-parte presentation. Federal entities are not subject to these procedures.

IV. Classification

Executive Orders 12866 and 13563: Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a significant regulatory action under E.O. 12866. Accordingly, the Office of Information and Regulatory Affairs has reviewed this rule.

Executive Order 13771: This rule is not subject to the requirements of E.O. 13771, because the rule is issued with respect to a national security function of the United States. As highlighted by sections I and II of this preamble, national security is a primary direct benefit of this rule. Application of the national security exemption under E.O. 13771 requires assessing the application of the ''good cause'' exception under 5 U.S.C. 533. This rule meets the ''good cause'' exception, as FASCSA requires publication of an interim final rule to effectuate the authorities of the FASC in a timely manner, and the one-year deadline Congress established for publication of such rule would not provide sufficient time for notice and comment in light of the complex nature of the rule and interagency process.

Regulatory Flexibility Act: Because the FASC is not required to publish a notice of proposed rulemaking for this interim final rule under 5 U.S.C. 553, no Regulatory Flexibility Analysis is required. *See* 5 U.S.C. 603(a), 604(a).

Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained OMB approval and displays a currently valid OMB Control Number. This rule does not contain a collection of information and is therefore not subject to the PRA.

Congressional Review Act: The FASC has determined that this rule will take effect upon publication pursuant to 5 U.S.C. 808(2). The FASC finds that notice and public procedure before this rule takes effect is unnecessary and contrary to the public interest under 5 U.S.C. 808(2) in light of Congress's direction to issue an interim final rule to address the critical supply chain security issues covered by this rule and to respond to public comments when issuing a final rule. *See* 41 U.S.C. 1321 note.

Unfunded Mandates Reform Act of 1995: This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995.

Executive Order 13132 (Federalism): This rule does not have Federalism implications as specified in Executive Order 13132.

Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights): This rule does not implement policies that have takings implications as identified in Executive Order 12630.

Executive Order 13175 (Consultation and Coordination with Indian Tribes): The rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

National Environmental Policy Act: This IFR does not require a detailed environmental analysis as the establishment and operation of FASC will not ''individually or cumulatively have a significant effect on the human environment'' (40 CFR 1508.4).

List of Subjects in 41 CFR Part 201

Cybersecurity, Federal acquisition, Government procurement, Information sharing, Information technology, National security, Removal and exclusion orders, Security measures, Supply chain, Supply chain risk information, Technology.

Grant Schneider,

Federal Chief Information Security Officer.

■ For the reasons set out in the preamble, 41 CFR part 201 is added to read as follows:

PART 201—FEDERAL ACQUISITION SUPPLY CHAIN SECURITY

Subpart A—General

Sec.

201.101 Scope.
201.102 Definitions.
201.103 Federal Acquisition Security Council (FASC).

Subpart B—Supply Chain Risk Information Sharing

201.201 Information Sharing Agency (ISA).
201.202 Submitting information to the FASC.

Subpart C—Removal orders and exclusion orders

201.301 Recommending removal orders and exclusion orders.
201.302 Notice of recommendation to source and opportunity to respond.

201.303 Issuing removal orders and exclusion orders and other related activities.
201.304 Executive agency compliance with exclusion and removal orders.

Authority: 41 U.S.C. 1321–1328, 4713.

Subpart A—General

§ 201.101 Scope.

(a) Except as provided in paragraph (b) of this section, this part applies to the following:

(1) The membership and operations of the FASC, including all U.S. and contractor personnel supporting the FASC's operations;

(2) Submission and dissemination of supply chain risk information; and

(3) Recommendations for, issuance of, and associated procedures related to removal orders and exclusion orders.

(b) This part does not require the following:

(1) Mandatory submission of supply chain risk information by non-federal entities.

(2) The removal or exclusion of any covered article by non-federal entities, except to the extent that an exclusion or removal order issued pursuant to subpart C of this Part applies to prime contractors and subcontractors to federal agencies.

§ 201.102 Definitions.

For purposes of this part:

(a) *Appropriate congressional committees and leadership* means:

(1) The Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Committee on Appropriations, the Committee on Armed Services, the Committee on Commerce, Science, and Transportation, the Select Committee on Intelligence, and the majority and minority leader of the Senate; and

(2) The Committee on Oversight and Government Reform, the Committee on the Judiciary, the Committee on Appropriations, the Committee on Homeland Security, the Committee on Armed Services, the Committee on Energy and Commerce, the Permanent Select Committee on Intelligence, and the Speaker and minority leader of the House of Representatives.

(b) *Council or FASC* means the Federal Acquisition Security Council.

(c) *Covered article* means any of the following:

(1) Information technology, as defined in 40 U.S.C. 11101, including cloud computing services of all types;

(2) Telecommunications equipment or telecommunications service, as those terms are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

(3) The processing of information on a Federal or non-Federal information system, subject to the requirements of the Controlled Unclassified Information program or subsequent U.S. government program for controlling sensitive unclassified information; or

(4) Hardware, systems, devices, software, or services that include embedded or incidental information technology.

(d) *Covered procurement* means:

(1) A source selection for a covered article involving either a performance specification, as provided in subsection (a)(3)(B) of title 41 U.S.C. 3306, or an evaluation factor, as provided in subsection (b)(1)(A) of title 41 U.S.C. 3306, relating to a supply chain risk, or where supply chain risk considerations are included in the agency's determination of whether a source is a responsible source;

(2) The consideration of proposals for and issuance of a task or delivery order for a covered article, as provided in title 41 U.S.C. 4106(d)(3), where the task or delivery order contract includes a contract clause establishing a requirement relating to a supply chain risk;

(3) Any contract action involving a contract for a covered article where the contract includes a clause establishing requirements relating to a supply chain risk; or

(4) Any other procurement in a category of procurements determined appropriate by the Federal Acquisition Regulatory Council, with the advice of the Federal Acquisition Security Council.

(e) *Covered procurement action* means any of the following actions, if the action takes place in the course of conducting a covered procurement:

(1) The exclusion of a source that fails to meet qualification requirements established under 41 U.S.C. 3311, for the purpose of reducing supply chain risk in the acquisition or use of covered articles;

(2) The exclusion of a source that fails to achieve an acceptable rating with regard to an evaluation factor providing for the consideration of supply chain risk in the evaluation of proposals for the award of a contract or the issuance of a task or delivery order;

(3) The determination that a source is not a responsible source, based on considerations of supply chain risk; and

(4) The decision to withhold consent for a contractor to subcontract with a particular source or to direct a contractor to exclude a particular source from consideration for a subcontract under the contract.

(f) *Exclusion order* means any of the following orders requiring the exclusion of sources or covered articles from executive agency procurement actions:

(1) An order issued by Secretary of Homeland Security applicable to federal executive branch civilian agencies;

(2) An order issued by the Secretary of Defense applicable to Department of Defense and national security systems other than sensitive compartmented information systems; or

(3) An order issued by the Director of National Intelligence applicable to the Intelligence Community and sensitive compartmented information systems.

(g) *Executive agency* means:

(1) An executive department specified in 5 U.S.C. 101;

(2) A military department specified in 5 U.S.C. 102;

(3) An independent establishment as defined in 5 U.S.C. 104(1); and

(4) A wholly owned Government corporation fully subject to chapter 91 of title 3 U.S.C.

(h) *Information and communications technology* means:

(1) Information technology as defined in 40 U.S.C. 11101;

(2) Information systems, as defined in 44 U.S.C. 3502; and

(3) Telecommunications equipment and telecommunications services, as those terms are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

(i) *Information technology* has the definition provided in 40 U.S.C. 11101.

(j) *Intelligence Community* includes the following:

(1) The Office of the Director of National Intelligence;

(2) The Central Intelligence Agency;

(3) The National Security Agency;

(4) The Defense Intelligence Agency;

(5) The National Geospatial-Intelligence Agency;

(6) The National Reconnaissance Office;

(7) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;

(8) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Department of Energy;

(9) The Bureau of Intelligence and Research of the Department of State;

(10) The Office of Intelligence and Analysis of the Department of the Treasury;

(11) The Office of Intelligence and Analysis of the Department of Homeland Security;

(12) Such other elements of any department or agency as may be

designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

(k) *National security system* has the definition given to it in 44 U.S.C. 3552 and means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency—

(1) The function, operation, or use of which involves intelligence activities; involves cryptologic activities related to national security; involves command and control of military forces; involves equipment that is an integral part of a weapon or weapons system; or subject to paragraph (j)(1)(3) of this section, is critical to the direct fulfillment of military or intelligence missions, but does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications); or

(2) Is protected at all times by procedures established for information that have been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

(3) Does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).

(l) *Removal order* means any of the following orders, issued pursuant to 41 U.S.C. 1323(c)(5), requiring the removal of covered articles from executive agency information systems:

(m) An order issued by Secretary of Homeland Security applicable to federal executive branch civilian agencies;

(2) An order issued by the Secretary of Defense applicable to Department of Defense and national security systems other than sensitive compartmented information systems; or

(3) An order issued by the Director of National Intelligence applicable to the intelligence community and sensitive compartmented information systems.

(n) *Responsible source* means a responsible prospective contractor and subcontractors, at any tier, as defined in part 9 of the Federal Acquisition Regulation.

(o) *Source* means a non-federal supplier, or potential supplier, of products or services, at any tier.

(p) *Supply chain risk* means the risk that any person may sabotage, maliciously introduce unwanted functionality, extract data, or otherwise manipulate the design, integrity, manufacturing, production, distribution, installation, operation, maintenance, disposition, or retirement of covered articles so as to surveil, deny, disrupt, or otherwise manipulate the function, use, or operation of the covered articles or information stored or transmitted by or through covered articles.

(q) *Supply chain risk information* includes, but is not limited to, information that describes or identifies:

(1) Functionality of covered articles, including access to data and information system privileges;

(2) Information on the user environment where a covered article is used or installed;

(3) The ability of the source to produce and deliver covered articles as expected (*i.e.,* supply chain assurance);

(4) Foreign control of, or influence over, the source (*e.g.,* foreign ownership, personal and professional ties between the source and any foreign entity, legal regime of any foreign country in which the source is headquartered or conducts operations);

(5) Implications to national security, homeland security, and/or national critical functions associated with use of the covered source;

(6) Vulnerability of federal systems, programs, or facilities;

(7) Market alternatives to the covered source;

(8) Potential impact or harm caused by the possible loss, damage, or compromise of a product, material, or service to an organization's operations or mission;

(9) Likelihood of a potential impact or harm, or the exploitability of a system;

(10) Security, authenticity, and integrity of covered articles and their supply and compilation chain;

(11) Capacity to mitigate risks identified;

(12) Credibility of and confidence in other supply chain risk information;

(13) Any other information that would factor into an analysis of the security, integrity, resilience, quality, trustworthiness, or authenticity of covered articles or sources;

(14) A summary of the above information, including: Summary of the threat level on 1 (low) to 5 (high) scale; and summary of the vulnerability level on 1 (low) to 5 (high) scale; and, any other information determined to be relevant to the determination of supply chain risk.

§ 201.103 Federal Acquisition Security Council (FASC).

(a) The following agencies and agency components shall be represented on the FASC:

(1) Office of Management and Budget;

(2) General Services Administration;

(3) Department of Homeland Security;

(4) Cybersecurity and Infrastructure Security Agency;

(5) Office of the Director of National Intelligence;

(6) National Counterintelligence and Security Center;

(7) Department of Justice;

(8) Federal Bureau of Investigation;

(9) Department of Defense;

(10) National Security Agency;

(11) Department of Commerce;

(12) National Institute of Standards and Technology; and

(13) Any other executive agency, or agency component, as determined by the Chairperson of the FASC.

(b) The FASC may request such information from executive agencies as is necessary for the FASC to carry out its functions, including evaluation of sources and covered articles for purposes of determining whether to recommend the issuance of removal or exclusion orders, and the receiving executive agency shall provide the requested information to the fullest extent possible.

(c) *Consultation and Coordination with Other Councils.* The FASC will consult and coordinate, as appropriate, with the Chief Information Officers Council, the Chief Acquisition Officers Council, the Federal Acquisition Regulatory Council, the Committee on Foreign Investment in the United States, and other relevant councils and interagency committees with respect to supply chain risks posed by the acquisition and use of covered articles.

(d) *Program Office and Committees.* The FASC may establish a program office and any committees, working groups, or other constituent bodies the FASC deems appropriate, in its sole and unreviewable discretion, to carry out its functions. Such a committee, working group, or other constituent body is authorized to perform any function lawfully delegated to it by the FASC.

Subpart B—Supply Chain Risk Information Sharing

§ 201.201 Information Sharing Agency (ISA).

The Act requires the FASC to identify an appropriate executive agency—the FASC's Information Sharing Agency (ISA)—to perform the administrative information sharing functions on behalf of the FASC, as enumerated in the law at 41 U.S.C. 1323(a)(3). The ISA will facilitate and provide the administrative support to a FASC supply chain and risk management Task Force; and serve as the liaison to the FASC to

communicate the Task Force efforts, as the Task Force develops the processes under which the functions in 41 U.S.C. 1323(a)(3) will be implemented on behalf of the FASC. The Department of Homeland Security (DHS), acting primarily through the Cybersecurity and Infrastructure Security Agency, is named the appropriate executive agency to serve as the FASC's ISA. The ISA's administrative functions are not construed to limit or impair the authority or responsibilities of any other federal agency with respect to information sharing.

(a) All references in this part to the ''submission of information to the FASC'' mean the submission of information to the ISA and the Task Force, on behalf of the FASC, pursuant to the FASC-approved processes and procedures described in this Section.

(b) The ISA and the Task Force will carry out administrative information dissemination functions on behalf of the FASC, and any references to the ''dissemination of information by the FASC'' mean dissemination of information by the ISA, on behalf of the FASC, pursuant to the FASC-approved processes and procedures described in this Section.

(c) *Interagency Supply Chain Risk Management Task Force.* The FASC will identify members for an interagency supply chain risk management (SCRM) task force (the Task Force) to assist the FASC with implementing its information sharing, risk analysis, and risk assessment functions as described in 41 U.S.C. 1323(a)(3). The purpose of the Task Force is to allow the FASC to capitalize on the various supply chain risk management and information sharing efforts across the federal enterprise. This Task Force will include technical experts in SCRM and related interdisciplinary experts from agencies identified in § 201.103 and any other agency, or agency component, the FASC Chairperson identifies. The ISA will facilitate the efforts of and provide administrative support to the Task Force and periodically report to the FASC on the Task Force efforts. The ISA will convene the Task Force, including providing a physical location/facility to host the Task Force.

(d) The ISA, in consultation with the Task Force, will submit to the FASC for approval:

(1) Processes and procedures describing how the ISA and the Task Force will operate and support the FASC;

(2) Processes and procedures describing how federal and non-federal entities must submit supply chain risk information (both mandatory and voluntary submissions of information) to the FASC, including any necessary requirements for information handling, protection and classification;

(3) Processes and procedures for the ISA to notify the federal entity that provided classified information to the ISA, prior to disseminating that classified information;

(4) Processes and procedures describing how the ISA and the Task Force will facilitate the sharing of information to support supply chain risk analyses under 41 U.S.C. 1326, recommendations issued by the FASC, and covered procurement actions under 41 U.S.C. 4713;

(5) Process and procedures describing how the ISA and Task Force will provide information to the FASC and to executive agencies regarding covered procurement actions by agencies and any issued removal orders and covered procurement actions; and

(6) Any other processes and procedures describing the operations of the Task Force as determined by the FASC Chairperson.

(e) The ISA will also identify to the FASC any ISA resource gaps, including, but not limited to, gaps in staffing, budget, organization, training, materials, and facility needs that may be necessary to implement its duties pursuant to this part.

§ 201.202 Submitting Information to the FASC.

(a) *Requirements for Submission of Information.* All submissions of information to the FASC must be accomplished through the processes and procedures approved by the FASC in § 201.201. Any information submission to the FASC must comply with information sharing protections described in § 201.202 and be consistent with applicable law and regulations.

(b) *Mandatory Information Submission Requirements.* Executive agencies must expeditiously submit supply chain risk information to the ISA using procedures approved by the FASC in § 201.201 when:

(1) The FASC requests information relating to a particular source, covered article or covered procurement; or

(2) An executive agency has determined there is a reasonable basis to conclude a substantial supply chain risk associated with a source, covered procurement, or covered article exists. In such instances, the executive agency shall provide the FASC with relevant information concerning the source or covered article, including:

(i) Supply chain risk information identified through the course of the agency's activities in furtherance of mitigating, identifying or managing its supply chain risk;

(ii) Supply chain risk information regarding covered procurement actions by the agency under 41 U.S.C. 4713; and any orders issued by the agency under 41 U.S.C. 4713.

(c) *Voluntary Information Submission Requirements.* All federal and non-federal entities may submit information relevant to SCRM, covered articles, sources, or covered procurement actions to the FASC not described in paragraph (b) in this section, *Mandatory Information Submission Requirements.*

(d) *Information Protections.* To the extent that information submitted to the FASC must be protected in accordance with applicable law and regulation, agencies providing such information must ensure the information contains proper marking, handling, dissemination, or use restrictions, including but not limited to the following:

(1) For classified information, the transmitting and receiving agencies shall ensure that information is provided to designated ISA personnel, who have an appropriate security clearance and a need to know the information. The ISA, Task Force, and the FASC will handle such information consistent with the applicable restrictions.

(2) Other protected information submitted to the FASC must be marked in accordance with any applicable intellectual property, business confidentiality, contractual, or other applicable dissemination rules. The FASC, the ISA, and the Task Force, will handle such information in a manner consistent with such markings.

(3) To the extent supply chain risk information submitted to the FASC includes information protected by the Procurement Integrity Act, agencies shall submit such information consistent with the FASC approved processes and procedures described in § 201.201. The FASC will handle such information consistent with the identified restrictions.

(d) *Dissemination of Information by the FASC.* The FASC maintains the responsibility, at its sole discretion to disclose its recommendations and any supply chain risk information relevant to its recommendation with any federal or non-federal entities when the FASC determines that such sharing may facilitate identification or mitigation of supply chain risk to information systems and to the extent consistent with the following paragraphs:

(1) The FASC may maintain its recommendations and any supply chain risk information as nonpublic, to the

extent permitted by law, or otherwise release such information to impacted entities and appropriate stakeholders if circumstances warrant such an approach including but not limited to exercising its discretion regarding the timing of any such release of information, the scope of information to be released, and the intended recipients of such information.

(2) Any release by the FASC of recommendations and supply chain risk information will be in accordance title 41 U.S.C. 1323 and with § 201.202(d), (e), (f) and (g).

(3) The FASC will not release a recommendation to a non-federal entity, unless a decision on whether or not to issue an exclusion or removal order has been made, and the affected source has been notified.

(e) *Reliance on Shared information.* Executive agencies and the officials identified in § 201.103(a)(1) may consider and rely upon supply chain risk information and any other information the FASC determines appropriate, received pursuant to this subpart and the criteria established under § 201.201, to exercise the authorities and responsibilities in 41 U.S.C. 1323, 1326, and 4713.

(f) *Limitation on further dissemination of the information.* The FASC (including the ISA, Task Force, and any other FASC constituent bodies) shall comply with applicable limitations on dissemination of supply chain risk information submitted pursuant to this subpart, including but not limited to the following restrictions:

(1) Controlled Unclassified Information, such as Law Enforcement Sensitive, Proprietary, Privileged, or Personally Identifiable Information, may only be disseminated in compliance with the safeguarding and dissemination controls applicable for that category of information and consistent with any additional administrative markings applied to this specific information as laid out in Executive Order 13556, *Controlled Unclassified Information,* 32 CFR part 2002.

(2) Classified Information may only be disseminated consistent with the restrictions applicable to the information and in accordance with the FASC's processes and procedures for disseminating classified information as required by this part.

Subpart C—Removal Orders and Exclusion Orders

§ 201.301 Recommending removal orders and exclusion orders.

(a) *Referral Procedure.* The FASC may commence an evaluation of one or more sources and one or more covered articles, pursuant to the criteria in paragraph (b) of this section and for the purpose of determining whether to recommend that the source(s) or covered article(s) be subject to a removal order or exclusion order, in any of the following ways:

(1) Upon the referral of the FASC or any member of the FASC;

(2) Upon the request, in writing, of the head of an executive agency or designee, accompanied by a submission of relevant information; or

(3) Based on information submitted to the FASC by any federal or non-federal entity that the FASC deems, in its discretion, to be credible.

(b) *Criteria.* The FASC will evaluate sources and covered articles, including by analyzing available information, and considering the following, non-exclusive factors, as appropriate:

(1) Functionality of the covered articles, including the source's access to data and information system privileges;

(2) Security, authenticity, and integrity of covered articles and their supply and compilation chains, including for embedded, integrated, and bundled software;

(3) The ability of the source to produce and deliver the covered articles as expected (*i.e.,* supply chain assurance);

(4) Ownership of, control of, or influence over the source or covered article(s) by a foreign government or parties owned or controlled by a foreign government, or other ties between the source and a foreign government, which may include the following considerations:

(i) Whether the U.S. government has identified the country as a foreign adversary or country of special concern;

(ii) Whether the source or its component suppliers have headquarters, research, development, manufacturing, test, distribution, or service facilities or other operations in a foreign country, including a country of special concern or a foreign adversary;

(iii) Personal and professional ties between the source—including its officers, directors or similar officials, employees, consultants, or contractors—and any foreign government; and

(iv) Laws and regulations of any foreign country in which the source has headquarters, research development, manufacturing, testing, packaging, distribution, or service facilities or other operations.

(5) Implications to national, homeland security, or critical functions associated with use of the source(s) or covered article(s);

(6) Vulnerabilities of federal systems, programs, or facilities;

(7) Capacity of the source or the U.S. Government to mitigate risks;

(8) Credibility of, and confidence in available information used to formulate assessment(s) of risk associated with proceeding, with using alternatives, and/or with adopting range of mitigations;

(9) Any transmission of information or data by a covered article to a country outside of the U.S.; and

(10) Any other information that would factor into an assessment of supply chain risk, including any impact to agency mission critical functions, and other information as the FASC deems appropriate.

(c) *Due Diligence.* As part of the analysis conducted pursuant to paragraph (b) of this section, the FASC will conduct appropriate due diligence. Such due diligence may include but need not be limited to the following actions:

(1) Review any information made available by the executive agency identified in § 202.201(a), and any other information the FASC determines appropriate;

(2) Ensure, to the extent possible, that the level of confidence in the information is appropriately taken into consideration; and

(3) Examine other relevant public or commercially available information as necessary or appropriate.

(d) *Consultation with NIST.* NIST will participate in FASC activities as a member and will advise the FASC on NIST standards and guidelines issued under 40 U.S.C. 11331, including ensuring that any recommended orders do not conflict with such standards and guidelines.

(e) *Content of recommendation.* (1) The FASC shall include the following in any recommendation to the Secretary of Homeland Security, Secretary of Defense, and/or Director of National Intelligence:

(i) Information necessary to positively identify any source(s) or covered article(s) recommended for exclusion or removal;

(ii) Information regarding the scope and applicability of the recommended exclusion order, removal order, or both, including whether any such order should apply to all executive agencies or a subset of executive agencies;

(iii) A summary of the supply chain risk assessment reviewed or conducted in support of the recommended exclusion or removal order, including material conflicting or contrary information, if any;

(iv) A summary of the basis for the recommendation, including a discussion of less intrusive measures that were considered and why such measures were not reasonably available to reduce supply chain risk;

(v) A description of the actions necessary to implement the recommended exclusion or removal order; and,

(vi) Where practicable, in the FASC's sole and unreviewable discretion, a description of the mitigation steps that could be taken by the source that may result in the FASC rescinding the recommendation.

(2) *Information sharing in absence of recommendation:* If the FASC decides not to issue a recommendation, information received and analyzed pursuant to the procedures in this section may be shared, as appropriate, pursuant to the procedures in subpart B of this chapter.

§ 201.302 Notice of recommendation to source and opportunity to respond.

(a) *Notice to source.* The FASC shall provide a notice of the FASC's recommendation to any source named in the recommendation.

(b) *Content of notice.* The notice under paragraph (a) of this section shall advise the source:

(1) That a recommendation has been made;

(2) Of the criteria the FASC relied upon and, to the extent consistent with national security and law enforcement interests, the information that forms the basis for the recommendation;

(3) That, within 30 days after receipt of the notice, the source may submit information in response to the recommendation;

(4) Of the procedures governing the review and possible issuance of an exclusion or removal order; and

(5) Where practicable, in the FASC's sole and unreviewable discretion, a description of the mitigation steps that could be taken by the source that may result in the FASC rescinding the recommendation.

(c) *Confidentiality of notice issued to source.* U.S. government personnel shall:

(1) Keep confidential and not make available outside of the executive branch, except to the extent required by law, any notice issued to a source under paragraph (b) of this section until an exclusion order or removal order is issued and the source has been notified pursuant to § 201.303(f)(1); and

(2) Keep confidential and not make available outside of the executive branch, except to the extent required by law, any notice issued to a source under paragraph (b) of this section if the FASC rescinds a recommendation or the Secretary of Homeland Security, Secretary of Defense, and Director of National Intelligence, as applicable, decide not to issue the recommended exclusion order and/or removal order.

(d) *Confidentiality of information submitted by source.* The FASC and its member agencies shall treat information that the source marks as confidential, private, or closely held, when marked by the source as Confidential and Not to be Publicly Shared. The FASC and its member agencies will not disclose such information to the public except to the extent required by law.

§ 201.303 Issuing removal orders and exclusion orders and other related activities.

(a)(1) *Consideration of and issuance of exclusion and removal orders.* The Secretary of Homeland Security, the Secretary of Defense, and the Director of National Intelligence shall review the FASC's recommendations and accompanying information and materials provided by the FASC pursuant to § 201.201, together with any information submitted by a source pursuant to § 201.202, and determine whether to issue an order based upon such recommendation.

(2) *Administrative record.* The administrative record for judicial review of an exclusion or removal order issued pursuant to 41 U.S.C. 1323(c)(6) shall, subject to the limitations set forth in 41 U.S.C. 1327(b)(4)(B)(ii)–(v), consist only of:

(i) The recommendation issued pursuant to 41 U.S.C. 1323(c)(2);

(ii) The notice of recommendation and review issued pursuant to 41 U.S.C. 1323(c)(3);

(iii) Any information and argument in opposition to the recommendation submitted by the source pursuant to 41 U.S.C. 1323(c)(3)(C);

(iv) The exclusion or removal order issued pursuant to 41 U.S.C. 1323(c)(5) and any information or materials directly relied upon by the official identified in paragraphs (b) through (d) of this section, as applicable, in issuing the exclusion or removal order; and

(v) The notification to the source issued pursuant to 41 U.S.C. 1323(c)(6)(A).

(3) *Other information.* Other information or material collected by, shared with, or created by the FASC or its member agencies shall not be included in the administrative record unless the official identified in paragraphs (b) through (d) of this section, as applicable, directly relied on that information or material in issuing the exclusion or removal order.

(b) *Secretary of Homeland Security.* The Secretary of Homeland Security shall issue removal or exclusion orders applicable only to civilian agencies, to the extent not covered by paragraph (c) or (d) of this section.

(c) *Secretary of Defense.* The Secretary of Defense shall issue removal or exclusion orders applicable only to the Department of Defense including national security systems other than sensitive compartmented information systems.

(d) *Director of National Intelligence.* The Director of National Intelligence shall issue removal or exclusion orders applicable only to the Intelligence Community and sensitive compartmented information systems, to the extent not covered by paragraph (c) in this section.

(e) *Applicability of issued orders to Non-Federal entities.* An exclusion order and a removal order may affect non-federal entities, including as follows:

(1) An exclusion order may require the exclusion of sources or covered articles from any executive agency procurement action, including but not limited to source selection and consent for a contractor to subcontract. To the extent required by the exclusion order, agencies shall exclude the source or covered articles, as applicable, from being supplied by any prime contractor and subcontractor at any tier.

(2) A removal order may require removal of the covered article(s) from an executive agency information system owned and operated by an agency; from an information system operated by a contractor on behalf of an agency; and from other contractor information systems to the extent that the removal order applies to contractor equipment or systems within the scope of ''information technology,'' as defined at herein.

(f) *Notification of issued exclusion and removal orders.* The official who issued the exclusion or removal order:

(1) Shall, upon issuance of an exclusion or removal order pursuant to paragraph (a) of this section:

(i) Notify any source named in the order of the exclusion or removal order; and to the extent consistent with national security and law enforcement interests, information that forms the basis for the order;

(ii) Provide classified or unclassified notice of the exclusion or removal order to the appropriate congressional committees and leadership;

(iii) Provide the exclusion or removal order to the ISA;

(iv) Notify the Interagency Suspension and Debarment Committee about the exclusion or removal order.

(2) May provide the exclusion order or removal order to other persons, including public disclosure, as the official deems appropriate and to the extent consistent with national security and law enforcement interests.

(g) *Delegation.* The officials identified in paragraph (a) of this section may not delegate the authority to issue exclusion and removal orders to an official below the level one level below the Deputy Secretary or Principal Deputy Director level, except that the Secretary of Defense may delegate authority for removal orders to the Commander of U.S. Cyber Command, who may not re-delegate such authority to an official below the level of the Deputy Commander.

(h) *Removal from Federal supply contracts.* If the officials identified in paragraphs (b) through (d) of this section, or their delegate, issue orders collectively resulting in a government-wide exclusion, the Administrator for General Services and officials at other executive agencies responsible for management of the Federal Supply Schedules, government-wide acquisition contracts and multi-agency contracts shall facilitate implementation of such orders by removing the covered articles or sources identified in the orders from such contracts.

(i) *Annual review of issued orders.* The officials identified in paragraphs (b) through (d) of this section shall review all issued exclusion and removal orders not less frequently than annually pursuant to procedures established by the FASC.

(j) *Modification or rescission of issued orders.* The officials identified in paragraphs (b) through (d) of this section may modify or rescind an issued exclusion or removal order, provided that a modified order shall not apply more broadly than the order before the modification.

§ 201.304 Executive agency compliance with exclusion and removal orders.

(a) *Agency compliance.* Executive agencies shall:

(1) Comply with exclusion and removal orders issued pursuant to § 201.303 and applicable to their agency, as required by 41 U.S.C. 1323(d) and 44 U.S.C. 35554(a)(1)(B); and

(2) Not make publicly-available any exclusion order or removal order unless otherwise approved by the FASC prior to such release.

(b) *Exceptions to issued exclusion and removal orders.* An executive agency required to comply with an exclusion order or a removal order may submit to the official that issued the order a request that an issued order not apply to the agency, to specific actions of the agency, to actions of the agency for a period of time before compliance with the order is practicable, and any other request that the requesting agency seeks. The request shall include all necessary information for the issuing official to review and evaluate the request, including alternative mitigations to the risks addressed by the order and the ability of an agency to fulfill its mission critical functions. Other circumstances that may warrant an exception to an issued order include other findings related to the national interest, including national security reviews, national security investigations, or national security agreements. The request shall be submitted in writing. The FASC may establish and update additional procedures for requesting waivers and criteria for approving or disapproving such requests as appropriate.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 9

[Docket Number NIH–2019–0001]

RIN: 0925–AA66

Standards of Care for Chimpanzees Held in the Federally Supported Sanctuary System

AGENCY: National Institutes of Health, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: This document contains technical amendments to the Health and Human Services (HHS) regulation regarding the Standards of Care for Chimpanzees Held in the Federally Supported Sanctuary System. The regulatory content is being amended to correct references that are made throughout the regulation regarding delegated authorities and activities of the National Center for Research Resources (NCRR) of the National Institutes of Health (NIH). With the abolishment of NCRR in 2011, the Director, NIH, delegated these authorities to the Office of Research Infrastructure Programs (ORIP) within the Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI), NIH. The ORIP/DPCPSI now has the lead responsibility for coordinating all efforts on behalf of HHS concerning the sanctuary system for surplus chimpanzees from both federal and non-federal sources. The references to NCRR throughout the regulation are corrected to reflect ORIP/DPCPSI, the definition of National Primate Research Center is corrected to reflect the correct number of currently existing centers, and the office address provided for ORIP/DPCPSI in the regulation is corrected.

DATES: Effective on September 1, 2020.

FOR FURTHER INFORMATION CONTACT: Daniel Hernandez, Acting NIH Regulations Officer, Office of Management Assessment, Division of Management Support, 6011 Executive Boulevard, Suite 601, Rockville, Maryland 20852–7669, telephone 301–435–3343, email *dhernandez@od.nih.gov*.

SUPPLEMENTARY INFORMATION: On December 20, 2000, the United States Congress enacted the Chimpanzee Health Improvement, Maintenance, and Protection Act of 2000 (Pub. L. 106–551, ''CHIMP Act''). Section 1 of this law amended the Public Health Service Act by adding section 481C (42 U.S.C. 287a–3a). Section 481C requires the Secretary, HHS, to provide for the establishment and operation of a sanctuary system to provide for the lifetime care of chimpanzees that have been used, or were bred or purchased for use, in research conducted or supported by NIH, the Food and Drug Administration (FDA), or other agencies of the Federal Government, and with respect to which it has been determined by the Secretary, HHS, that the chimpanzees are not needed for such research (*i.e.,* surplus chimpanzees).

Section 481C(d) directs the Secretary, HHS, to establish, by regulation, standards of care for operating the sanctuary system to provide for the permanent retirement of surplus chimpanzees. On April 5, 2001, the Secretary, HHS, delegated to the Director, NIH, authorities to establish and operate the sanctuary system. Subsequently, the Director, NIH, delegated the authorities to NCRR. On October 10, 2008, HHS issued a final rule that established the regulation at 42 CFR part 9 which sets forth the standards of care for chimpanzees held in the federally supported chimpanzee sanctuary system. References are made

throughout that regulation regarding delegated authorities and activities of NCRR, NIH.

On September 9, 2011, the Secretary, HHS, approved an organizational change at NIH that included the abolishment of NCRR and the creation of the Office of Research Infrastructure Programs (ORIP) within the Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI). The DPCPSI had been established on May 6, 2008, as a result of provisions of the NIH Reform Act of 2006, Public Law 109–482. The Director, NIH, delegated authorities to establish and operate the sanctuary system to ORIP within DPCPSI, NIH. The ORIP/DPCPSI now has the lead responsibility for coordinating all efforts on behalf of HHS concerning the sanctuary system for surplus chimpanzees from both federal and non-federal sources.

Recently, ORIP officials, in collaboration with NIH Regulations Program (NIHRP) officials, completed a review of the regulation codified at 42 CFR part 9, as part of NIH's efforts to comply with the requirements of the President's Regulatory Reform agenda, as set forth in Executive Order 13777, Enforcing the Regulatory Reform Agenda. One of the outcomes of the review was the determination that the regulation needed to be updated to correct its references regarding the delegated authorities and activities of NCRR and to indicate that ORIP/DPCPSI now has the lead responsibility for coordinating all efforts on behalf of HHS concerning the sanctuary system for surplus chimpanzees.

Since the regulation was issued in 2008, the number of existing National Primate Research Centers has been reduced from eight to seven, as of 2015. This change needs to be made in the definition of National Primate Research Center provided in section 9.2 of the regulation.

Additionally, the office address provided in section 9.4 of the regulation, 1 Democracy Plaza, is corrected to read One Democracy Plaza.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), the Secretary, HHS, has found good cause exists for waiving the general notice of proposed rulemaking, opportunity for public comment and 30-day delay in effectiveness as to these technical updates and correction. The notice, comment and delayed effective date provisions are being waived in part because these minor amendments concern matters of agency organization, practice and procedure. Further, it is in the public interest that correct and up-to-date information be contained in the affected sections of the regulation at 42 CFR part 9 as soon as possible.

Executive Orders 12866 and 13563

Executive Orders 12866, ''Regulatory Planning and Review,'' and 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. A regulatory impact analysis (RIA) is required for significant and, economically significant rules with economically significant effects ($100 million or more in any 1 year). It has been determined that this amendatory rulemaking is not significant.

Executive Order 13771

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' directs agencies to issue two deregulatory actions for each new significant regulatory action that imposes costs. The incremental costs of a new regulation should be offset by the costs eliminated by the prior regulations. The Secretary, HHS, has determined this amending rulemaking action is not significant and thus is neither regulatory nor deregulatory for the purposes of Executive Order 13771.

Executive Order 13132

Executive Order 13132, ''Federalism,'' requires that federal agencies consult with state and local government officials in the development of regulatory policies with federalism implications. The Secretary, HHS, has reviewed this final rule as required under the Executive Order and determined that it will not have federalism implications. The Secretary, HHS, certifies that the final rule will not have effect on the States or on the distribution of power and responsibilities among various levels of government.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires agencies to analyze regulatory options that would minimize the significant economic impact of a rule on small entities. The Secretary has determined that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires agencies to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandates that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually to inflation) in any one year. The current threshold after adjustment for inflation is $154 million, using the most current (2018) Implicit Price Deflator for the Gross Domestic Product. The Secretary, HHS, has determined that this final amendatory rulemaking will not result in an expenditure in any year that meets or exceeds that amount.

Paperwork Reduction Act

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

Congressional Review Act

The Secretary, HHS, has determined that this amendatory rulemaking is a non-major rule under the Congressional Review Act (5 U.S.C. chapter 8) and has provided a report thereon to the Senate, House of Representatives and General Accounting Office in accordance with that law.

List of Subjects

Animal welfare, humane care and treatment of chimpanzees.

Accordingly, under the authority of 42 U.S.C. 216, the Department of Health and Human Services amends 42 CFR

part 9 by making the following correcting amendments:

Title 42—Public Health

PART 9—STANDARDS OF CARE FOR CHIMPANZEES HELD IN THE FEDERALLY SUPPORTED SANCTUARY SYSTEM

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 42 U.S.C. 216, 287a–3a.

§ 9.2 [Amended]

■ 2. Amend § 9.2 by:

■ a. In the definition of ''National Primate Research Center (NPRC)'' removing the phrase ''National Center for Research Resources'' and adding, in its place, the phrase ''Office of Research Infrastructure Programs (ORIP) within the Division of Program Coordination, Planning and Strategic Initiatives (DPCPSI),'' removing the date ''June 2007'' and adding, in its place, the date ''2015''; and removing the word ''eight'' and adding, in its place, the word ''seven''.

■ b. In the definition of ''Sanctuary Contractor'' by removing the phrase ''NCRR/NIH'' and adding, in its place the phrase ''ORIP/DPCPSI/NIH.''

■ c. In the definition of ''Sanctuary of federally supported chimpanzee system'' by removing the phrase ''NCRR/NIH/HHS'' and adding, in its place, the phrase ''ORIP/DPCPSI/NIH/HHS.''

§ 9.3 [Amended]

■ 3. Amend § 9.3 by:

■ a. In paragraph (a)(2)(ix) removing the phrase ''NCRR'' and adding, in its place, the phrase ''ORIP/DPCPSI.''

■ b. In paragraph (a)(8) removing the phrase ''NCRR/NIH'' and adding, in its place, the phrase ''ORIP/DPCPSI/NIH.''

■ c. In paragraph (b)(2) removing the phrase ''NCRR/NIH'' and adding, in its place, the phrase ORIP/DPCPSI/NIH.''

§ 9.4 [Amended]

■ 4. In § 9.4, amend paragraph (a) by removing the phrase ''NCRR'' and adding, in its place, the phrase ''ORIP/DPCPSI'', and removing the number ''1'' in the ''1 Democracy Plaza'' address and adding, in its place, the word ''One'' to read ''One Democracy Plaza''.

§ 9.5 [Amended]

■ 5. Amend § 9.5 by:

■ a. In paragraph (c)(4) removing the phrase ''NCRR/NIH'' and adding, in its place, the phrase ''ORIP/DPCPSI/NIH.''

■ b. In paragraph (d)(2) removing the phrase ''NCRR'' and adding, in its place, the phrase ORIP/DPCPSI/NIH.''

■ c. In paragraph (e) removing the phrase ''NCRR'' and adding, in its place, the phrase ''ORIP/DPCPSI/NIH.''

§ 9.6 [Amended]

■ 6. In § 9.6, amend paragraph (d)(2) by removing the phrase ''NCRR'' and adding, in its place, the phrase ''ORIP/DPCPSI.''

§ 9.9 [Amended]

■ 7. In § 9.9, amend paragraph (a) by removing the phrase ''NCRR/NIH'' and adding, in its place, ''ORIP/DPCPSI/NIH.''

§ 9.12 [Amended]

■ 8. Amend § 9.12 by:

■ a. In paragraph (a) removing the phrase ''NCRR'' and adding, in its place, the phrase ''ORIP/DPCPSI''; removing the phrase ''NCRR/NIH/HHS'' and adding, in its place, the phrase ORIP/DPCPSI/NIH/HHS''; and removing the phrase ''NIH/NCRR Project Officer'' and adding, in its place, the phrase ''ORIP/DPCPSI/NIH Project Officer.''

■ b. In paragraph (b) removing the phrase ''NCRR/NIH/HHS'' and adding, in its place, ''ORIP/DPCPSI/NIH/HHS''; removing the phrase ''NCRR'' and adding, in its place, the phrase ''ORIP/DPCPSI''; and removing the phrase ''NCRR/NIH'' and adding, in its place, the phrase ''ORIP/DPCPSI/NIH.''

Dated: July 21, 2020.

Francis S. Collins,

Director, National Institutes of Health.

Alex M. Azar II,

Secretary, Health and Human Services.

[FR Doc. 2020–17090 Filed 8–31–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2020–0086]

RIN 2127–AM26

Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule responds to an ''emergency petition'' submitted by the Alliance of Automotive Innovation (Alliance) regarding the phase-in and compliance requirements of Federal Motor Vehicle Safety Standard No. 141 (FMVSS 141), ''Minimum sound for hybrid and electric vehicles.'' The petition details the challenges manufacturers have encountered in complying with FMVSS 141 due to disruptions in the supply chain caused by the Coronavirus Disease 2019 (COVID–19) public health emergency. The petition requests three changes to the phase-in and compliance requirements of FMVSS 141. After considering the concerns raised in the petition, NHTSA has decided to grant the petition, in part, by electing to defer the phase-in and compliance dates by six months. NHTSA is denying the request for an alternative performance option during the phase-in period.

DATES: *Effective date:* The amendments made in this rule are effective August 28, 2020.

Comment date: You should submit your comments early enough to ensure that the docket receives them not later than September 16, 2020.

ADDRESSES: You may submit comments to the docket number identified 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.
- *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:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, 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) 366–9322 before coming.
- *Fax:* 202–493–2251.

Regardless of how you submit your comments, please be sure to mention the docket number of this document.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation section of this document. 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 under Rulemaking Notices and Analyses regarding documents submitted to the Agency's dockets.

Docket: For access to the docket to read background documents or comments received, go to *http://*

www.regulations.gov or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call, Mr. Michael Pyne, NHTSA Office of Crash Avoidance Standards, at (202) 366–4171.

For legal issues, you may call Mr. Paul Connet, Office of the Chief Counsel, at (202) 366–5547, facsimile (202) 366–5547.

The mailing address for these officials at the National Highway Traffic Safety Administration: 1200 New Jersey Avenue SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

Pursuant to the Pedestrian Safety Enhancement Act of 2010 (PSEA), NHTSA published a final rule on December 14, 2016, establishing a new Federal motor vehicle safety standard setting minimum sound level requirements for low-speed operation of hybrid and electric light vehicles.[1] The minimum sound requirements provide a means for blind and other pedestrians, as well as bicyclists and other road users, to detect the presence of vehicles that do not naturally produce sounds like vehicles with internal combustion engines, thereby reducing the risk that these ''quiet'' vehicles will be involved in low-speed pedestrian crashes.

The phase-in requirement for FMVSS 141, as modified by the 2018 rule issued in response to several petitions for reconsideration, began on September 1, 2019, with full compliance slated to begin on September 1, 2020. However, halfway through the phase-in period, the COVID–19 public health emergency began, leading to significant public health and economic effects. The automotive industry in the U.S. was especially afflicted by the shutdowns as vehicle production came to a halt. Automotive supply chains were decimated with production of parts similarly halted.[2] [3] The disruptions in the global supply chains prevented manufacturers from acquiring new parts, implementing vehicle redesigns, and manufacturing automobiles.[4] While production has resumed to a certain extent, manufacturers continue to experience ongoing difficulties in acquiring parts and returning production to full volume.[5]

This interim final rule responds to an emergency petition submitted by the Alliance resulting from the COVID–19 public health emergency. After considering the issues raised in the Alliance petition, the Agency agrees that the unprecedented disruptions to automotive manufacturing caused by the public health emergency make compliance with the phase-in schedule for FMVSS 141 impracticable and warrant appropriate regulatory relief. The Agency is granting two of petitioner's requests, in part, by deferring the compliance dates for the phase-in schedule and full compliance by six months. The Agency is declining to adopt petitioner's third request for an alternative phase-in performance requirement. The Agency is seeking comment on all three of the petitioner's requests and the Agency's response.

II. Background on FMVSS 141

In January 2011, Congress passed the PSEA directing NHTSA to undertake a rulemaking to create a new safety standard requiring hybrid and electric vehicles (HEV) to have a minimum sound level to help pedestrians—especially those with impaired eyesight—detect those vehicles. The PSEA stipulated that the alert sound should not require either driver or pedestrian activation, and that the sound be reasonably detectable by nearby pedestrians. The PSEA also directed the Agency to establish a phase-in schedule for compliance, with full compliance beginning the September 1st of the calendar year that begins three years after the date on which the final rule is issued. NHTSA published a final rule on December 14, 2016, establishing FMVSS 141, ''Minimum Sound Requirements for Hybrid and Electric Vehicles.'' [6] The final rule fulfilled NHTSA's obligations under the PSEA to set minimum sound requirements that increase the detectability of HEVs.

After the 2016 final rule was published, NHTSA received timely petitions for reconsideration from three sources. NHTSA determined that, collectively, the petitioners had made six discrete requests. On February 26, 2018, the Agency issued a final rule in response to those petitions for reconsideration which granted five of the requests, including: (1) Postponing the compliance schedule by one year to better align with the PSEA; (2) allowing similar make/model vehicles to be equipped with different hardware; (3) allowing alert sounds to vary by trim level or model series rather than just by make/model; (4) limiting the compliance criteria for the sameness requirement to only the digital sound file and digital processing algorithm; and (5) permitting, in limited circumstances, the alteration of factory-equipped sounds during vehicle repair and recalls.[7] The final rule denied a request to change the cross-over speed, which is the speed above which the pedestrian alert sound is allowed to turn off.[8]

The current phase-in period, as established in the Agency's 2018 response to the petitions for reconsideration, began on September 1, 2019, with full compliance required beginning September 1, 2020. Under the phase-in and full compliance schedules, 50 percent of light HEVs manufactured between September 1, 2019 and August 31, 2020, and all light HEVs manufactured on or after September 1, 2020 must comply with the FMVSS 141.

[1] 81 FR 90416.

[2] *See,* Letter from MEMA members to the Secretary of Treasury Steven Mnuchin (''A recent industry survey indicated that 21 percent of the supplier respondents have eight weeks or fewer before declaring insolvency''), May 20, 2020.

[3] *See,* ''Original Equipment Suppliers Association Automotive Supplier Barometer™ Q2 2020, Supply Chain and Globalization,'' June 2, 2020.

[4] *See* Letter for the Record, ''The State of Transportation and Critical Infrastructure Examining the Impact of the COVID–19 Pandemic,'' from President and CEO Bill Long, Motor and Equipment Manufacturers Association (MEMA), June 3, 2020, to Chairman Roger Wicker and Senator Maria Cantwell, Committee on Commerce, Science & Transportation. (''Since suppliers are responsible for two-thirds of the value of a new vehicle, the deployment and commercialization of these technologies are dependent on the health of the supplier industry. Continuing to provide the U.S. consumer with increasingly cleaner, safer vehicles will require extensive, long-term financial commitments from the entire industry. If the supplier industry falters or fails, the entire automotive industry will suffer, ultimately harming the competitiveness of the U.S. automotive industry.'')

[5] *See generally,* Victoria Johns, *Ford facing shutdowns in US because of engine shortage,* Automotive Logistics, *https://www.automotivelogistics.media/coronavirus/ford-facing-shutdowns-in-us-because-of-engine-shortage/40879.article.*

[6] 81 FR 90416. See also NHTSA's February 26, 2018 final rule responding to petitions for reconsideration of that rule (83 FR 8182) (discussed below).

[7] *Id.*

[8] Another request, to allow vehicles to be manufactured with a suite of driver-selectable pedestrian alert sounds, resulted in the Agency publishing a notice of proposed rulemaking (NPRM) on September 17, 2019, undertaking rulemaking on the request. 84 FR 48866. The Agency is developing the next steps in that rulemaking.

III. Alliance Petition

On April 29, 2020, the Alliance submitted an ''emergency petition'' seeking relief from certain FVMSS 141 compliance requirements. The petitioner states in its petition that, until the end of February, every HEV manufacturer had a credible and achievable plan for meeting the phase-in requirements of FMVSS 141 by August 31, 2020, and all were on target for 100 percent compliance beginning September 1, 2020. However, the petitioner states, the public health emergency upended these compliance plans. The petitioner states that on the date of its petition (April 29), ''every manufacturing plant in the United States is idle, due to the Coronavirus pandemic. And, production restart plans are forming, but the industry is very uncertain about how long it will take to restore pre-pandemic production levels.'' The petitioner states its industry's highest priority is the health and safety of its workers and its customers and neighbors, and health and safety will guide its decisions about the pace of reopening offices and resuming production in its plants. According to the petitioner, many suppliers are shuttered with uncertain plans for production and shipping due to the national health emergency and that this disruption in the supply chain has ''adversely affected manufacturer's plans for compliance with the FMVSS 141 phase-in.''

The petition requests that the Agency take three actions:

(a) Defer the current phase-in period (September 1, 2019 through August 31, 2020) to September 1, 2020 through August 31, 2021;

(b) Defer the beginning of full compliance to September 1, 2021; and

(c) Simplify the performance requirements during the phase-in period.

In support of its three requests, the petitioner describes the toll the national emergency has exacted on the automobile manufacturing industry. The petitioner asserts that every manufacturing plant in the United States abruptly closed earlier into the pandemic, and there remains a lingering concern about how long it will take the industry to restore pre-pandemic levels of production in the wake of the severe and unprecedented disruptions in the supply chain. The petitioner states that the hardships caused by plant closures have hindered manufacturers' ability to produce FMVSS 141 compliant vehicles. The petitioner also maintains that the closure of test labs in some jurisdictions has complicated the ability of some manufacturers to complete certification tests needed to fully support self-certification of compliance.

The petitioner states that the phase-in requirement is especially difficult for some manufacturers to meet because of how they designed their compliance plans. The petitioner explains that several manufacturers planned to meet the 50 percent fleetwide phase-in requirement by producing compliant vehicles during the second half of the production year. With plants shuttered, manufacturers are now unable to produce enough FMVSS 141 compliant vehicles to counterbalance the volume of pre-FMVSS 141 hybrid and electric vehicles manufactured during the first half of the production year to meet the phase-in requirement.

The petitioner also states that the national health emergency has led some manufacturers to reassess the financial plans they had in place for development of HEVs. The petitioner explains that these manufacturers have been unable to amortize the tooling of several pre-FMVSS 141 vehicle lines fully due to production disruptions, and need more time to produce these vehicles to recover their investment costs. The petitioner believes that manufacturers may be challenged further by the expected lowered demand for hybrid and electric vehicles due to the fall of oil prices.

Regarding its suggested alternative phase-in performance option, the petitioner contends that its option, in essence, ''simplifies the performance requirements . . . [to] require only that an HEV/EV vehicle emit sound.'' The petitioner states that the suggested performance standard would allow manufacturers to reach a higher phase-in percentage. The petitioner states it ''is prepared to support an increase in the required phase-in percentage from 50% to 75% during the production period beginning September 1, 2020 and ending August 31, 2021,'' if NHTSA agrees to permit the petitioner's suggested performance standard during the phase-in period.

IV. Agency Response

After considering the information provided in the petition and assessing the ongoing hardships stemming from the public health emergency, the Agency has decided to grant, in part, the petitioner's requests to delay the phase-in and full compliance dates. The Agency is not adopting the petitioner's request for an alternative phase-in performance standard in this interim final rule.

In general, the Agency has determined that disruptions to the auto industry caused by the COVID–19 public health emergency were unforeseeable and have rendered otherwise valid compliance plans impracticable and potentially even impossible. The difficulties caused by the COVID–19 public health emergency continue to hinder production. These disruptions justify providing some delay for the compliance period, but the Agency believes that six months is more appropriate than one year. While the Agency has determined that a six-month delay is appropriate and justified, the information provided by the petitioner in support of an alternative performance standard is not sufficient to support changes to the standard established in the 2016 final rule. That said, the Agency is requesting comment on these decisions and has provided an expedited comment period to allow commenters to provide information that the Agency could address before the expiration of the new phase-in period.

a. Phase-In Deferment

The current phase-in schedule (S9) requires that, for HEVs to which FMVSS 141 applies that are manufactured on or after September 1, 2019 and before September 1, 2020, the quantity of HEVs complying with the standard must be not less than 50 percent of one or both of the following: (1) A manufacturer's total production of hybrid and electric vehicles produced on and after September 1, 2019, and before September 1, 2020; or (2) a manufacturer's average annual production of hybrid and electric vehicles on and after September 1, 2016, and before September 1, 2019. As noted in the Alliance's petition, FMVSS 141 permitted manufacturers to employ different compliance strategies to reach the phase-in requirement, including strategies that backloaded the production of compliant vehicles into the second half of the year.

The level of disruption to automobile production caused by the COVID–19 public health emergency has been unprecedented and was completely unforeseeable when manufacturers established their compliance plans. The effects of the COVID–19 public health emergency have rendered impracticable implementation of what were valid compliance strategies to meet the schedule established for FMVSS 141. Those manufacturers who planned to produce compliant vehicles in the second half of the phase-in period using newer model year vehicles are unable to produce sufficient quantities of compliant vehicles to recover from the

lost production time to meet the 50 percent phase-in threshold.[9]

The shutdown in testing facilities during the COVID–19 public health emergency has made it difficult for some manufacturers to test their vehicles for compliance as they had planned. NHTSA believes manufacturers should be provided more time to test and assess the compliance of their vehicles adequately, and implement potential design and manufacturing changes, since manufacturers often rely on internal pre-production testing to verify that vehicles meet performance targets.

The Agency concludes that the disruptions to production and testing were due to forces beyond the control of manufacturers and that holding manufacturers accountable for these unavoidable circumstances would be unreasonable and contrary to the National Traffic and Motor Vehicle Safety Act (Safety Act). The Safety Act requires Federal motor vehicle safety standards to be practicable.[10] The hardships created by the COVID–19 public health emergency have made meeting the current phase-in requirements impossible for some manufacturers. While manufacturers were able to resume production to some extent in recent months, that production has been limited and continues to be affected by supply chain disruptions. Accordingly, the standard is no longer practicable for the effective dates that had been established, which is contrary to the Safety Act requirements for the FMVSS.

Refusing to amend the compliance dates would also be counterproductive to the nation's recovery effort. On May 19, 2020, the President issued Executive Order 13924, ''Regulatory Relief to Support Economic Recovery,'' (the Order) as part of the country's ongoing recovery effort in response to the national COVID–19 public health emergency. The Order directs agencies to address the current economic emergency by using, to the fullest extent possible, available emergency authorities to support the economic response to the COVID–19 outbreak. It also directs agencies to provide relief through rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery or by issuing new proposed rules as necessary.

The Agency believes that changing the compliance dates is consistent with the Order's directive and will assist with the recovery. Extending the phase-in date prevents manufacturers from either ceasing production of vehicles that do not conform to FMVSS 141 or falling into non-compliance. The extension affords manufacturers the opportunity to continue production of pre-FMVSS 141 vehicles for a brief period. This encourages manufacturers to resume production of more vehicle lines and, as a consequence, more-quickly return their workforce to the assembly lines. Consumers, who have experienced economic hardships from the COVID–19 public health emergency, would also benefit from extension of the effective dates because these pre-FMVSS 141 vehicles present additional HEV choices.

Accordingly, the Agency agrees that the phase-in period should be deferred. The Agency believes that a six-month deferment strikes a reasonable balance between regulatory relief and the goal of implementing FMVSS 141 as reasonably possible. Moving the phase-in start date back six months ''resets'' production volumes for compliance purposes and allows manufacturers to restart their compliance plans. This six-month extension also provides additional time for supply chains to recover, and for manufacturers to reopen plants and reevaluate strategies for FMVSS 141 compliance. While the petitioner requested a one-year extension, the petitioner did not provide supporting data or information justifying such a deferment. At this stage, therefore, NHTSA is not convinced that a year-long deferment is warranted to provide adequate relief. However, as part of this interim final rule, the Agency is requesting comment on whether to provide the full year requested by petitioners.

The new phase-in period will begin March 1, 2020, and end February 28, 2021. For manufacturers that intend to meet the phase-in requirement based on their previous three-year production volumes, the average fleet size will remain the average the annual production volumes of hybrid and electric vehicles from September 1, 2016 to August 31, 2019.[11] The Agency is not changing the required 50 percent phase-in percentage.

b. Full Compliance Delay

The Agency has also decided to grant the petitioner's request, in part, to defer full compliance with FMVSS 141, but is allowing for six months instead of the requested year. The aforementioned reasons for deferring the phase-in period are applicable to the full compliance deadline. The Agency considered retaining the current full compliance date and only amending the phase-in period. However, as with the phase-in schedule, manufacturers had established plans leading to full compliance for vehicles produced on and after September 1, 2020. The COVID–19 public health emergency has rendered those plans impracticable, not only for the phase-in schedule, but also for vehicles for the coming year, since the disruptions to manufacturing, supply chains, and testing have continued. To the extent that production has resumed, that production has been limited and continues to be affected by the public health emergency, both regarding a manufacturer's own capacity and its reliance upon a global supply chain for needed parts and equipment. Further, challenges in accessing testing facilities continue, which may make it difficult for some manufacturers to exercise reasonable care in certifying that their vehicles are compliant. Thus, the Agency has determined that the continuing effects of the COVID–19 public health emergency have rendered the full compliance mandate for vehicles manufactured after September 1, 2020 impracticable. To address this practical impossibility, NHTSA is deferring the date for full compliance to March 1, 2021.

The Agency believes that the six-month deferment strikes a reasonable balance between providing necessary regulatory relief and implementing FMVSS 141 as quickly as possible. An additional six months provides time for supply chains to take into account the effects of the public health emergency, and for manufacturers to reevaluate strategies for meeting FMVSS 141. While the petitioner requested a year-

[9] To illustrate, a manufacturer intending to build 10 hybrid vehicles each month over the course of the production year for a total of 120 vehicles would need to build at least 60 compliant vehicles during the year to meet the phase-in requirement described by FMVSS 141 S.9.1(b). If the manufacturer spends the first 6 months building 60 model year 2019 vehicles that did not meet FMVSS 141 because it anticipated launching a compliant 2020 model year vehicle in the second half of the phase-in schedule, the manufacturer would need to manufacture vehicles at full capacity for the remainder of the year to produce the requisite 60 compliant vehicles. If production stopped for a single month, the maximum quantity of compliant vehicles a manufacturer could produce during the year would drop to 50, falling below the phase-in threshold.

[10] 49 U.S.C. 30111(a). NHTSA also must consider whether a standard is reasonable when prescribing an FMVSS. *Id.* at 30111(b)(3).

[11] NHTSA is keeping these dates out of simplicity, as doing so avoids manufacturers and NHTSA's enforcement office having to track down older data and parsing it into mid-year increments to determine compliance requirements. As the cut-off date for determining the three-year production average preceded the national emergency, the required compliance production volume for 9.1(b) should be unaffected.

long deferment of the final compliance date, it did not provide data or information justifying such an extension. NHTSA is not convinced that a year-long deferment is warranted to provide adequate relief, particularly since manufacturers would have been in position to be in full compliance by September 1, 2020 prior to the public health emergency.

A six-month deferment will set the new full compliance date approximately one year after the onset of the disruptions caused by COVID–19. Those six months should provide manufacturers sufficient time to resume planned operations and to set new production schedules. A six-month deferment also encourages manufacturers to prioritize achieving fully-compliant vehicles more rapidly than one twice as long, thus encouraging the production of HEVs that meet FMVSS 141. However, as part of this interim final rule, the Agency is requesting comment on whether to provide the full year requested by petitioners.

c. Alternative Phase-In Option

The Agency is not adopting petitioner's request for an alternative performance standard during the phase-in period in this interim final rule for several reasons.

First, the Agency believes that deferring the phase-in period will provide sufficient relief to manufacturers. An additional six months gives manufacturers time to reestablish supply chains. Furthermore, deferring the phase-in period fully addresses the unique hardships to meet the 50 percent phase-in threshold caused by production disruptions, since the phase-in requirement only applies to vehicles manufactured during the phase-in period.

Second, the Agency has concerns about the efficacy of petitioner's proposed alternative. The Agency considered a similar alternative during the original rulemaking establishing FMVSS 141, and found that it inadequately specified the frequency content of sounds, such that many sounds meeting the alternative could be undetectable. The alternative also was found to allow many sounds that are less robust and thus more susceptible to being masked by surrounding ambient sounds.[12]

Finally, the Agency finds that the Alliance's petition lacks a sufficient justification for the alternative phase-in compliance option. The petition does not explain why a simplified performance requirement eases the burdens caused by the COVID–19 public health emergency.

For these reasons, the Agency does not agree to the third request and is not incorporating the petitioner's alternative phase-in compliance option into this interim final rule. The Agency requests comment on this issue.

V. Comments and Immediate Effective Date

Because the August 31 and September 1, 2020 compliance dates are fast approaching, NHTSA finds good cause to issue this interim final rule delaying the compliance dates for six months. There is good cause to make this rule effective immediately so as to provide needed relief to manufacturers facing insurmountable barriers in meeting FMVSS 141 due to the effects of the COVID–19 public health emergency. Pursuant to DOT's regulation on rulemaking procedures, 49 CFR 5.13(j)(2), NHTSA seeks to replace this interim final rule with a final rule, which may differ from today's rule in response to comments received. Accordingly, NHTSA is accepting comments on this interim final rule. The Agency is seeking comments on all three of the requests made by Alliance in its petition and the Agency's response. In particular, the Agency is interested in information concerning whether the six-month period is adequate and whether the Agency should reconsider its position on the modified standard during the phase-in period. Given the narrow focus of this rule and its near-term effects, the Agency has provided an expedited comment period, which the Agency believes will allow commenters sufficient time to address the issues in this rule and provide the Agency with time to respond to those comments well before the end of revised compliance date. See ''Request for Comments'' section below.

The Agency is issuing this interim final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA). Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

As discussed above in this document, the intent of this action is to provide relief to manufacturers of hybrid and electric vehicles who have experienced unprecedented disruptions in their production processes and supply chains due to the COVID–19 public health emergency. The phase-in period is currently set to end on August 31, 2020, with full compliance beginning immediately thereafter. Since the compliance dates are imminent, the Agency finds it impracticable to seek public comment. NHTSA seeks to issue this rule to provide relief before August 31 so there is not enough time to publish an NPRM and a final rule before that date. The Agency's understanding from the petitioners is that several members of the industry intended to backload production of compliant vehicles during the phase-in period, such that much of the 50% of vehicles that must comply with the standard would be produced at the beginning of the spring of 2020. However, this plan was made impracticable by the COVID–19 public health emergency, which continues to cause severe disruptions in the auto industry regarding manufacturing, supply chains, and sales. The disruptions have also resulted in delays and challenges to compliance testing by some manufacturers seeking to test for compliance as the basis for certification. As a result, some manufacturers have been unable to either produce sufficient compliant vehicles during the phase-in period to satisfy phase-in requirements, or test new models for compliance with the substantive standards. Failure to extend the compliance period to account for these realities, before the phase-in period concludes, would lead to some manufacturers either withholding production of HEVs, or facing potential non-compliance, due to factors beyond their control.

Since the compliance dates are imminent, the Agency finds it impracticable to seek public comment. Similarly, in order to provide meaningful relief to manufacturers, the Agency finds good cause to make this rule effective immediately. Section 30111(d) of the Safety Act states that a standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed, unless the Secretary (NHTSA by delegation) finds, for good cause shown, that a different effective date is in the public interest and publishes the reasons for the finding. For the reasons discussed in this preamble, NHTSA finds there is good cause for this rule to be effective immediately. This immediate effective date is in the public interest given the

[12] *See* 81 FR at 90456.

impact the COVID–19 public health emergency has had on the ability of manufacturers to meet the compliance schedule for FMVSS 141 implementation. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule. These comments must be submitted on or before the date indicated in the **DATES** section at the beginning of this document. NHTSA will consider these comments in deciding the next steps following this interim final rule.

VI. Regulatory Analyses and Notices

a. Executive Orders 12866, 13563, 13771 and DOT Rulemaking Procedures

Executive Order 12866, Executive Order 13563, and the Department of Transportation's administrative rulemaking procedures set forth in 49 CFR part 5, subpart B, provide for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of E.O. 12866.

Today's final rule is not significant and has not been reviewed by OMB under E.O. 12866. This final rule only makes a six-month adjustment to the existing compliance schedules of FMVSS 141. We are only adjusting the phase-in schedule and the September 1, 2020 full compliance date by six months to give manufacturers time to revise their production and compliance schedules in response to disruptions caused by the COVID–19 public health emergency and restore their manufacturing abilities to meet the requirements of the standard.

Without this interim final, the automobile industry would experience a burden due to an inability to comply with FMVSS 141. The interim rule alleviates this burden by delaying the FMVSS 141 compliance date by six months. The delay is unavoidable due to disruptions the auto manufacturing industry has experienced as a consequence of the 2020 COVID–19 public health emergency. The rule provides relief to manufacturers of hybrid and electric vehicles who have experienced unprecedented disruptions to the supply chain; without this interim final rule, compliance with the current schedule for FMVSS 141 implementation would be impracticable and potentially impossible. The Agency's estimates of aggregate costs and benefits from the initial final rule, restated in the response to petitions for reconsideration, were based upon an expected sales volume that has been severely disrupted by the COVID–19 public health emergency and, therefore, is no longer helpful in determining the rule's likely impacts. Further, there is significant uncertainty about how and when vehicle sales, specifically HEV sales, will rebound over the limited six-month period relevant to this rulemaking, making any new projections impracticable, particularly in light of the need to issue this rule expeditiously. Comments are requested on this issue.

Executive Order 13771 titled ''Reducing Regulation and Controlling Regulatory Costs,'' directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed. In addition, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs. Only those rules deemed significant under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' are subject to these requirements. Per OMB Memo M–17–21, E.O. 13771 applies to a rulemaking action that is ''a significant regulatory action as defined in Section 3(f) of E.O. 12866 that has been finalized and that imposes total costs greater than zero.'' As discussed above, by delaying the compliance dates by six months, this action is a deregulatory rule under Executive Order 13771, but the Agency has not estimated quantified cost savings.

b. Executive Order 13924

On May 19, 2020, the President issued Executive Order 13924, ''Regulatory Relief to Support Economic Recovery,'' as part of the Country's ongoing recovery effort to the national COVID–19 public health emergency. The Order directs agencies to address the current economic emergency by using to the fullest extent possible any available emergency authorities to support the economic response to the COVID–19 outbreak. It also directs agencies to provide relief through rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery or by issuing new proposed rules as necessary. This interim final rule is consistent with E.O. 13924 by providing manufacturers adversely affected by production disruptions caused by the national health emergency time to recover to meet the phase-in and full compliance requirements of FMVSS 141, and reassess how best to implement FMVSS 141.

c. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, NHTSA has considered the impacts of this rulemaking action on small entities (5 U.S.C. Sec. 601 *et seq.*). Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Small Business Administration's Office of Advocacy guide: *How to Comply with the Regulatory Flexibility Ac. Ch.1. p.9.* Accordingly, NHTSA is not required to conduct a regulatory flexibility analysis. Nevertheless, the Agency believes that today's interim final rule will reduce the regulatory burden on small businesses because it delays the compliance with FMVSS 141 for an additional year. I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities.

Even though the Agency is not required to conduct a regulatory flexibility analysis, the Agency believes this interim final rule will reduce the regulatory burden on small businesses but will have a limited impact on small businesses. Extending the phase-in and full compliance dates provide small businesses with additional lead time to meet an already existing standard. As such, small businesses may use the additional time to spread out compliance costs and to continue to sell current vehicles to amortize expenses related to existing vehicle lines. NHTSA notes, however, that it has not heard from small entities about challenges in meeting the compliance dates of FMVSS 141. Thus, NHTSA believes the interim final rule will not have a significant impact on a substantial number of small entities.

d. Executive Order 13132, Federalism

NHTSA has examined today's interim final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The Agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The interim final rule 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.''

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this interim final rule could or should preempt State common law causes of action. The Agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation. To this end, the Agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of today's interim final rule and finds that this rule will prescribe only a change in effectives dates of a safety standard. As such, NHTSA does not intend that this rule will preempt State tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's rule. Establishment of a higher standard by means of State tort law would not conflict with the rule adopted here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

e. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This action will not result in additional expenditures by State, local or tribal governments or by any members of the private sector. Therefore, the Agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

f. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule adjusts the timing of the phase-in reporting requirements to match the manufacturer's production year but includes no new collection of information because the actual reporting requirements are the same as the requirements in the December 2016 final rule.

g. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision may prescribe or continue in effect a standard applicable to the same aspect of performance of a Federal motor vehicle safety standard only if the standard is identical to the Federal standard. However, the United States Government, a State, or political subdivision of a State, may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings are not required before parties file suit in court.

h. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

i. Environmental Impacts

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. Since this rulemaking action only extends the compliance dates and does not substantive requirements of the standard, the Agency has determined that implementation of this action would not have any significant impact on the quality of the human environment. NHTSA has also determined that the changes in this final rule would not change the findings in the Final Environmental Assessment prepared in connection with the final rule.

J. Executive Order 13609

The policy statement in section 1 of Executive Order 13609 provides, in part: The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation.

International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In the preamble to the December 2016 final rule NHTSA discussed the reasons for the differences in the regulatory approach taken by foreign governments that have addressed this issue. This interim final rule does not affect those decisions made in the December 2016 final rule. Further, the Agency reiterates that NHTSA's test procedures are not requirements that manufacturers must follow when certifying vehicles to the FMVSS and manufacturers are free to choose whatever certification method they wish as long as the manufacturer can demonstrate a good faith basis for certification.

VII. Request for Comments

How long do I have to submit comments?

We are providing a 15-day comment period.

How do I prepare and submit comments?

- Your comments must be written in English.
- To ensure that your comments are correctly filed in the Docket, please include the Docket Number shown at the beginning of this document in your comments.
- Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.
- If you are submitting comments electronically as a PDF (Adobe) File, NHTSA asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions. Comments may be submitted to the docket electronically by logging onto the Docket Management System website at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit 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 above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. 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). To facilitate social distancing during COVID–19, NHTSA is temporarily accepting confidential business information electronically. Please see *https://www.nhtsa.gov/coronavirus/submission-confidential-business-information* for details.

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing the follow on action, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the internet. To read the comments on the internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Please note that, even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, reporting and record keeping requirements, tires.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

Subpart B—Federal Motor Vehicle Safety Standards

■ 2. Section 571.141 is amended by revising S9 to read as follows:

§ 571.141 Standard No. 141; Minimum Sound Requirements for Hybrid and Electric Vehicles.

* * * * *

S9 *Phase-in schedule.*

S9.1 *Hybrid and Electric Vehicles manufactured on or after March 1, 2020, and before February 28, 2021.* For hybrid and electric vehicles to which this standard applies manufactured on and after March 1, 2020, and before March 1, 2021, except vehicles produced by small volume manufacturers, the quantity of hybrid and electric vehicles complying with this safety standard shall be not less than 50 percent of one or both of the following:

(a) A manufacturer's average annual production of hybrid and electric vehicles on and after September 1, 2016, and before September 1, 2019;

(b) A manufacturer's total production of hybrid and electric vehicles on and after March 1, 2020, and before March 1, 2021.

S9.2 *Hybrid and Electric Vehicles manufactured on or after March 1, 2021.* All hybrid and electric vehicles to which this standard applies manufactured on or after March 1, 2021, shall comply with this safety standard.

PART 585—PHASE–IN REPORTING REQUIREMENTS

■ 3. The authority citation for part 585 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

Subpart N—Minimum Sound Requirements for Hybrid and Electric Vehicles Reporting Requirements

■ 4. Revise § 585.130 to read as follows:

§ 585.130 Applicability.

This subpart applies to manufacturers of hybrid and electric passenger cars, trucks, buses, multipurpose passenger vehicles, and low-speed vehicles subject to the phase-in requirements of S9.1 Hybrid and Electric Vehicles manufactured on or after March 1, 2020, and before March 1, 2021 (49 CFR 571.141).

■ 5. Revise § 585.132 to read as follows:

§ 585.132 Response to inquiries.

At any time, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with the requirements of Standard No. 141, Minimum Sound Requirements for Hybrid and Electric Vehicles (49 CFR 571.141). The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

■ 6. Section 585.133 is amended by revising paragraph (a) to read as follows:

§ 585.133 Reporting requirements.

(a) *Phase-in reporting requirements.* Within 60 days after February 28, 2021, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 141, Minimum Sound Requirements for Hybrid and Electric Vehicles (49 CFR 571.141), for its vehicles produced from March 1, 2020 to February 28, 2021. Each report shall provide the information specified in paragraph (b) of this section and in § 585.2.

* * * * *

■ 7. Revise § 585.134 to read as follows:

§ 585.134 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.133 until December 31, 2025.

James C. Owens,

Deputy Administrator.

[FR Doc. 2020–19334 Filed 8–28–20; 11:15 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2020–0053; FF09E21000 FXES11110900000 201]

Endangered and Threatened Wildlife and Plants; Determination That Designation of Critical Habitat is Not Prudent for the Rusty Patched Bumble Bee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of final determination.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have reconsidered whether designating critical habitat for the rusty patched bumble bee (*Bombus affinis*) would be prudent. On January 11, 2017, we published a final rule listing the rusty patched bumble bee as an endangered species under the Endangered Species Act of 1973, as amended (Act). In that final rule, we stated that designation of critical habitat may be prudent, but not determinable. We have now determined that such a designation would not be prudent. The present or threatened destruction, modification, or curtailment of habitat is not the primary threat to the species, and the availability of habitat does not limit the conservation of the rusty patched bumble bee now, nor will it in the future.

DATES: The determination announced in this document was made on September 1, 2020.

ADDRESSES: This document and the supporting documentation we used in preparing this determination are available on the internet at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2020–0053.

FOR FURTHER INFORMATION CONTACT: Sarah Quamme, Field Supervisor, Minnesota-Wisconsin Ecological Services Field Office, U.S. Fish and Wildlife Service, 4101 American Blvd. E, Bloomington, MN 55425; telephone 952–252–0092. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Historically, the rusty patched bumble bee was broadly distributed across the eastern United States and Upper Midwest, from Maine in the United States and southern Quebec and Ontario in Canada, south to the northeast corner of Georgia, reaching west to the eastern edges of North and South Dakota (Service 2016, p. 49). For a thorough review of the life history and ecology of the rusty patched bumble bee, please refer to the species status assessment report (Service 2016).

Previous Federal Actions

Please refer to the proposed listing rule for the rusty patched bumble bee (81 FR 65324; September 22, 2016) for a detailed description of previous Federal actions concerning this species. On January 11, 2017, we published in the **Federal Register** (82 FR 3186) a final rule listing the rusty patched bumble bee as an endangered species. The rule became effective on March 21, 2017 (82 FR 10285; February 10, 2017). On January 15, 2019, the Natural Resources Defense Council filed a lawsuit against the Service for not publishing a final rule designating critical habitat for the species. Per a September 25, 2019, settlement agreement with the Natural Resources Defense Council, we agreed to submit to the **Federal Register** either a proposed rule designating critical habitat or a final determination that critical habitat designation is not prudent no later than July 31, 2020.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied

by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation also does not allow the government or public to access private lands, nor does designation require implementation of restoration, recovery, or enhancement measures by non-Federal landowners.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed may be included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species.

Our 2017 rule found that critical habitat was not determinable because of the lack of complete data regarding the complex life-history needs of the rusty patched bumble bee. We also ventured that designation of critical habitat may be prudent. Specifically, we found that identification and mapping of critical habitat is not likely to initiate any threat of collection or vandalism for the bee and that potential benefits of critical habitat designation may include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is unoccupied; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the protected species (82 FR 3186; January 11, 2017). While our 2017 rule stated that designation of critical habitat may be prudent, the Service did not make a finding in the 2017 final listing rule that designation was prudent.

We have now analyzed more complete data and have a better understanding of the life-history needs of the rusty patched bumble bee. In light of this enhanced understanding, as well as new information that has become available since the time of listing, we have re-evaluated whether critical habitat designation is prudent for the rusty patched bumble bee.

Designating Habitat Would Not Be Prudent

The rusty patched bumble bee is a habitat generalist, considered to be flexible with regard to its habitat requirements. The species occupies a variety of habitats, including prairies, woodlands, marshes, agricultural landscapes, and residential parks and gardens (Colla and Packer 2008, p. 1381; Colla and Dumesh 2010, p. 46; Service rusty patched bumble bee unpublished geodatabase 2019). The species requires areas that support sufficient food (nectar and pollen), undisturbed nesting habitat in proximity to floral resources, and overwintering habitat for hibernating queens (Goulson *et al.* 2015, p. 2; Potts *et al.* 2010, p. 349).

Bumble bees are generalist foragers, meaning they gather pollen and nectar from a wide variety of flowering plants (Xerces 2013, pp. 27–28). The rusty patched bumble bee is one of the first bumble bees to emerge early in the spring and the last to go into hibernation, so the species requires a constant and diverse supply of blooming flowers to meet its nutritional needs.

Rusty patched bumble bee nests are typically in abandoned rodent nests or other similar cavities (Plath 1922, pp. 190–191; Frison 1923, p. 267; Macfarlane *et al.* 1994, p. 4). Bumble bee queens seek nesting sites that require little preparation, are in well-drained soil, and are sheltered from the elements (Frison 1923, pp. 265–266). In a recent study of other bumble bee species, spring foundress queens (*i.e.,* queens establishing a new nest) searching for nesting locations favored transitional zones between wooded and open habitats over open habitats, with most queens investigating areas with

dense leaf litter, fallen logs, and other features of woody habitats (Lanterman *et al.* 2019, pp. 136–137). Other bumble bees in the subgenus to which rusty patched bumble bee belongs have been found nesting in a variety of landscapes, including forest and forest edges as well as agricultural, urban, grassland, and other landscapes (Liczner and Colla 2019, p. 794).

Little is known about the overwintering habitats of rusty patched bumble bee foundress queens, but other species of *Bombus* typically form a chamber in soft soil, a few centimeters deep, and sometimes use compost or mole hills to overwinter (Goulson 2010, p. 11). Overwintering bumble bee queens have been found mostly in shaded areas, usually near trees and in banks without dense vegetation (Liczner and Colla 2019, p. 792). An overwintering rusty patched bumble bee queen, discovered in a maple oak-woodland in Wisconsin in 2016, was found under a few centimeters of leaf litter and loose soil (Herrick 2016, pers. comm.). Based on what we know about other *Bombus* species and the rusty patched bumble bee, we assume rusty patched bumble bees are overwintering primarily in woodlands.

Historically, the rusty patched bumble bee was widely distributed across its range. Prior to listing in 2017, the species experienced a widespread and precipitous decline. The cause of the decline is unknown, but evidence suggests a synergistic interaction between an introduced pathogen and exposure to pesticides (specifically, insecticides and fungicides; Service 2016, p. 53). The final listing rule for rusty patched bumble bee (82 FR 3186; January 11, 2017) identified additional threats to the species as habitat loss and degradation, small population dynamics, and effects of climate change.

Historical loss of habitat is commonly cited as a contributor to bee declines (Goulson *et al.* 2015, p. 2; Goulson *et al.* 2008; Potts *et al.* 2010, p. 348; Brown and Paxton 2009, pp. 411–412). For example, loss of native grassland since European settlement of North America is estimated to be as high as 99.9 percent (Samson and Knopf 1994, p. 418). The current decline of rusty patched bumble bee, however, is more recent than these historical losses of habitat. Since 1999, the rusty patched bumble bee has experienced an 88 percent decline in the number of populations documented prior to 2000. Along with the loss of populations, a marked decrease in the range and distribution has occurred in recent times, with an 87 percent loss of spatial extent within the historical range since 2000. Although habitat loss has established negative effects on bumble bees (Goulson *et al.* 2008; Williams and Osborne 2009, pp. 371–373), many bumble bee experts conclude it is unlikely to be a main driver of the recent, widespread North American bee declines (Szabo *et al.* 2012; p. 236; Colla and Packer 2008, p. 1388; Cameron *et al.* 2011, p. 665). Further, the rusty patched bumble bee may not be as severely affected by habitat loss because it is not dependent on specific plant species for floral resources and can use a variety of habitats for nesting and overwintering.

The rusty patched bumble bee is no longer present in 20 of the 31 States and Provinces where it occurred historically; however, suitable habitat is still widespread in these areas. In addition, many of the locations where the species was observed historically retain suitable habitat, indicating many of the historical locations were not extirpated due to habitat loss. Because the rusty patched bumble bee is a generalist forager that does not depend on certain species of plants for nectar and pollen and likely uses woodlands and woodland edges as well as other areas for overwintering and nesting, the best available information indicates that its habitat needs are relatively plentiful and widely distributed across its historical range, providing further evidence that habitat loss is not the primary threat to the species. Across the historical range of the species, there appears to be abundant suitable habitat for rusty patched bumble bees to occupy in the future should their numbers rebound. Due to the rusty patched bumble bee's general habitat requirements, we expect sufficient habitat to remain available to the species into the future.

Since the time of listing, we have developed a rusty patched bumble bee map, posted on our website, that shows where the rusty patched bumble bee may be present (Service 2020). The map identifies three areas: (1) ''High potential zones'' (HPZs) where rusty patched bumble bee is likely present, (2) ''low potential zones'' where rusty patched bumble bee is not likely to be present, and (3) the species' historical range where rusty patched bumble bee is not present. The HPZs are irregular polygons generated from a model of known recent (2007–present) observation points, estimated foraging distances, and the ability of the bee to move through a variety of land classes. The modeled HPZ polygons do not equate to suitable habitat for rusty patched bumble bees, although the HPZs likely contain suitable habitat because the rusty patched bumble bee was recently observed at least once within each of the HPZs. The model used to create the HPZs, however, did not attempt to map specific foraging, nesting, or overwintering areas.

Section 7(a)(2) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species. Since the time of listing, we have developed section 7 consultation guidance, which focuses on avoiding direct impacts to rusty patched bumble bees and their occupied habitat (Service 2019b, entire). The consultation guidance directs Federal agencies to assess potential effects to rusty patched bumble bee from activities occurring in suitable habitat within the HPZs. We have determined that consultation outside of these zones, in unoccupied habitat, is not necessary because it is unlikely that the species is using those areas. Although we identified section 7 consultation in unoccupied areas as a potential benefit of designating critical habitat, we have found since then that consultation in those areas is not necessary for the conservation of the species.

Similarly, we developed voluntary guidance for implementation of section 10(a)(1)(B) of the Act for non-Federal project proponents (Service 2017, entire). For non-Federal projects that would occur within a HPZ, this voluntary guidance helps project proponents and landowners understand the status and distribution of the rusty patched bumble bee, determine whether their projects could incidentally take the rusty patched bumble bee, and, if so, how they may plan and carry out their projects while in compliance with the Act.

In 2018, the Service developed ''Conservation Management Guidelines for the Rusty Patched Bumble Bee (*Bombus affinis*)'' (Service 2018, entire) and, in 2019, released the ''Draft Recovery Plan for Rusty Patched Bumble Bee (*Bombus affinis*)'' (Service 2019a, entire). Both documents provide guidance for improving or maintaining nesting habitat, floral resources, and overwintering habitat for rusty patched bumble bee. The recovery strategy in the draft recovery plan focuses on a sequence of first halting declines, then reversing declines, and ultimately securing the long-term viability of the species (Service 2019a, p. 3). The initial specific objective includes preventing further loss of populations by increasing the health of individuals and the number of colonies within a population, improving the quality and quantity of habitat, and ensuring connectivity between populations. The draft recovery

plan recommends habitat restoration and enhancement because even slight improvements in resource availability could increase development and productivity at existing colonies and improve the bees' resilience to other stressors, such as pesticides and pathogens, which are estimated to be the primary drivers of the species' recent decline. This also helps to address the deleterious effects of small population size, which the rusty patched bumble bee is currently experiencing. At a landscape level, although habitat improvement may benefit the species, we cannot predict which specific areas rusty patched bumble bees may occupy, given the primary stressors of pesticides and pathogens, the species' dispersal abilities, and the variety of habitats it can use for foraging, overwintering, and nesting.

The Service's website provides a map of priority areas that are of most interest for rusty patched bumble bee surveys, habitat assessments, and habitat improvements, with areas with the most recent detections of the species and areas that intersect with HPZs as the two highest priorities (Service 2019c). The priority areas are not appropriate for designation as critical habitat because they do not map directly to suitable habitat and contain areas not suitable for rusty patched bumble bees. Rather, the priority areas reflect our emphasis on the need to protect bees and prevent the further loss of colonies. The maps provide guidance for Federal and non-Federal projects as well as education to local landowners.

Our current regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

The best scientific data available indicate that the present or threatened destruction, modification, or curtailment of the rusty patched bumble bee's habitat or range is not the primary threat to the species. Because habitat for the rusty patched bumble bee is not limiting, and because the bee is considered to be flexible with regard to its habitat use for foraging, nesting, and overwintering, the availability of habitat does not limit the conservation of the rusty patched bumble bee now, nor will it in the future. Given the primary stressors of pesticides and pathogens, the species' dispersal abilities, and the variety of habitats it can use for foraging, overwintering, and nesting, we cannot predict which specific areas rusty patched bumble bees may occupy at a landscape level across its historic range. Therefore, pursuant to 50 CFR 424.12(a)(1)(v), the best scientific data available indicate that designation of critical habitat is not prudent.

In making this determination we applied the implementing regulations at 50 CFR 424.12(a)(1) that are currently in effect. The current implementing regulations incorporate revisions that were made final on August 27, 2019, and that final rule expressly stated that the revisions applied ''only to relevant rulemakings for which the proposed rule is published after [September 26, 2019]'' (84 FR 45020). The reason for that applicability language was so as not ''to require that any previously completed classification decision or critical habitat designation must be reevaluated on the basis of these final regulations'' (*Id.*). The proposed and final listing rules for the rusty patched bumble bee published on September 22, 2016, and January 11, 2017, respectively—both were before September 26, 2019, and both indicated that critical habitat was not determinable but may be prudent.

There is some ambiguity as to whether this indication in the proposed and final listing rules that designation may be prudent does constitute a ''rulemaking'' for which a proposed rule was published before the effective date of that rule.'' It is not clear, for example, whether a prudency determination qualifies as a ''rulemaking'' under the applicability language or whether the proposed rule—a proposal to list the species along with an accompanying finding that critical habitat was not then determinable—qualified as a ''proposed rule published after that date.''

To address this ambiguity, we also evaluated whether designation of critical habitat is prudent under the regulations that were in effect when we made the not-determinable finding at the time of the final listing rule.

The regulations that were in effect at the time the species was listed (in early 2017) stated that a designation of critical habitat is not prudent when any of the following situations exist:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species; or

(ii) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Services may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of ''critical habitat.''

The best scientific data available indicate that the present or threatened destruction, modification, or curtailment of the rusty patched bumble bee's habitat or range is not the primary threat to the species. Because habitat for the rusty patched bumble bee is not limiting, and because the bee is considered to be flexible with regard to its habitat use for foraging, nesting, and overwintering, the availability of habitat does not limit the conservation of the rusty patched bumble bee now, nor will it in the future. Although we have since found that triggering section 7 consultation in unoccupied areas is not necessary, we have achieved, through development of the priority maps, the other benefits of critical habitat that we had identified in the final listing rule, *i.e.,* focusing conservation activities on the most essential areas to prevent further loss of colonies, providing educational benefits by creating greater public awareness of rusty patched bumble bee and its conservation, and preventing inadvertent harm to the species. Because these maps are updated regularly as we receive new information, they provide better, more focused attention to the needs of rusty patched bumble bee than a static critical habitat designation would. For these reasons, we find that designating critical habitat would not be beneficial for the species.

Therefore, we also find that, even if we were to apply the regulations in place at the time of listing at 50 CFR 424.12(a)(1), we would still conclude that designating critical habitat is not

prudent for the rusty patched bumble bee.

References Cited

A complete list of references cited in this document is available on the internet at *http://www.regulations.gov* and upon request from the Minnesota-Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are staff members of the Service's Great Lakes Regional Office and Minnesota-Wisconsin Ecological Services Field Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–17093 Filed 8–31–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227–0066; RTID 0648–XA430]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure; request for comments.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2020 total allowable catch of Pacific cod allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 1, 2020, through 2400 hours, A.l.t., December 31, 2020. Comments must be received at the following address no later than 4:30 p.m., A.l.t., *September 16, 2020.*

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2019–0074, by either of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

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

NMFS closed directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI under § 679.20(d)(1)(iii) on January 19, 2020 (85 FR 3856, January 23, 2020).

NMFS has determined that as of August 26, 2020, approximately 1,046 metric tons of Pacific cod remain in the 2020 Pacific cod apportionment for catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2020 total allowable catch (TAC) of Pacific cod in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 26, 2020.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 16, 2020.

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

Dated: August 27, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–19259 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 85, No. 170

Tuesday, September 1, 2020

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0788; Product Identifier 2020–NM–091–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A300 series airplanes, and Airbus SAS Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). This proposed AD was prompted by reports of cracking at a certain hole location on the left-hand (LH) side of a certain frame (FR). This proposed AD would require repetitive inspections for discrepancies of certain areas in and around the fuselage, as specified in two European Union Aviation Safety Agency (EASA) ADs, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 16, 2020.

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

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

For material that will be incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0788.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0788; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *Dan.Rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0788; Product Identifier 2020–NM–091–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments it receives, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the FAA receives about this NPRM.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person identified in the **FOR FURTHER INFORMATION CONTACT** section. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0110R1, dated May 27, 2020; and EASA AD 2020–0111R2, dated June 16, 2020 (''EASA AD 2020–0110R1'' and ''EASA AD 2020–0111R2'') (also referred to as ''the Mandatory Continuing Airworthiness Information,'' or ''the MCAI''); to correct an unsafe condition for all Airbus SAS Model A300 series airplanes and Airbus SAS Model A300–600 series airplanes.

This proposed AD was prompted by reports of cracking at hole location #10 on the LH side of FR4. The FAA is proposing this AD to address fatigue cracking, which could result in reduced structural integrity of the fuselage. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0110R1 describes procedures for repetitive special detailed inspections for discrepancies (*i.e.,* cracking) of the fuselage internal structure at certain frames, windshield frame lower section and closing panel, fuselage skin lap joint, and center wing bottom skin internal angle; and applicable corrective actions (repairing discrepancies).

EASA AD 2020–0111R2 describes procedures for repetitive special detailed inspection for discrepancies of the outer wing bottom skin internal joint plate, outer wing bottom skin, fuselage internal structure at certain frames, and windshield frame lower section and closing panel; and applicable corrective actions (repairing discrepancies).

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

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would require, accomplishing the actions specified in EASA AD 2020–0110R1 and EASA AD 2020–0111R2 described previously, as incorporated by reference. Any differences with EASA AD 2020–0110R1 and EASA AD 2020–0111R2 are identified as exceptions in the regulatory text of this AD.

For the action specified in paragraph (4) of EASA AD 2020–0110R1, the compliance times vary depending on airplane configuration, inspection type, and inspection results. The initial compliance times for the inspections vary between before the accumulation of 18,500 flight cycles and 24,500 flight cycles since the first flight of the airplane. The repetitive intervals for the inspections vary between 1,500 flight cycles and 12,600 flight cycles, depending on inspection results. See Airbus Service Bulletin A300–53–0265, Revision 6, dated July 2, 2012, for more information.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0110R1 and EASA AD 2020–0111R2 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0110R1 and EASA AD 2020–0111R2 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD.

Service information specified in EASA AD 2020–0110R1 and EASA AD 2020–0111R2 that is required for compliance with EASA AD 2020–0110R1 and EASA AD 2020–0111R2 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0788 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 118 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
90 work-hours × $85 per hour = $7,650	$0	$7,650	$902,700

The FAA has received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2020–0788; Product Identifier 2020–NM–091–AD.

(a) Comments Due Date

The FAA must receive comments by October 16, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) and (2) of this AD, certificated in any category.

(1) Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A300 C4–605R Variant F airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage; 57 Wings.

(e) Reason

This AD was prompted by reports of cracking at hole location #10 on the left-hand side of frame 4. The FAA is issuing this AD to address fatigue cracking, which could result in reduced structural integrity of the fuselage.

(f) Compliance

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

(g) Requirements

(1) For airplanes identified in paragraph (c)(1) of this AD: Except as specified in paragraphs (h)(1) and (3) of this AD, comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0110R1, dated May 27, 2020 (''EASA AD 2020–0110R1'').

(2) For airplanes identified in paragraph (c)(2) of this AD: Except as specified in paragraphs (h)(2) and (3) of this AD, comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0111R2, dated June 16, 2020 (''EASA AD 2020–0111R2'').

(h) Exceptions to EASA AD 2020–0110R1 and EASA AD 2020–0111R2

(1) Where EASA AD 2020–0110R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (4) of EASA AD 2020–0111R2 refers to June 3, 2020 (''the effective date of this AD at original issue''), this AD requires using the effective date of this AD.

(3) The ''Remarks'' section of EASA AD 2020–0110R1 and EASA AD 2020–0111R2 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2020–0110R1 and EASA AD 2020–0111R2 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2020–0110R1 and EASA AD 2020–0111R2, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0788.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *Dan.Rodina@faa.gov.*

Issued on August 25, 2020.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2510

RIN 1210–AB94

Registration Requirements for Pooled Plan Providers

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the requirements for registering with the Department of Labor as a ''pooled plan provider'' for ''pooled employer plans'' under sections 3(43) and 3(44) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) provides that newly permitted ''pooled plan providers'' can begin offering ''pooled employer plans'' on January 1, 2021, but requires such persons to register with the Secretary of Labor before beginning operations. The proposed rule would also establish a new form—EBSA Form PR (Pooled Plan Provider Registration)—as the required filing format for pooled plan provider registrations. Filing the proposed Form

PR with the Department of Labor would also satisfy the SECURE Act requirement to register with the Treasury Department. The proposed rule would affect persons wishing to serve as pooled plan providers, employee defined contribution pension benefit plans that are operated as pooled employer plans, employers participating in such plans, and participants and beneficiaries covered by such plans.

DATES: Comments are due on or before October 1, 2020.

ADDRESSES: You may submit written comments, identified by RIN 1210–AB94, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To facilitate receipt and processing of comments, the Department of Labor encourages interested parties to submit their comments electronically.

Mail: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210, Attention: Proposed Registration Requirements for Pooled Plan Providers RIN 1210–AB94.

Instructions: All submissions must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. Any comment that is submitted will be shared with the Internal Revenue Service (IRS). If you submit comments electronically, do not submit paper copies. Comments will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/agencies/ebsa* and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N–1513, 200 Constitution Ave. NW, Washington, DC 20210.

Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records posted on the internet as received and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Colleen Brisport Sequeda, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8500 (this is not a toll-free number) for questions related to pooled plan provider reporting requirements under Title I of ERISA.

Customer service information: Individuals interested in obtaining general information from the Department of Labor concerning Title I of ERISA may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department's website (*www.dol.gov/agencies/ebsa*).

SUPPLEMENTARY INFORMATION:

I. Legal Framework

Under ERISA, an employee benefit plan (whether a pension plan or a welfare plan) must be sponsored by an employer, by an employee organization, or by both. Section 3(5) of ERISA defines the term ''employer'' for this purpose as ''any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan, and includes a group or association of employers acting for an employer in such capacity.'' These definitional provisions of ERISA have been interpreted as permitting a multiple employer plan (MEP) to be established or maintained by a cognizable, bona fide group or association of employers that is controlled by the employer members and that acts in the interests of its employer members to provide benefits to their employees.[1] This approach is based on the premise that the person or group that maintains the plan is tied to the employers and employees that participate in the plan by some common economic or representational interest or genuine organizational relationship unrelated to the provision of benefits. The Department of Labor (Department) has taken steps, through a final rule on ''association retirement plans'' at 29 CFR 2510.3–55, to clarify and expand the types of arrangements that can be treated as multiple employer plans under Title I of ERISA. The final rule did not, however, extend to so-called ''open MEPs.''[2]

A primary goal of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act),[3] authorizing of pooled employer plans was to remove possible barriers to the broader use of multiple employer plans. Among other things, the SECURE Act amended section 3(2) of ERISA and added section 3(43) to ERISA to authorize a new type of ERISA-covered defined contribution pension plan—a ''pooled employer plan'' operated by a ''pooled plan provider''—in which multiple unrelated employers will be able to participate without the need for any commonality among the participating employers or other genuine organizational relationship unrelated to participation in the plan, thus enabling a type of open MEP. By allowing most of the administrative and fiduciary responsibilities of sponsoring a retirement plan to be transferred to a ''pooled plan provider,'' the pooled employer plan can offer employers, especially small employers, a way of offering their employees a workplace retirement savings option with reduced burdens and costs compared to sponsoring their own separate retirement plan. New section 3(44) of ERISA establishes requirements for ''pooled plan providers,'' including a requirement to register with the Department and the Department of the Treasury (Treasury Department) before beginning operations as a pooled plan provider. The effective date for these provisions allows ''pooled employer plans'' to begin operating on January 1, 2021.

Under section 3(2) of ERISA, a pooled employer plan is treated for purposes of ERISA as a single plan that is a multiple employer plan. A ''pooled employer plan'' is defined in section 3(43) as a plan that is an individual account plan established or maintained for the purpose of providing benefits to the employees of two or more employers; that is a qualified retirement plan or a plan funded entirely with individual retirement accounts (IRA plan); and the terms of which must meet certain requirements set forth in the statute.[4] Specifically, the terms of the plan must satisfy the following requirements:

- Designate a pooled plan provider and provide that the pooled plan provider is a named fiduciary of the plan;
- designate one or more trustees (other than an employer in the plan) to be responsible for collecting

[1] The SECURE Act did not change the conditions for plans that were already permitted under section 3(2) of ERISA to act as a single MEP. *See, e.g.,* Advisory Opinions 2008–07A, 2003–17A, and 2001–04A. Those classes of multiple employer plans (*e.g.,* employer association retirement plans and plans sponsored by professional employer organizations) are outside of the scope of this rulemaking, as are multiple employer plans established and maintained pursuant to bona fide collective bargaining.

[2] See the preamble discussion in the Final Rule on the Definition of ''Employer'' Under Section 3(5) of ERISA—Association Retirement Plans and Other Multiple-Employer Plans, 84 FR 37508 (July 31, 2019). The Department did, however, seek comments through a Request for Information published with that proposed rule seeking comments on whether, and if so under what conditions, open MEP structures should be treated as a multiple employer plan for purposes of Title I of ERISA.

[3] The SECURE Act was enacted as Division O of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94) (December 20, 2019).

[4] 29 U.S.C. 1002(43). The term ''pooled employer plan'' does not include a multiemployer plan or plan maintained by employers that have a common interest other than having adopted the plan. The term also does not include a plan established before the date the SECURE Act was enacted unless the plan administrator elects to have the plan treated as a pooled employer plan and the plan meets the ERISA requirements applicable to a pooled employer plan established on or after such date.

contributions to, and holding the assets of, the plan, and require the trustees to implement written contribution collection procedures that are reasonable, diligent, and systematic;

• provide that each employer in the plan retains fiduciary responsibility for the selection and monitoring, in accordance with ERISA fiduciary requirements, of the person designated as the pooled plan provider and any other person who is designated as a named fiduciary of the plan, and the investment and management of the portion of the plan's assets attributable to the employees of that employer (or beneficiaries of such employees) in the plan to the extent not delegated to another fiduciary by the pooled plan provider and subject to the ERISA rules relating to self-directed investments;

• provide that employers in the plan, and participants and beneficiaries, are not subject to unreasonable restrictions, fees, or penalties with regard to ceasing participation, receipt of distributions, or otherwise transferring assets of the plan in accordance with applicable rules for plan mergers and transfers;

• require the pooled plan provider to provide to employers in the plan any disclosures or other information that the Secretary of Labor may require, including any disclosures or other information to facilitate the selection or monitoring of the pooled plan provider by employers in the plan;

• require each employer in the plan to take any actions that the Secretary of Labor or pooled plan provider determines are necessary to administer the plan or to allow for the plan to meet the ERISA and Internal Revenue Code (Code) requirements applicable to the plan, including providing any disclosures or other information that the Secretary of Labor may require or which the pooled plan provider otherwise determines are necessary to administer the plan or to allow the plan to meet such ERISA and Code requirements; and

• provide that any disclosure or other information required to be provided to participating employers may be provided in electronic form and will be designed to ensure only reasonable costs are imposed on pooled plan providers and employers in the plan.

The fidelity bonding requirements in ERISA section 412 apply to fiduciaries and other persons handling the assets of a pooled employer plan but the maximum bond amount for each such plan official is $1,000,000 as compared to the $500,000 maximum that applies in the case of other ERISA-covered plans that do not hold employer securities.[5]

A ''pooled plan provider'' with respect to a pooled employer plan is defined in ERISA section 3(44) to mean a person that meets the following requirements:

• Is designated by the terms of the plan as a named fiduciary under ERISA, as the plan administrator, and as the person responsible to perform all administrative duties (including conducting proper testing with respect to the plan and the employees of each employer in the plan) that are reasonably necessary to ensure that the plan meets the Code requirements for tax-favored treatment and the requirements of ERISA and to ensure that each employer in the plan takes actions as the Secretary or the pooled plan provider determines necessary for the plan to meet Code and ERISA requirements, including providing to the pooled plan provider any disclosures or other information that the Secretary may require or that the pooled plan provider otherwise determines are necessary to administer the plan or to allow the plan to meet Code and ERISA requirements;

• acknowledges in writing its status as a named fiduciary under ERISA and as the plan administrator;

• is responsible for ensuring that all persons who handle plan assets or are plan fiduciaries are bonded in accordance with ERISA requirements; and

• registers as a pooled plan provider.

The SECURE Act specifies that the Secretary may perform audits, examinations, and investigations of pooled plan providers as may be necessary to enforce and carry out the purposes of the provision. The SECURE Act also directs the Department to issue such guidance as it determines appropriate to carry out the pooled employer plan and pooled plan provider provisions, including guidance (1) to identify the administrative duties and other actions required to be performed by a pooled plan provider, and (2) that provides, in appropriate cases involving a noncompliant employer, for transfer of plan assets attributable to employees of the noncompliant employer (or beneficiaries of such employees) to a plan maintained only by that employer (or its successor), to a tax-favored retirement plan for each individual whose account is transferred, or to any other arrangement that the Department determines is appropriate, and for the noncompliant employer (and not the plan with respect to which the failure occurred or any other employer in the plan) to be liable for any plan liabilities attributable to employees of the noncompliant employer (or beneficiaries of such employees), except to the extent provided in the guidance. An employer or pooled plan provider is not treated as failing to meet a requirement of guidance issued by the Secretary if, before the issuance of such guidance, the employer or pooled plan provider complies in good faith with a reasonable interpretation of the provisions to which the guidance relates.

The SECURE Act also provides that the Form 5500 annual return/report of employee benefit plan (Form 5500) filing for a multiple employer plan subject to section 210 of ERISA, including a pooled employer plan, must include a list of the employers in the plan, a good faith estimate of the percentage of total contributions made by such employers during the plan year, the aggregate account balances attributable to each employer in the plan (determined as the sum of the account balances of the employees of each employer and the beneficiaries of such employees) and, with respect to a pooled employer plan in particular, the identifying information for the person designated under the terms of the plan as the pooled plan provider. In addition, the provision authorizes the Department to prescribe simplified reporting for pooled employer plans that cover fewer than 1,000 participants, but only if no single employer in the plan has 100 or more participants covered by the plan.

The SECURE Act does not limit the class of persons who can act as pooled plan providers, but it is expected that

[5] The SECURE Act requires that pooled plan providers must ensure that all plan fiduciaries and other persons who handle plan assets are bonded in accordance with section 412 of ERISA. In the Department's view, the SECURE Act confirms that application of ERISA section 412 requirements to pooled employer plans, except establishing $1,000,000 as the maximum bond amount compared to $500,000 for plans that do not hold employer securities, and makes clear that the pooled plan provider is subject to the provisions of ERISA section 412(b), which provides that ''it shall be unlawful for any plan official of such plan or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any plan official, with respect to whom the requirements of subsection (a) [of ERISA section 412] have not been met.'' Thus, in the Department's view, the normal section 412 rules for ERISA plans govern the bonding requirements for pooled employer plans. *See* 29 CFR 2550.412–1, 29 CFR part 2580; *see also* Field Assistance Bulletin 2008–04 (providing a general description of statutory and regulatory requirements for bonding). For example, the Department does not read the SECURE Act as broadening the section 412 bonding rules to apply to persons who handle plan assets regardless of whether they handled plan funds or other property within the meaning of section 412. Similarly, the existing statutory and regulatory exemptions for certain banks, insurance companies, and registered broker-dealers continue to apply.

financial services companies (such as insurance companies, banks, trust companies, consulting firms, record keepers, and third-party administrators) will be the primary sponsors of pooled employer plans. As noted above, however, section 3(44) does require as a condition of being a pooled plan provider that the person ''registers as a pooled plan provider with the Secretary, and provides to the Secretary such other information the Department may require, before operations as a pooled plan provider.'' [6]

In the Department's view, the statutory purpose of the registration requirement is to provide the Department with sufficient information regarding persons acting as pooled plan providers to engage in effective monitoring and oversight of this new type of ERISA retirement plan. Although the Department does not have specific details as to how pooled employer plans authorized under the SECURE Act will be structured or operated, the Department has assumed that they may be similar to other currently operating multiple employer plans. Additionally, there may be challenges associated with these new types of multiple employer plans that the Department, the Treasury Department, or IRS, as the federal agencies charged with oversight of private-sector pension plans, may need to address. The SECURE Act expressly provides that participating employers will retain certain residual fiduciary responsibilities, including for the selection and oversight of the pooled plan provider and the plan's other named fiduciaries. This raises concerns that the potential for inadequate employer oversight of the activities of a pooled employer plan and its plan fiduciaries and other service providers may be greater than for other plans sponsored by an employer because the nature of the plan involves participating employers passing along more responsibility to the pooled plan provider than they do in other plan arrangements.

The registration process and requirements must enable the Department to identify pooled plan providers when they begin operating and effectively oversee their actions and the pooled employer plans they operate. While pooled plan providers will be required to file Forms 5500 for the pooled employer plans they operate, Forms 5500 generally are not filed until seven to nine-and-a-half months after the end of the plan year.[7] In the absence of appropriate detail in the registration statement, a pooled plan provider could begin operating multiple plans with hundreds or thousands of participants and millions of dollars without the agencies having any information about the pooled employer plans for almost two years.

In determining how best to implement the statutory registration requirement, the Department considered a number of alternatives with respect to any registration statement requirement including whether it must be filed when the provider begins operations in anticipation of operating one or more pooled employer plans, when it begins operating each individual pooled employer plan, or both. The Department also does not believe that the SECURE Act provisions preclude or were intended to preclude the Department from imposing reasonable ongoing reporting requirements to enable the Department to effectively oversee pooled plan providers and the pooled employer plans they operate. Therefore, as discussed in more detail below, relying on the language in the SECURE Act requiring a registration statement as well as on its broad authority under section 505 of ERISA to prescribe regulations,[8] including forms, to enable the Department to carry out its statutory oversight mission, the Department has chosen the structure set out in the proposal.

The proposal would require an initial registration filing and supplemental filings to report changes in the information in the initial filing, information about each specific pooled employer plan before initiation of operations, and information on specified reportable events, time-sensitive knowledge of which are important for the Department, the Treasury Department, and the IRS to carry out oversight and for participating employers to be able to exercise their fiduciary duties of selection and monitoring. The proposal would require a final filing once the last pooled employer plan has been terminated and ceased operations.

The Department believes that the initial registration, supplemental filing, and final filing requirements, when combined with the Form 5500 annual reporting requirements, will give the Department the timely access to pooled plan provider information needed to fulfill the monitoring and oversight tasks the SECURE Act placed on the agencies and would be less burdensome and less costly for pooled plan providers and pooled employer plans than some alternatives that were considered. The Department is also proposing to establish a new EBSA form—EBSA Form PR (Pooled Plan Provider Registration) (Form PR)—as the required filing format for pooled plan provider registrations as a way to facilitate compliance with the regulatory registration requirements. Filing the proposed Form PR is intended to satisfy the respective requirements under Title I of ERISA and the Code to register with both the Department and the Treasury Department.

This proposed rule is expected to be an Executive Order (E.O.) 13771 deregulatory action. Details on the estimated effects of this proposed rule can be found in the economic analysis.

II. Registration Requirements for Pooled Plan Providers

Specifically, as described above, the SECURE Act expressly provides a requirement to register as a pooled plan provider and a separate authorization for the Department to require reporting of other information. The SECURE Act did not include specific content requirements for the pooled plan provider registration. The Department is proposing that the first part of the process be an initial ''registration'' filing of basic identifying information about the pooled plan provider and some information, for example, about its structure, affiliated service providers, marketing activities, and pending legal or regulatory proceedings. The second part is a supplemental filing requirement intended to provide the agencies, participating employers and employees, and the public information about reportable events, which would include any change in the information filed as part of the initial registration and also significant financial and

[6] ERISA section 3(44)(a)(ii).

[7] Title I and Title IV of ERISA and the Code establish annual reporting requirements for employee benefit plans. DOL, the Treasury Department (specifically the IRS), and the Pension Benefit Guaranty Corporation jointly developed the Form 5500 so employee benefit plans could use one form to satisfy annual reporting requirements under ERISA and the Code. The Form 5500 is part of ERISA's overall reporting and disclosure framework, helping to assure that employee benefit plans are operated and managed in accordance with certain prescribed standards and that participants and beneficiaries, as well as regulators, are provided or have access to sufficient information to protect the rights and benefits of plan participants and beneficiaries.

[8] Section 505 of ERISA provides generally that the Secretary may prescribe such regulations the Secretary ''finds necessary or appropriate to carry out the provisions of this subchapter. Among other things, such regulations may define accounting, technical and trade terms used in such provisions; may prescribe forms; and may provide for the keeping of books and records, and for the inspection of such books and records (subject to section 1134(a) and (b) of this title).'' 29 U.S.C. 1135.

operational events related to the pooled plan provider and the pooled employer plans it sponsors.

A. Initial Registration

For purposes of the initial registration, the Department proposes to define ''beginning operations as a pooled plan provider'' to mean publicly marketing pooled plan provider services or publicly offering a pooled employer plan. In the Department's view, an important purpose of the requirement to register before beginning operations as a pooled plan provider is to provide the Department, the Treasury Department, the IRS, prospective employer customers, and the public with notice and relevant information about the pooled plan provider. Accordingly, the initiation of public marketing services as a pooled plan provider or publicly offering one or more pooled employer plans are important registration triggers. The Department does not intend to require registration as a result of preliminary business activities, such as establishing the business organization, creating a business plan, obtaining necessary licenses or entering into contracts with subcontractors or partners, obtaining an federal employer identification number, or actions and communications designed to evaluate market demand in advance of publicly marketing pooled plan provider services or publicly offering one or more pooled employer plans.

As noted above, the SECURE Act left it to the agencies' discretion to establish specific content requirements for the pooled plan provider registration. In developing this proposal, the Department focused on information needed by the agencies to identify, contact, and engage in timely oversight of pooled plan providers, as well as on the information that the Department could post on its website that would provide employers considering participating in a pooled employer plan, participating employees, covered employees, and other interested stakeholders the ability to identify, contact, and do some due diligence on pooled plan providers. The Department also considered the content requirements of other registration requirements under federal and state securities laws for investment advisers and broker-dealers. For example, among other information, registrations require disclosures of identifying and contact information, background information about the registrant's business, information about relevant management policies, names of executives and general partners, relevant legal proceedings and previous violations, and relevant negative information, such as legal problems or other business events or trouble that would be of consequence to users of the registration information. The Department also focused on minimizing the administrative burden and expense involved for pooled plan providers and the pooled employer plans they operate.

Based on those considerations, the Department is proposing that a prospective pooled plan provider would need to file the following information 30 to 90 days before beginning operations as a pooled plan provider:

1. Legal Business Name and any Trade Name (Doing Business As).

2. Federal Employer Identification Number (EIN). An EIN is a nine-digit employer identification number (for example, 00–1234567) that has been assigned by the IRS. Entities that do not have an EIN may apply for one on Form SS–4, Application for Employer Identification Number. The Form SS–4 is available by calling 1–800–829–4933 or going to the IRS website at *https://www.irs.gov/pub/irs-pdf/fss4.pdf.* EIN data is important for accurately identifying registrants and cross-referencing information reported about the registrant on other filings, such as the Form 5500 filed by the pooled employer plans operated by the registrant.

3. Business Telephone. We expect that pooled plan providers, like many or most existing 401(k) providers, will operate a call center designed to handle inquiries from employers interested in or already participating in a pooled employer plan as well as participants and beneficiaries covered by plans operated by the registrant. The separate requirement to provide contact information for the registrant's principal compliance officer gives the Department and others with compliance concerns a means of contacting a responsible person at the registrant. The business telephone number requirement is focused mainly on including in the public Form PR data that the Department will post on its website a way for interested/participating employers and covered employees to contact the pooled plan provider for information. As such, we are soliciting comments on whether this data element should allow a call center number to be reported as the business telephone number.

4. Business Mailing Address.

5. Address of any public website or websites of the pooled plan provider or any affiliates to be used to market any such person(s) as a pooled plan provider to the public or to provide public information on the pooled employer plan operated by the pooled plan provider. The Department believes this information will be useful in the Department's oversight of pooled plan providers and will also assist employers performing due diligence in selecting and monitoring pooled employer plans. The Department also expects that most pooled plan providers will have such websites, and believes that having information on such websites provides an alternative to requiring more information to be submitted as part of the registration process.

6. The name, mailing address, telephone number, and email address for the primary compliance officer of the pooled plan provider. The Department believes it is important that it, as well as participating employers and covered employees, have an effective means of communicating with a responsible person at the pooled plan provider regarding compliance questions or concerns. The Department is proposing that the registration include an email address for the compliance officer, but solicits comments on whether alternative or additional means of contacting the compliance offer should be included in the registration.

7. The agent for service of legal process for the pooled plan provider, and the address at which process may be served on such agent, and in addition, a statement that service of legal process may be made upon the pooled plan provider. The proposal would allow either a person or a process service company to be identified as the agent for service of legal process.

8. The approximate date when pooled plan operations are expected to commence. The SECURE Act requires that the registration must be filed before the pooled plan provider begins operations. Accordingly, this data element is important to enable the Department to ensure compliance with the SECURE Act requirement. As noted elsewhere, the Department is proposing that the registration be filed not more than 90 or less than 30 days before the pooled plan provider begins operations.

9. A description of administrative and investment services that will be offered or provided by the pooled plan provider, including identification of any affiliates expected to have a role in the provision of those administrative and investment services, and a description of the roles of such affiliates. For this purpose, the term ''affiliates'' includes all persons who are treated as a single employer with the person intending to be a pooled plan provider under section 414(b), (c), (m), or (o) of the Code and are expected to provide services to pooled employer plans sponsored by the

pooled plan provider, and any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and any corporation or partnership of which such person is an officer, director, or partner. Information regarding when various plan services will be provided by the pooled plan provider or any affiliate will assist the Department and prospective participating employers evaluate the pooled plan provider and whether there are potentials for conflicts of interest with respect to the operations or investments of any pooled employer plans to be operated by the provider.

10. A statement disclosing any federal or state criminal conviction related to the provisions of services to, operation of, or investments of, any employee benefit plan against the pooled plan provider, or any officer, director, or employee of a pooled plan provider, if the conviction, or related term of imprisonment served, is within ten years of the date of the registration. In the Department's view, this data element focuses on relevant legal proceedings, previous violations, and relevant negative information that will be useful in the Department's oversight of pooled plan providers. For example, under ERISA section 411, the Department is responsible for ensuring disqualified parties do not serve in positions or capacities prohibited under the statute. Although this question is intentionally presented without all the technical provisions and specifications in section 411 of ERISA, that statutory provision prohibits individuals convicted of disqualifying crimes from serving in plan-related capacities during or for a period of 13 years after such conviction or the end of imprisonment, whichever is later, subject to some provisions allowing that period to be shortened.[9] This data would also assist employers performing due diligence in selecting and monitoring pooled employer plans. The Department solicits comments on whether civil judgments should be included here, and if, so whether the requirement with respect to civil judgments should be further limited to just certain types of civil judgments, *e.g.,* those involving claims of fraud or dishonesty with fraud or dishonesty defined similarly to those terms in the fidelity bonding provisions in ERISA section 412 and the Department's implementing regulations.

11. A statement disclosing any ongoing criminal, civil, or administrative proceedings related to the provisions of services to, operation of, or investments of any employee benefit plan, in any court or administrative tribunal by the federal or state government or other regulatory authority against the pooled plan provider or any officer, director, or employee of the pooled plan provider. As with the information on criminal convictions, this data element focuses on relevant legal proceedings, previous violations, and relevant negative information that will be useful in the Department's oversight of pooled plan providers and will also assist employers performing due diligence in selecting and monitoring pooled employer plans.

B. Reportable Event Supplemental Filings

Before the pooled plan provider initiates operations of a pooled employer plan, the proposal would require the pooled plan provider to submit a supplemental filing with the name, trustee identification information, and EIN for the plan. The timing of this requirement arises from Code section 413(e)(3), which provides that the requirements to be a pooled plan provider (including the requirement to register with the Secretary of the Treasury before beginning operations as a pooled plan provider) must be satisfied ''with respect to any plan.''

The proposal would also require additional filings for (i) any changes in the previously reported registration information and (ii) specified events affecting either the pooled plan provider or a plan it sponsors that may signal financial problems or other circumstances that could potentially put the pensions of covered employees at risk.[10] These supplemental filings would provide important information to the Department, the Treasury Department, and the IRS to help them protect plan participants and beneficiaries and conduct more effective monitoring and oversight of pooled employer plans and pooled plan providers. Without this kind of timely information, the agencies would typically not learn of risks to a pooled employer plan until the plan files a Form 5500, possibly many months after the event and when opportunities for protecting plan participants from financial injury have been missed. Reporting changes in the previously filed registration information also will help the Department ensure that the information regarding pooled plan providers posted on its website and available to the public is up to date. Otherwise the Department, employers, and the public would have to rely on outdated information until a Form 5500 was filed for the plan and then would need to compare the registration information with the subsequently filed information about pooled plan providers in Forms 5500 submitted by the pooled plan provider on behalf of the pooled employer plans the providers operate and have to rely on outside sources to determine which information is correct.

Therefore, pooled plan providers would need to disclose certain changes in a supplemental filing within 30 days of the occurrence of the change. These changes are:

1. Any change in the registration information previously reported by the pooled plan provider. In the Department's view, it is important that the registration information it has, and that it posts on its website, be accurate and up to date. The Department intends that the filing system for the pooled plan provider registrations will enable registrants submitting a supplemental filing to complete the basic identifying information regarding the registrant and update only those parts of the registration with a change in the required information.

2. Any one of the following changes in circumstances of the pooled plan provider:

(i) Significant change in the corporate or business structure of the pooled plan provider, *e.g.,* merger, acquisition. As noted above, the Department considered other registration regimes in developing this proposal, and some included data collections regarding business events or trouble that would be of consequence to users of the registration information. In the Department's view, a significant change in the pooled plan provider's corporate structure could have consequences that affect the pooled employer plans as well as participating employers and covered employees and could also give rise to possible conflicts of interest that would not have existed in the absence of the transaction.

(ii) Initiation of bankruptcy, receivership, or other insolvency proceeding for the pooled plan provider or an affiliate, or ceasing all operations as a pooled plan provider. It is important for both participating employers and the agencies charged with oversight of pooled plan providers and pooled employer plans to have information about insolvency proceedings as soon as is reasonably practicable to make sure that the

[9] *See also Beck* v. *Levering,* 947 F.2d 639 (2d Cir. 1991) (in a civil action, permitting lifetime injunction against an individual from providing services to ERISA plans).

[10] If only correcting a mistake in a previous filing, the person should indicate that on the form by checking the box for an amended filing instead. See discussion in Section II.C.

interests of participants and beneficiaries are protected. The Department already has a REACT project whose aim is to respond in an expedited manner to protect the rights and benefits of plan participants when the plan sponsor faces severe financial hardship or bankruptcy and the assets of the employee benefit plan are in jeopardy. Under REACT, when a company has declared bankruptcy, the Department's goal is to take immediate action to (1) ascertain whether there are plan contributions which have not been paid to the plans' trust, (2) advise all affected plans of the bankruptcy filing, and (3) provide assistance in filing proofs of claim to protect the plans, the participants, and the beneficiaries. EBSA also attempts to identify the assets of the responsible fiduciaries and evaluate whether a lawsuit should be filed against those fiduciaries to ensure that the plans are made whole and the benefits secured. The Department expects that it will either expand the REACT program or establish a similar program specifically designed for pooled plan providers and pooled employer plans, and this supplemental reportable event information would be important.

(iii) Receiving written notice of the initiation of any administrative or enforcement action in any court or administrative tribunal by any federal or state governmental agency or other regulatory authority against the pooled plan provider or any officer, director, or employee of the pooled plan provider, related to the provision of services to, operation of, or investments of any pooled employer plan. Timely knowledge of such actions will help the agencies fulfill their oversight functions and also assist prospective and existing participating employers properly carry out their duties under the SECURE Act provisions with respect to selection and monitoring of pooled employer plans. For purposes of the registration, employees of the pooled plan provider would include employees of the pooled employer plan, but only those who handle assets of the plan within the meaning of section 412 of ERISA or who are responsible for the operations or investments.

(iv) Receiving written notice of a finding of fraud or dishonesty by federal or state court or a federal or state governmental agency related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan against the pooled plan provider or any officer, director, or employee of the pooled plan provider. As with information regarding actions by governmental agencies or other regulatory authorities against the provider, information about court or governmental agency findings of fraud or dishonesty in connection with the provision of services to, operation of, or investments of any employee benefit plan is important for agency oversight and for participating employers with respect to their duties under the SECURE Act provisions regarding selection and monitoring of the pooled employer plans.

(v) Receiving written notice of the filing of any federal or state criminal charges related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan against the pooled plan provider or any officer, director, or employee of the pooled plan provider Such actions, too, are relevant to the selection and monitoring obligations of participating employers, and while ERISA section 411 bars serving as an ERISA fiduciary following a wide range of crimes, this information is limited to those criminal charges related to the provision of services to, operation of, or investments of any pooled employer or other employee benefit plan.

C. Amendment and Correction of Registration Information

The Department intends that the filing system for registrations, similar to that for the Form 5500, will allow pooled plan providers the ability to file corrections and amendments of their registration and reportable event filings. The Department does not believe that it would be appropriate to read the SECURE Act in a way that would result in inadvertent or good faith errors in registrations resulting in a failure to register and a consequent nullification of the person's status as a person authorized to act as a pooled plan provider. Thus, under the proposal, inadvertent or good faith errors and omissions in a filing's content generally would not be treated as a failure to register, provided that a corrected or amended filing is submitted within a reasonable period of the discovery of the error or omission. If only correcting information previously reported, such as if an incorrect name was entered for an affiliate of the pooled plan provider, a person would indicate on the form that the filing is an amended filing, not a supplemental filing.

Further, the Department expects at a later date to propose new questions on the Form 5500 that would ask whether a pooled plan provider filed its registration statement with the Secretary, including any required updates, and to report the electronic confirmation number provided to the pooled plan provider at the time that the registration was received. These would be similar to the questions currently on the Form 5500 that require reporting by multiple employer group health plans about their compliance with registration and reporting requirements on the Form M–1 (Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)). The questions would provide the Department, the Treasury Department, the IRS, participating employers, and other stakeholders with information that would allow them to connect the Form PR registration with the Form 5500 for all pooled employer plans operated by the registrant.

D. Final Filing

As proposed, if a pooled plan provider has ceased operating all pooled employer plans and has filed a supplemental reportable event filing to indicate that the last pooled employer plan for which it served as the pooled plan provider has been terminated and ceased operating, the provider would be required to file a final registration filing. For this purpose, a plan would be treated as terminated and having ceased operations when a resolution has been adopted terminating the plan, all assets under the plan (including insurance/annuity contracts) have been properly distributed to the participants and beneficiaries or legally transferred to the control of another plan, and when a final Form 5500 has been filed for the plan. The final Form PR filing would be due within 30 days of the filing of the last final Form 5500 for the last pooled employer plan the provider operates. A single combined filing may be used both to report that the last pooled employer plan operated by the provider has been terminated and ceased operating and to serve as the final Form PR filing by the pooled plan provider. The final filing is intended to assist the Department's maintenance of an accurate database of persons serving as pooled plan providers and provision of accurate public information about pooled plan providers to employers, participants, beneficiaries, and other interested persons.

E. Electronic Filing

This proposal also includes a provision to require electronic filing of all pooled plan provider registrations with the Department. The Department believes that regular mail is not the most efficient or cost-effective way to file and process these notices and statements. Because the internet is widely

accessible to persons who file these notices and statements, the Department expects that persons interested in being pooled plan providers will find electronic filing easier and more cost-effective than paper filing. The submission process would also assist pooled plan providers by ensuring that all of the required information would be included in the registration before the electronic filing could be completed through the internet site. In addition, as previously mentioned, the process would provide an electronic registration confirmation receipt to the pooled plan provider. Electronic filing should also facilitate the disclosure of the information to participating employers, covered participants and beneficiaries, and other interested members of the public. Once a registration statement is filed, the data would be posted on the Department's website and be available to the public. Thus, the Department believes that filers and data users all stand to benefit from electronic filing in ways that are consistent with the goals of the E-Government Act of 2002.[11]

The Department plans to use the same system and registration process for filing the pooled plan provider registration that plan administrators currently use, and that pooled plan providers will use, to file the Form 5500 for employee benefit plans, including pooled employer plans.

Under ERISA Section 505, in addition to having the authority to prescribe such regulations the Department determines may be necessary or appropriate to carry out the provisions of Title I of ERISA, the Department has the authority to prescribe forms. Pursuant to that authority, the Department is proposing a new EBSA form—Form PR. The proposed form and the accompanying instructions would be the required filing format for pooled plan provider registrations and would facilitate the regulatory registration requirements proposed in this document. The proposed form and instructions are attached as Appendix A.

The pooled plan provider registration form and instructions, like other Department forms, will undergo OMB review under the Paperwork Reduction Act of 1995 (PRA), and be assigned an OMB Control number prior to being published for use. The volume of pooled plan provider registration filings is unknown but as discussed in detail in the regulatory impact analysis, the Department assumes for purposes of this proposal that fewer than 5,000 persons will register initially as pooled plan providers.

[11] Public Law 107–347, sec. 2 (Dec. 17, 2002).

F. Coordination With the Treasury Department and the Internal Revenue Service

As noted above, the SECURE Act requires pooled plan providers to register with the Department as well as with the Treasury Department and the IRS. The Department coordinated with those agencies to develop this proposal. They have advised that filing the registration statement with the Department, including the supplemental statement identifying a pooled employer plan for which the pooled plan provider is acting in that capacity prior to the initiation of operations of each such plan, will also satisfy the Code requirement to register as a pooled plan provider with respect to that plan. The Department will continue to consult with the Treasury Department and the IRS in connection with their development of the pooled plan provider registration requirements and filing process.

G. Request for Public Comments

The Department invites comments from interested persons on all facets of the proposed rule. Commenters are free to express their views not only on the specific provisions of the proposal as set forth in this document, but on other issues germane to the subject matter of the proposal. The Department also requests comment on the following questions:

1. Is the definition of ''beginning operations as a pooled plan provider,'' which determines whether initial registration is required, appropriate in scope? Should the definition exclude marketing and solicitation efforts so that the initial registration is tied solely to beginning operation of a pooled employer plan? Should the deadlines for filing an initial registration be nearer to the date of actual public marketing activities if the pooled plan provider intends only to engage in marketing and solicitation efforts, and will not enroll any employer or employee in a pooled employer plan until at least 30 days after initial registration?

2. Are there any additional classes of information or types of reportable events that should be included in the registration requirement?

3. Is there a more efficient or effective way of collecting reportable event information that would reduce administrative burdens and expenses?

4. Could the burden associated with the collection of reportable event information be reduced by better aligning the collection with other disclosure requirements for pooled plan providers?

5. Are there other federal or state filings for insurance companies, banks, and other financial institutions, such as the Form ADV (or similar Securities and Exchange Commission (SEC) or State registration forms) for financial advisors, on which the Department could rely as an alternative source of information about pooled plan providers and the plans they operate?

6. Are there particular forms or numbers (*e.g.,* Form ADV, SEC registration number, Central Registration Depository number, or National Association of Insurance Commissioners Code) that could be referenced in the registration that would, with nominal burden, help employers find more information about pooled plan providers and compare providers across platforms of available information?

7. Should the disclosure of ''ongoing criminal, civil, or administrative proceedings related to the provisions of services to, operation of, or investments of any employee benefit plan by the pooled plan provider'' be expanded? For example, would disclosing settlements of fiduciary liability claims against pooled plan providers with the Department or PBGC, including settlements under ERISA § 206(d)(4)(A)(iii), assist employers performing due diligence in selecting and monitoring pooled employer plans?

Comments should be submitted in accordance with the instructions at the beginning of this document. The Department believes that 30 days will afford interested persons an adequate amount of time to analyze the proposed rule and submit comments.

Regulatory Impact Analysis

Summary—The SECURE Act was enacted to expand retirement savings. Section 101 of the SECURE Act amends section 3(2) of ERISA to eliminate the commonality of interest requirement for establishing certain individual account plans, or ''pooled employer plans,'' that meet specific requirements. Among these requirements, such plans must designate a ''pooled plan provider'' to serve as a named fiduciary and as the plan administrator. Further, section 101 of the SECURE Act requires pooled plan providers to register with the Department and the Treasury Department before beginning operations. The statute expressly provides a separate authorization for the Department to require additional information.

The Department has examined the effects of this rule as required by

Executive Order 12866,[12] Executive Order 13563,[13] the Congressional Review Act,[14] Executive Order 13771,[15] the Paperwork Reduction Act of 1995,[16] the Regulatory Flexibility Act,[17] section 202 of the Unfunded Mandates Reform Act of 1995,[18] and Executive Order 13132.[19]

1.1. Executive Orders

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, 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 costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, ''significant'' regulatory actions are subject to review by the Office of Management and Budget (OMB).[20] Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to produce a rule that does any of the following:

(1) Has an annual effect on the economy of $100 million or more in any one year, or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant'');

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

(3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A full regulatory impact analysis must be prepared for major rules with economically significant effects (for example, $100 million or more in any one year), and OMB reviews ''significant'' regulatory actions. OMB determined that this rule is not economically significant within the meaning of section 3(f)(1) of the Executive Order but is significant under 3(f)(4). Therefore, the Department has provided an assessment of the potential costs, benefits, and transfers associated with this proposed rule. In accordance with the provisions of Executive Order 12866, OMB has reviewed this proposed rule.

1.2. Introduction and Need for Regulation

As added by the SECURE Act, section 3(44) of ERISA requires a person to register as a pooled plan provider with the Secretary, and provide other information the Secretary may require, before operating a pooled employer plan. These proposed rules respond to the direction given to the Secretary in the SECURE Act and provide the requirements for registering with the Secretary.

The required information allows the Department to identify pooled plan providers so that it may monitor their actions. While the Form 5500, which pooled plan providers will also be required to file, collects such information, Form 5500 reporting is generally unavailable for more than 18 months after a plan starts. The SECURE Act's registration requirements give the Department more immediate access to pooled plan provider information, allowing it to observe how this new market develops and assess the need for further guidance.

1.3. Affected Entities

The goal of the SECURE Act is to increase retirement savings, in particular by expanding the options for small employers to participate in multiple employer plans. The Department expects this expansion to produce administrative savings and new investment opportunities for many small employers. Section 101 of the SECURE Act allows commercial service providers to serve as the plan administrator and a named fiduciary of defined contribution pension plans of more than one unrelated employer. Expanding the ways in which service providers and employers may craft and join multiple employer plans should reduce costs and administrative burdens for participating employers. Rather than sponsoring individual plans with separate Form 5500 filing and audit requirements, a single Form 5500 filing by the pooled plan provider would satisfy the annual reporting requirement for all the participating employers. Pooled plan providers would be both a named fiduciary and plan administrator for the pooled employer plan, and they would be required to register with the Department before operating any such plans.

The Department has identified certain existing entities that it believes would be most likely to serve as pooled plan providers. For example, recordkeepers that currently administer retirement plans may be well positioned to serve as pooled plan providers and some recordkeepers have affiliated entities that may seek to provide investment alternatives and services to the plan. Similarly, many Professional Employer Organizations (PEOs) have served as plan administrators and would likely have little trouble taking on the role of pooled plan provider. Further, insurance companies have expressed interest in serving as pooled plan providers and some have prior experience providing similar services. Chambers of Commerce have connections with employers, but many are small with few full-time staff. Also, few Chambers of Commerce have sponsored MEWAs. While retirement plan advisors such as broker-dealers and registered investment advisers are also plausible candidates, the Department believes that many would be reluctant to assume the named fiduciary and plan administrator roles. Entities such as registered investment advisors may likely be more comfortable serving as section 3(38) investment managers for the pooled plan providers.

Given these assumptions, the Department currently estimates that roughly 3,200 unique entities will initially register to serve as pooled plan providers. Recordkeepers and plan administrators of existing defined contribution plans are most likely to enter the market, followed by PEOs, direct annuity writers, chambers of commerce, and plan advisors.

[12] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[13] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 18, 2011).

[14] 5 U.S.C. 804(2) (1996).

[15] Reducing Regulation and Controlling Regulatory Costs, 82 FR 9339 (Jan. 30, 2017).

[16] 44 U.S.C. 3506(c)(2)(A) (1995).

[17] 5 U.S.C. 601 *et seq.* (1980).

[18] 2 U.S.C. 1501 *et seq.* (1995).

[19] Federalism, 64 FR 153 (Aug. 4, 1999).

[20] Regulatory Planning and Review, *supra* note 2.

ESTIMATED POOLED PLAN PROVIDER

	Universe	Expected share %	Estimated number
Unique Record Keepers and Plan Administrators for existing DC Plans [a]	2,378	50	1,189
Professional Employer Organization [b]	907	25	227
Chambers of Commerce [c]	4,000	5	200
Large Broker-Dealers [d]	173	5	9
Registered Investment Adviser Firms [d]	30,246	5	1,512
Direct Annuity Writers (Insurance Companies) [e]	386	25	97
Total	38,090	8	3,233

[a] 2017 Form 5500 Schedule C Data.
[b] National Association of Professional Employers, *https://www.napeo.org/what-is-a-peo/about-the-peo-industry/industry-statistics*.
[c] Association of Chamber of Commerce Executives reports that there are 4,000 Chambers with at least 1 full-time staff person.
[d] 2019 FINRA Industry Snapshot. FINRA reported 3,607 FINRA registered firms in 2018. There were 173 with 500 or more registered representatives.
[e] National Association of Insurance Commissioners.

1.4. Benefits

The SECURE Act requirement that pooled plan providers first register with the Department before beginning operations alerts regulators to the presence and intent of new entities. Registering allows potential pooled plan providers access to this newly created market. These registrations would require contact information, links to any websites containing marketing information for any pooled employer plan(s) established by the provider, the date operations are expected to commence, and a description of the provider's services and affiliates. These registrations will be publicly available and will provide a complete list of registered pooled plan providers. In addition, the supplemental filing requirement ensures that providers update their initial filing to report material changes relevant to the pooled plan provider's and participating employers' fiduciary duties (including, for example, inception of bankruptcy and litigation, criminal, or regulatory enforcement actions against the pooled plan provider). This will help provide transparency regarding the provider's management and business practices, allowing employers to better survey the market when choosing a pooled plan provider or deciding whether to continue to rely on an existing provider and the Department and Treasury Department to carry out their statutory oversight duties.

In the Department's view, the statutory purpose of the registration requirement is to provide the Department with sufficient information regarding entities acting as pooled plan providers to engage in effective monitoring and oversight of this new type of ERISA retirement plan. As discussed above, the potential for inadequate employer oversight of the activities of a pooled employer plan and its plan fiduciaries and other service providers may be greater than for other plans sponsored by an employer because the nature of the plan involves participating employers passing along more responsibility to the pooled plan provider than they do in other plan arrangements. The proposed information collection, which has been kept limited to minimize burden, will enable the Department to fulfill its oversight responsibilities. Links to any websites containing marketing information for any pooled employer plan(s) established by the provider, the date operations are expected to commence, a description of the provider's services and affiliates, and material changes relevant to the pooled plan provider's fiduciary duties (including, for example, bankruptcy, litigation, and criminal or regulatory enforcement actions) all serve to help with monitoring and oversight.

As stated above, the SECURE Act amended ERISA to remove possible barriers to the broader use of multiple employer plans. This objective was accomplished primarily by allowing multiple unrelated employers to participate in an open MEP called a pooled employer plan that does not require commonality among participating employers or a genuine organizational relationship unrelated to participation in the plan. By allowing most of the administrative and fiduciary responsibilities of sponsoring a retirement plan to be transferred to pooled plan providers, pooled employer plans provide employers with an option to provide a workplace retirement plan to their employees with reduced burdens and costs compared to sponsoring their own separate single employer retirement plan. Consequently, more plan formation and broader availability of workplace retirement plans should occur, especially among small employers.

The Department is uncertain of the number of pooled employer plans that could be created based on the proposed rule, the number of employers that will participate in such plans, and the number of participants and beneficiaries that will be covered by them. The Department is confident, however, that some pooled employer plans will come into existence.

It is possible that each pooled plan provider that registers will offer at least one new pooled employer plan and larger pooled plan providers may offer more than one new pooled employer plan. As is the case with multiple employer plans generally, some pooled employer plans may be large or very large in terms of participating employers, others medium in size, and some may even be small, although small pooled employer plans would seem to lack the attraction and efficiency of the economies of scale that could exist for larger pooled employer plans.

The effects on coverage are somewhat uncertain because of the possibility of at least some zero-sum gain. Some new pooled employer plans will attract participating employers that currently do not offer retirement savings opportunities to their employees. The result in this situation would be a net coverage increase in this country and retirement security would be improved to some extent for the employees of these participating employers.[21] At the

[21] Workplace retirement plans often provide a more effective way for employees to save for retirement than saving in their own IRAs. Compared with saving on their own in IRAs, workplace retirement plans provide employees with: (1) Higher contribution limits, (2) generally lower investment management fees as the size of plan assets increases, (3) a well-established uniform regulatory structure with important consumer

Continued

same time, however, the Department expects that some existing retirement plans, most likely those of small single employer plan sponsors, could terminate or otherwise cease to operate in their current form and merge into pooled employer plans. A dominant influence in this direction would be the administrative cost savings and other operational efficiencies that come with economies of scale. The Department has repeatedly acknowledged the potential benefits that could inure to small employers and their employees if they join together in a multiple employer plans and similar cooperative arrangements.[22] For different reasons, though, it also is possible that some existing multiple employer plans, such as those structured under 29 CFR 2510.3–55 (Association Retirement Plans or ''ARPs''), could convert to pooled employers plans.[23] Conversions of this type might occur, for example, if an ARP were to conclude that restrictions under section 3(5) of ERISA, such as the geographic limitations imposed pursuant to 29 CFR 2510.3–55(b)(2) or the substantial employment function test for bona fide professional employer organization arrangements in 2510.3–55(c)(1), were disadvantageous or inefficient relative to the conditions for being a pooled employer plan. The total number of defined contribution plans, therefore, could decrease as a result of these mergers and conversions; however, net coverage (*i.e.,* the number of total defined contribution plan participants) could increase, because (1) participants in plans that merge or convert into pooled employer plans would continue to be covered under a retirement plan, and (2) some employers that do not currently provide their employees with retirement plan access would join pooled employer plans and their employees would count as newly-covered participants.

Pooled employer plans generally would benefit from scale advantages that small businesses do not currently enjoy, and the Department expects that such plans will pass some of the attendant savings onto participating employers and participants. Large scale may create two distinct economic advantages for pooled employer plans. First, as scale increases, marginal costs for pooled employer plans would diminish and pooled plan providers would spread fixed costs over a larger pool of member employers and employee participants, creating direct economic efficiencies. Second, asset managers commonly offer proportionately lower prices, relative to assets invested, to larger investors, under so-called tiered pricing practices resulting in decreased expense ratios based on the aggregate amount of money invested by a single pooled employer plan.

For example, larger plans tend to have lower fees overall.[24] Generally, small plans with 10 participants are paying approximately 50 basis points more than plans with 1,000 participants.[25] Small plans with 10 participants are paying about 90 basis points more than large plans with 50,000 participants. Grouping small employers together into a pooled employer plan could facilitate savings through administrative efficiencies and sometimes through price negotiation (market power). The degree of potential savings may be different for different types of administrative functions, *e.g.,* scale efficiencies can be very large with respect to asset management, and may be smaller, but still meaningful, with respect to functions such as marketing, distribution, asset management, recordkeeping, and transaction processing.

Other potential benefits of the expansion of MEPs through the creation of pooled employer plans could include: (1) Increased economic efficiency as small businesses can more easily compete with larger companies in recruiting and retaining workers due to a competitive employee benefit package, (2) enhanced portability for employees that leave employment with an employer to work for another employer participating in the same pooled employer plan, and (3) higher quality data (more accurate and complete) reported to the Department on the Forms PR and 5500. The Department requests comments regarding such potential benefits.

1.5. Costs

The costs most directly associated with this rule are those of preparing and submitting the registration statement. The PRA section of this document, below, discusses these costs in detail. The estimated cost is $688,000 in the first year and $72,400 in subsequent years.[26] The perpetual time horizon annualized cost is $106,100 in 2016 dollars, using a seven percent discount percent rate, discounted from 2016. Other indirect costs may ensue, depending on the extent of pooled employer plan formation, as well as the extent of conversions, mergers, and contractions among existing plans. The extent of these actions is unknown at this time; in other words, such additional costs are highly uncertain. With respect to any new pooled employer plan, these indirect costs would relate to pooled plan provider complying with the requirements of the SECURE Act that are not codified by this proposed regulation.

1.6. Transfers

Several potential transfers could occur as a result of this proposed rule. To the extent the formation of pooled employer plans leads employers that previously sponsored a retirement plans to terminate or freeze these plans, or leave another group plan like an ARP, and join a pooled employer plan, there may be a transfer if the pooled employer plan utilizes different service providers and asset types than the terminated plan. A similar transfer might occur in cases where employers who previously did not offer their employees a retirement plan join a pooled employer plan. Employees of these employers may have been saving for retirement previously in different ways, such as through an IRA, which would have different service providers. Service providers that specialize in providing services to pooled employer plans or are affiliated with a pooled plan provider might benefit at the expense of other providers who specialize in providing services to small plans or IRAs. Those different service providers would

protections, including fiduciary obligations, recordkeeping and disclosure requirements, legal accountability provisions, and spousal protections, (4) automatic enrollment, and (5) stronger protections from creditors. At the same time, workplace retirement plans provide employers with choice among plan features and the flexibility to tailor retirement plans that meet their business and employment needs. See 84 FR 37528.

[22] 84 FR 37508 (July 31, 2019) (Definition of ''Employer'' Under Section 3(5) of ERISA—Association Retirement Plans and Other Multiple-Employer Plans); see also 83 FR 28912 (June 21, 2018) (Definition of ''Employer'' Under Section 3(5) of ERISA—Association Health Plans).

[23] Section 101 of SECURE Act itself contemplates such conversions and provides a special rule for existing plans to elect pooled employer plan status (new section 3(43)(C)) of ERISA).

[24] 84 FR 37508, 37535.

[25] Deloitte Consulting and Investment Company Institute, *Inside the Structure of Defined Contribution/401(k) Plan Fees, 2013: A Study Assessing the Mechanics of the ''All-in'' Fee* (Aug. 2014). Deloitte Consulting LLP conducted a survey of 361 defined contribution plans for the Investment Company Institute. The study calculates an ''all in'' fee that is comparable across plans including both administrative and investment fees paid by the plan and the participant. Deloitte predicted these estimates by analyzing the survey results using a regression approach calculating basis points as a share of assets. See 84 FR 37508. 37535.

[26] The total ten-year cost is $1,215,000 with a three percent discount rate and $1,084,000 with a seven percent discount rate. The annualized ten-year cost is $142,000 using a three percent discount rate, and $154,000 using a seven percent discount rate.

experience gains or losses of income or market share.

The rule could also result in asset transfers if pooled plan providers invest in different types of assets than plans that merge or convert to pooled employer plans. For example, small plans tend to rely more on mutual funds, while larger plans have greater access to other types of investment vehicles such as bank common collective trusts and insurance company pooled separate accounts, which allow for specialization and plan specific fees. This movement of assets could see profits move from mutual funds to other types of investment managers.

Finally, the Code generally gives tax advantages to certain retirement savings over most other forms of savings.[27] Consequently, all else being equal, workers who are saving money in tax qualified retirement savings vehicles generally can enjoy higher lifetime consumption and wealth than those who does not. The magnitude of the relative advantage generally depends on the worker's tax bracket, the amount contributed to the plan, the timing of contributions and withdrawals, and the investment performance of the assets in the account. Workers that do not contribute to a qualified retirement savings vehicle due to lack of access to a workplace retirement plan do not reap this relative advantage. This rule would likely increase the number of American workers with access to tax-qualified workplace retirement plans, which would spread this financial advantage to some people who are not currently receiving it. If access to retirement plans and savings increase as a result of this rule, a transfer will occur flowing from all taxpayers to those individuals receiving tax preferences as a result of new and increased retirement savings.

As is evident from the foregoing, the exact magnitude of the potential transfers is uncertain at this stage, as is the precise identities of the transferors and transferees. Much depends on the number of pooled employer plans that eventually come into existence, the extent of plan consolidation, the number of employers that begin participating anew in pooled employer plans and the savings habits of the employees of these employers (who might have heretofore been saving through an IRA). And a major influence on each of these factors will be, among other things, the nature, extent and timing of the regulatory intervention needed to implement the SECURE Act, as well as the general state of the economy. The Department specifically solicits comments and data on the potential magnitude of these transfers and the associated costs and benefits.

1.7. Uncertainty

While the Department has identified types of service providers that it believes will be well positioned to act as pooled plan providers, it is unclear how many will choose to enter the market and whether they will do so in the first year of enactment or in later years. The Department has based its assumptions on discussions with stakeholders and articles on emerging markets. The Department invites comments on which and how many entities are likely to register as pooled plan providers.

Section 101 of the SECURE Act requires pooled plan provides to register with the Department and provide such other information as the Secretary may require before beginning operations as a pooled plan provider. The Department seeks to include information that would prove useful, while minimizing costs. The Department requests comments on whether (1) any required information does not satisfy this condition or (2) it should require other information to be included in the registration whose benefits would outweigh any administrative burden.

1.8. Alternatives

Section 101 of the SECURE Act requires pooled plan providers to register with the Secretary and provide such other information as the Secretary may require, before beginning operations as a pooled plan provider. The Department considered several alternative forms of information to be included that are discussed below.

The Department could have required fewer data elements, such as contact information only, including address and email. While slightly less burdensome than the proposed requirements, requiring fewer data elements would provide substantially less information to the Department, which would impede its ability to fulfill its critical oversight role of protecting participants and plan assets. Employers also would receive less information to survey the market when choosing a pooled plan provider or deciding whether to continue to rely on an existing provider.

The Department considered requiring pooled plan providers to file a registration for each pooled employer plan. This would have required pooled plan providers to file multiple similar filings. The Department did not choose this option, because it would have required pooled service providers to make multiple filings while providing minimal additional benefits.

The Department also considered not requiring pooled service providers to make supplemental filings. While this option would have been less burdensome than the chosen option, it would have provided less information to the Department and interested employers. Requiring pooled service providers to report updated information to the Department can provide key information the Department needs to fulfill its oversight role. Therefore, the Department determined that the benefits of requiring supplemental filings justified any additional cost that pooled plan providers would incur to furnish the updated information.

2. Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to allow the general public and federal agencies to comment on proposed and continuing collections of information in accordance with the PRA.[28] This helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Currently, the Department is soliciting comments concerning the proposed information collection request (ICR) included in the registration requirements for pooled plan providers. To obtain a copy of the ICR, contact the PRA addressee shown below or go to *http://www.RegInfo.gov.*

The Department has submitted a copy of the proposed rule to the Office of Management and Budget (OMB) in accordance with 44 U.S.C.3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that address the following:

• Evaluate whether the collection of information is necessary for the functions of the agency, including

[27] Employer contributions to qualified pension plans and, generally, employee contributions made at the election of the employee through salary reduction are not taxed until distributed to the employee, and income earned on those amounts is not taxed until distributed. The tax expenditure for ''net exclusion of pension contributions and earnings'' is computed as the income taxes forgone on current tax-excluded pension contributions and earnings less the income taxes paid on current pension distributions.

[28] 44 U.S.C. 3506(c)(2)(A) (1995).

whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the 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 electronically delivered responses).

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503 and marked ''Attention: Desk Officer for the Employee Benefits Security Administration.'' Comments can also be submitted by fax at (202) 395–5806 (this is not a toll-free number), or by email at *OIRA_submission@omb.eop.gov.* OMB requests that comments be received within 30 days of publication of the proposed rule to ensure their consideration.

PRA Addressee: Address requests for copies of the ICR to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210. The PRA Addressee may be reached by telephone at (202) 693–8410 or by fax at (202) 219–5333. (These are not toll-free numbers.) ICRs also are available at *http://www.RegInfo.gov* (*http://www.reginfo.gov/public/do/PRAMain*).

The SECURE Act requires a person to register as a pooled plan provider with the Secretary, and provide other information the Secretary may require, before beginning operations. This information collection contains the requirements to register with the Secretary under section 3(44) of the Act. The information collection will utilize the EFAST 2 electronic filing system that pooled plan providers will use to file the Form 5500 required to be filed on behalf of the pooled employer plan the provider operates. The proposed Form PR and Instructions that appear in Appendix A are included as part of the information collection request.

The Department has designed a two-part approach for this requirement. The first consists of a simple registration of contact information, links to marketing websites, and a description of services and the role of any affiliates. Pooled plan providers must electronically register with the Department at least 30 days, but not more than 90 days, before beginning operations. The information included should be collected by the pooled plan provider during its normal course of business, so collection should not require additional effort by the administrator. Therefore, the Department estimates that compiling and submitting the initial registration information will take about 45 minutes and impose no additional costs on the administrator. To limit costs, a pooled plan provider needs to file only one registration regardless of the number of pooled employer plans it operates, provided that a supplemental statement is filed identifying each pooled employer plan before the initiation of operations of the plan as a pooled employer plan. Assuming roughly 3,200 pooled plan providers, the Department estimates a burden of 2,425 hours, with an equivalent cost of $402,000, in the first year.[29]

If the pooled plan provider does not begin operating any new pooled employer plans, does not change its use of affiliates or other related parties to provide services or its contact information, or does not experience any material changes in condition set forth in the proposal, it may go for a period of years without needing to supplement its registration. The Department anticipates that this will be the case with many pooled plan providers.

The supplemental filing requirement is similar to, although more limited than, filers' obligations with respect to the Form M–1, which requires entities to submit additional filings to document material changes. Approximately seven percent of entities filing a Form M–1 in 2017 submitted an additional filing after undergoing a material change. Assuming pooled plan providers will behave in a similar manner, the Department expects roughly 230 pooled plan providers to submit supplemental filings documenting material changes annually, including in the first year.

The supplemental filing amends the original registration to include employer identification numbers (EINs) and contact information for pooled employer plans that begin operations, cease operations, or experience material changes relevant to the pooled plan provider's fiduciary duties (including, for example, bankruptcy, litigation, and criminal or regulatory enforcement actions). Accordingly, the Department estimates the supplemental filing would take 30 minutes for pooled plan providers to submit. The Department does not believe, however, that the pooled plan provider would incur any additional costs beyond the labor costs necessary to collect and submit this information. The Department estimates that there will be 3,460 filings under the second part of this requirement in the first year, imposing a burden of 1,730 hours, with an equivalent cost of $287,000.[30]

In subsequent years, the Department believes that the percentage of pooled plan providers reporting beginning or ceasing operations of pooled employer plans will roughly parallel the experience of Form M–1 filers. Approximately 14 percent of Form M–1 filers indicated they began operations in 2017, while six percent indicated they ceased operations.[31] Assuming pooled plan providers behave in a similar manner, the Department expects an additional 650 registrations related to beginning or ceasing operations annually in subsequent years.[32] These filings require an hour burden of 324 hours with an equivalent cost of nearly $54,000 in subsequent years.

The estimated total burden of this information collection is 4,155 hours, with an equivalent cost of $688,000, in the first year and 437 hours, with an equivalent cost of $72,400, in subsequent years.[33]

The Department expects a large number of pooled plan providers to file the first part of registrations in the initial year, and significantly fewer to file in subsequent years as the market stabilizes. Incidents of filing updated

[29] 3,223 pooled plan providers * 0.75 hours = 2,425 hours. 2,425 hours * $165.63 = $401,653. Labor rates are EBSA estimates, found at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf.*

[30] 3,460 pooled plan providers * 0.50 hour = 1,730 hours. 1,730 hours * $165.63 = $286,540. Labor rates are EBSA estimates, found at *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf.*

[31] Pension plans face additional burdens in terminating, and so using welfare plans termination rates as a proxy may overstate the number of incidents. The Department welcomes comments addressing this assumption.

[32] 3,233 * 0.14 = 453 pooled plan providers report pooled employer plans beginning operation, 453 pooled plan providers * 0.50 hour = 227 hours. 227 hours * $165.63 = $37,598 3,233 * 0.06 = 453 pooled plan providers report pooled employer plans ending operation, 194 pooled plan providers * 0.50 hour = 977 hours. 97 hours * $165.63 = $16,060.

[33] 873 filings * 0.5 hours = 437 hours. The 873 filings in subsequent years are 453 pooled plan providers reporting pooled employer plans beginning operations, 194 pooled plan providers reporting pooled employer plans ending operations, and 226 pooled plan providers filing other changes.

and amended registration statements are expected to increase after the first year, as pooled employer plans enter and exit the market, change service providers, and change pooled employer plan offerings.

A summary of paperwork burden estimates follows:

Type of Review: New collection.

Agency: Employee Benefits Security Administration, U.S. Department of Labor.

Title: Registration requirements to serve as a pooled plan provider to pooled employer plans.

OMB Control Number: 1210–NEW.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,660 3-year average (3,233 first year, 873 subsequent years).

Estimated Number of Annual Responses: 2,813 3-year average (6,693 first year, 873 subsequent years).

Frequency of Response: Occasionally.

Estimated Total Annual Burden Hours: 1,676 3-year average (4,155 first year, 437 subsequent years).

Estimated Total Annual Burden Cost: 0.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[34] imposes certain requirements with respect to federal rules that are (1) subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act[35] and (2) likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis of the proposed rule. The Department has determined that this proposed rule, which would require prospective pooled plan providers to register with the Department prior to beginning operations, is not likely to have a significant economic impact on a substantial number of small entities. Therefore, the Department certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Department estimates that only about eight percent of the potential market will decide to be a pooled plan provider and be subject to the rule. Each of these entities would incur an estimated cost of $124 to register and $83 to update the registration if needed. Below is justification for this determination.

3.1. Need for and Objectives of the Rule

Section 101 of the SECURE Act requires pooled plan providers to register with the Department, the Treasury Department, and the IRS. As noted above, the Treasury Department and the IRS have indicated that filing the registration statement with the Department will also satisfy the Code's registration requirement. The required information under the proposal would allow regulators to identify and monitor pooled plan providers. While some of the required information may be found in the Form 5500, which pooled plan providers will also be required to file on behalf of each participating employer plan they operate, this reporting is not available for more than 18 months after the pooled plan providers begin operating, and would not necessarily include some important information regarding the pooled plan providers themselves, such as bankruptcy filings, or the commencement of any criminal, civil, or administrative proceedings in any court or administrative tribunal by the federal or state government or other regulatory authority against the pooled plan provider related to the provisions of services to, operation of, or investments of, any employee benefit plan. Requiring pooled plan providers to register gives both the agencies and the public, including participating employers, more immediate access to the information for monitoring purposes, and enables the agencies to monitor how this new market develops and assess whether further guidance is needed.

3.2. Affected Small Entities

The Department has identified certain existing entities that it believes would be most likely to serve as pooled plan providers. For example, recordkeepers that currently administer retirement plans are well positioned to serve as pooled plan providers. Similarly, many PEOs have served as plan administrators and would likely have little trouble taking on the role of pooled plan provider. Further, many insurers have expressed interest in serving as pooled plan providers. While retirement plan advisors such as broker-dealers and registered investment advisors are also plausible candidates, the Department believes that many would be reluctant to assume the named fiduciary and plan administrator roles. Entities such as registered investment advisors may likely be more comfortable serving as section 3(38) investment managers for the pooled plan providers.

Given these assumptions, the Department estimates that roughly 3,200 unique entities will initially register to serve as pooled plan providers. Recordkeepers and plan administrators of existing defined contribution pension plans are most likely to enter the market, followed by PEOs, chambers of commerce, and plan advisors.

While the Department does not have complete information on which of these entities meet the Small Business Administration's definition of a small entity, many of these entities likely are small. The Department estimates that about half of current recordkeepers and plan administrators currently serving DC plans would register to become pooled plan providers. Other types of providers will likely comprise a smaller share of entities that register. Overall, the Department estimates that about eight percent of the universe of entities the Department has identified as well-suited to serve as pooled plan providers are likely to register. The table below includes both large and small entities. The Department cannot estimate with specificity the distribution by size of the providers that will choose to become pooled plan providers although most of the providers in these service categories meet the Small Business Administration definition of small entities, however if the percentages in the footnote are applied to the number of affected entities in the table below, about 2,600 businesses could be small businesses.[36]

ESTIMATED POOLED PLAN PROVIDER

	Universe	Expected share (%)	Estimated number
Unique Record Keepers and Plan Administrators for existing DC Plans [a]	2,378	50%	1189

[34] 5 U.S.C. 601 *et seq.* (1980).

[35] 5 U.S.C. 551 *et seq.* (1946).

[36] Some possible affected industries by NAICS code are as follows: 524292 third-party administration, more than 90 percent small business; 524113 underwriting annuities and life insurance, more than 70 percent small business, 523999 financial investment services, more than 95 percent small businesses; 523999 brokerage, financial investment services, more than 95 percent small business; 561330 professional employer organization, more than 90 percent small business.

ESTIMATED POOLED PLAN PROVIDER—Continued

	Universe	Expected share (%)	Estimated number
Professional Employer Organization [b]	907	25	227
Chambers of Commerce [c]	4,000	5	200
Large Broker-Dealers [d]	173	5	9
Registered Investment Advisor Firms [d]	30,246	5	1512
Direct Annuity Writers (Insurance Companies) [e]	386	25	97
Total	38,090	8%	3,233

[a] 2017 Form 5500 Schedule C Data.
[b] National Association of Professional Employers, *https://www.napeo.org/what-is-a-peo/about-the-peo-industry/industry-statistics*.
[c] Association of Chamber of Commerce Executives reports that there are 4,000 Chambers with at least 1 full-time staff person.
[d] FINRA Industry Snapshot. FINRA reported 3,607 FINRA registered firms in 2018. There were 173 with 500 or more registered representatives.
[e] National Association of Insurance Commissioners.

3.3. Impact of the Rule

The Department estimates that it would take the average pooled plan provider with a labor rate of $165.63 only 45 minutes to register, at an expense of $124.23, because the information necessary is readily available through the normal course of business.[37] Pooled plan providers submit the filing only when data elements change, the administrator begins or ceases operations for any pooled employer plan, or the pooled plan provider undergoes a material change. The supplemental filing will require an estimated 30 minutes to complete, at an expense of $82.82. As with the initial registration, the required information for the supplemental filing is readily available. The cost to file both a registration and a supplemental filing in a single year would be $207.16, which would be less than one percent of revenues if a business had more than $20,700 in revenues. The Department lacks complete data to determine the number of firms that do not meet this revenue threshold. Available data suggests that 15 percent of possibly affected firms have revenues less than $100,000.[38]

To further show how small a $207 burden is, note that a one-person firm consisting of an individual with a labor rate of $165.63 would need to only work 125 hours to have revenue of $20,700. That same individual working 2,000 hours, a standard work year, would produce revenue of $331,260 resulting in $207.16 being significantly less than once percent of revenue.

3.4. Duplicate, Overlapping, or Relevant Federal Rules

The proposed rule would not conflict with any relevant federal rules. Section 101 of the SECURE Act requires pooled plan providers to register both with the Department and with the Treasury Department and the IRS; the proposed Form PR would satisfy the requirements under both Title I of ERISA and the Code. The statute expressly provides a separate authorization for the Departments to require additional information.

4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 requires each federal agency to prepare a written statement assessing the effects of any federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by state, local, and tribal governments, in the aggregate, or by the private sector.[39] For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875, this proposal does not include any federal mandates that the Department expects would result in such expenditures by state, local, and tribal governments, or the private sector.[40] This rule simply requires prospective pooled plan providers to register with the Department.

5. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism, and requires that federal agencies adhere to specific criteria when formulating and implementing policies that have ''substantial direct effects'' on the states, the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government.[41] Federal agencies promulgating regulations that have federalism implications must first consult with state and local officials, then describe in the preamble to the final rule the extent of their consultation and the nature of the officials' concerns.

In the Department's view, these proposed regulations would not have federalism implications because they would not have direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibilities among various levels of government. This proposed rule simply requires private companies that intend to offer pooled employer plans to register with the Department.

The Department welcomes input from states regarding this assessment.

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Pensions.

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR part 2510 as follows:

PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F, G, AND L OF THIS CHAPTER

■ 1. The authority citation for part 2510 is revised to read as follows:

Authority: 29 U.S.C. 1002(1), 1002(2), 1002(3), 1002(5), 1002(16), 1002(21), 1002(37), 1002(38), 1002(40), 1002(42), 1002(43), 1002(44), 1031, and 1135; Secretary of Labor's Order No. 1-2011, 77 FR 1088 (Jan. 9, 2012); Sec. 2510.3–101 and 2510.3–102 also issued under sec. 102 of Reorganization

[37] To register: 0.75 hours per pooled plan provider; 0.75 hours * $165.63 = $124.23. To update a registration: 0.50 hours * $165.63 = $82.82. The total labor rate for a financial manager is used as a proxy for the labor rate. Labor rates are EBSA estimates found at *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf*.

[38] Data set supplied by the Small Business Administration containing data on the number of firms and revenue by NAICS codes. Estimates used NAICS codes 524292, 56133, 523120, 52393, 523130, and 524113.

[39] 2 U.S.C. 501 *et seq.* (1995).

[40] Enhancing the Intergovernmental Partnership, 58 FR 58093 (Oct. 28, 1993).

[41] Federalism, *supra* note 7.

Plan No. 4 of 1978, 5 U.S.C. App. At 237 (2012), (E.O. 12108, 44 FR 1065 (Jan. 3, 1979) and 29 U.S.C. 1135 note. Sec. 2510.3–38 is also issued under sec. 1, Public Law 105–72, 111 Stat. 1457 (1997).

■ 2. Add § 2510.3–44 to read as follows:

§ 2510.3–44 Registration requirement to serve as a pooled plan provider to pooled employer plans.

(a) *General.* Section 3(44) of the Act sets forth the criteria that a person must meet in order to be a pooled plan provider for pooled employer plans under section 3(43) of the Act.

(b) *Registration requirement.* Subparagraph (A)(ii) of section 3(44) requires the person to register as a pooled plan provider with the Department, and provide such other information as the Department may require, before beginning operations as a pooled plan provider. For this purpose, ''beginning operations as a pooled plan provider'' means publicly marketing services as a pooled plan provider or publicly offering a pooled employer plan. To meet the requirements to register with the Department under section 3(44) of the Act, a person intending to act as a pooled plan provider must:

(1) No earlier than 90 days and no later than 30 days before beginning operations as a pooled plan provider, file with the Department the following information on a complete and accurate Form PR (Pooled Plan Provider Registration) in accordance with the form's instructions.

(i) The legal business name and any trade name (doing business as) of such person.

(ii) The business mailing address and phone number of such person.

(iii) The employer identification number (EIN) assigned to such person by the Internal Revenue Service.

(iv) The address of any public website or websites of the pooled plan provider or any affiliates to be used to market any such person as a pooled plan provider to the public or to provide public information on the pooled employer plans operated by the pooled plan provider.

(v) Name, address, contact telephone number and email address for the primary compliance officer of the pooled plan provider.

(vi) The agent for service of legal process for the pooled plan provider, and the address at which process may be served on such agent, and in addition, a statement that service of legal process may be made upon the pooled plan provider.

(vii) The approximate date when pooled plan operations are expected to commence.

(viii) A description of the administrative, investment, and fiduciary services that will be offered or provided in connection with the pooled employer plans, including a description of the role of any affiliates in such services. For purposes of this paragraph (viii), the term ''affiliate'' includes all persons who are treated as a single employer with the person intending to be a pooled plan provider under section 414(b), (c), (m), or (o) of the Internal Revenue Code who will provide services to pooled employer plans sponsored by the pooled plan provider and any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and any corporation or partnership of which such person is an officer, director, or partner.

(ix) A statement disclosing any federal or state criminal conviction related to the provision of services to, operation of, or investments of, any employee benefit plan, against the pooled plan provider, or any officer, director, or employee of the pooled plan provider if the conviction, or related term of imprisonment served, provider is within ten years of the date of registration.

(x) A statement disclosing any ongoing criminal, civil, or administrative proceedings related to the provisions of services to, operation of, or investments of any employee benefit plan, in any court or administrative tribunal by the federal or state government or other regulatory authority against the pooled plan provider, or any officer, director, or employee of the pooled plan provider.

(2) No later than the initiation of operations of a plan as a pooled employer plan, file with the Department a supplemental report using the Form PR containing the name and EIN for the pooled employer plan, and the name, address, and EIN for the trustee for the plan.

(3) Within 30 days of occurrence of the following reportable events, file with the Department a supplemental report using the Form PR:

(i) Any change in the information reported pursuant to subparagraph (b)(1) or (b)(2) of this section.

(ii) Any significant change in corporate or business structure of the pooled plan provider, *e.g.,* merger, acquisition, or initiation of bankruptcy, receivership, or other insolvency proceeding for the pooled plan provider or an affiliate, or ceasing all operations as a pooled plan provider.

(iii) Receipt of written notice of the initiation of any administrative or enforcement action related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan, in any court or administrative tribunal by any federal or state governmental agency or other regulatory authority against the pooled plan provider or any officer, director, or employee of the pooled plan provider.

(iv) Receipt of written notice of a finding of fraud or dishonesty by a federal or state court or federal or state governmental agency related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan against the pooled plan provider or any officer, director, or employee of the pooled plan provider.

(v) Receipt of written notice of the filing of any federal or state criminal charges related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan against the pooled plan provider or any officer, director, or employee of the pooled plan provider.

(4) Only one registration must be filed for each person intending to act as a pooled plan provider, regardless of the number of pooled employer plans it operates. A pooled plan provider must file updates for each pooled employer plan described in paragraph (b)(2) of this section, any change of previously reported information, and any change in circumstances listed in paragraph (b)(3) of this section, but may file a single statement to report multiple changes, as long as the timing requirements are met with respect to each reportable change.

(5) If a pooled plan provider has terminated and ceased operating all pooled employer plans, the pooled plan provider must file a final supplemental filing in accordance with instructions for the Form PR.

(6) For purposes of this section, a pooled employer plan is treated as beginning operations when it is considered covered by Title I of ERISA within the meaning of section 4 of ERISA, and a pooled employer plan is treated as terminated and ceased operating when a resolution has been adopted terminating the plan, all assets under the plan (including insurance/annuity contracts) have been distributed to the participants and beneficiaries or legally transferred to the control of another plan, and a final Form 5500 has been filed for the plan.

(7) Registrations required under this section shall be filed with the Secretary electronically on the Form PR in accordance with the Form PR instructions published by the Department.

Signed at Washington, DC, this 18th day of August 2020.

Jeanne Klinefelter Wilson,

Acting Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

BILLING CODE 4510–29–P

Appendix A

(Illustration Purposes Only – Official Form to be Developed)

Form PR Department of Labor Employee Benefits Security Administration Department of the Treasury Internal Revenue Service	Registration for Pooled Plan Provider This filing is required under section 3(44) of the Employee Retirement Income Security Act of 1974 (ERISA) and Section 413 of the Internal Revenue Code Complete all entries in accordance with the instructions	OMB Nos1210-XXXX 1545-XXXXX This Form is Open to Public Inspection

Part I	Filing Type

Check the appropriate box to indicate filing type (see instructions)

[] Initial filing [] Supplemental Reportable Event filing [] Amended filing [] Final filing

Part II	Registration Information

1a Legal Business and any trade (d/b/a) name of pooled plan provider	**1b** Pooled plan provider contact telephone number **1c** Pooled plan provider public website
1d Mailing address (include room, apt., suite no. and street, or P.O. Box) City or Town, State, or U.S. territory, and Zip Code	**1e** Pooled plan provider Employer Identification Number (EIN)
1f Name and mailing address for the primary compliance officer of the pooled plan provider (include room, apt., suite no. and street, or P.O. Box), city or town, state, or U.S. territory, and ZIP code)	**1g** Compliance officer email address **1h** Compliance officer telephone number
1i The agent for service of legal process, and the address at which process may be served on the agent	

2 Enter the approximate date the pooled plan provider expects to begin operating pooled employer plan(s) (use MM/DD/YYYY format) __/__/__

3 Will the pooled plan provider offer or provide any services or investment products to the pooled employer plans or plan participants and beneficiaries? [] Yes []No

If you answer "Yes", check each service or product that is being provided through the registrant and/or an affiliate and complete Lines 3a-f to indicate each service or investment product, with a separate entry to indicate each affiliate who provides such service or product. For elements 3a-f, if such services are being provided by the pooled plan provider, enter "registrant" as the first entry in each element.

3a (1) [] Investment management, including selecting plan investment alternatives
(2) Enter name, EIN, address of each affiliate providing such service.
3b(1) [] Investment advice, including recommending plan investment alternatives
(2) Enter name, EIN, address of each affiliate providing such service.
3c(1) [] Investment products (propriety funds, annuities, etc.)
(2) Enter name, EIN, address of each affiliate providing such service.
3d(1) [] Plan administration
(2) Enter name, EIN, address of each affiliate providing such service.
3e(1) [] Custodial or trustee services
(2) Enter name, EIN, address of each affiliate providing such service.
3f(1) [] Other (describe) _____
(2) Enter name, EIN, address of each affiliate providing such service and a description of the services.

4a Have there been any federal or state criminal convictions of, or terms of imprisonment served by, the pooled plan provider or any officer, director, or employee of the pooled plan provider in the 10 years preceding the registration related to the provision of services to, operation of, or investments of any employee benefit plan? [] Yes [] No

4b If you answer "Yes" to 4a, you must complete elements (1)-(4) in 4b for each such conviction or imprisonment.
4b(1) Name of agency other regulatory authority_____
(2) Enter date_____
(3) Enter name of tribunal or court where action proceeded _____
(4) Enter caption and docket or other identifying number _____

5a Are there any ongoing criminal, civil, or administrative proceedings in any court or administrative tribunal by the federal or state government or other regulatory authority against the pooled plan provider, or any officer, director, or employee of the pooled plan provider related to the provisions of services to, operation of, or investments of any employee benefit plan [] Yes [] No

5b If you answer "Yes" to 5a, you must complete elements (1)-(4) in 5b for each such conviction, imprisonment, or civil judgment.
5b(1) Name of agency other regulatory authority_____
(2) Enter date_____ _____
(3) Enter name of tribunal or court where action is proceeding _____
(4) Enter caption and docket or other identifying number_____

Part III Supplemental Reportable Event Information

6aType of Supplemental Information. Pooled plan providers must (1) report information about each pooled employer plan before beginning operations of the plan as a pooled employer plan, and (2) must report any change in the information previously reported or a change in pooled plan provider circumstances within 30 days of the change. Check which information is being

reported (See Instructions)
[] New pooled employer plan [] Change in information previously reported [] Other change in circumstances
You may report multiple changes in the same supplemental registration, as long as you meet the timing requirements for reporting each change, including beginning operations of a plan as a pooled employer plan (See instructions)
6b Identify the line items with changed information.

7 Pooled Employer Plan Information. Enter the name and EIN for each pooled employer plan that the registrant will begin operating, and the name, address, and EIN for the trustee for each such plan. Complete as many repeating entries as needed to identify all pooled employer plans. (See instructions)
7a Name of pooled plan _____
7b EIN of pooled plan _____
7c(1) Legal and d/b/a name of trustee for pooled plan. _____
(2) EIN of trustee for pooled plan _____
(3) Enter the date the plan will begin operating as a pooled employer plan
(4) Enter the date the plan was terminated and ceased operating as a pooled employer plan_____

8 Change in Pooled Plan Provider Circumstances. Check the appropriate box(es) and enter the date that there has been a material change in the information regarding the pooled plan provider. (See instructions)
8a [] Merger *Enter date*: _____
8b [] Acquisition *Enter date*: _____
8c [] Initiation of bankruptcy, receivership, or other insolvency proceeding for the pooled plan provider or an affiliate of the pooled plan provider
8c(1) Enter date of filing _____
(2) Enter name of court where action is proceeding _____
(3) Enter caption and docket number for the proceeding_____

8d [] Cessation of operations as a pooled plan provider *Enter Date*_____
8e [] Received written notice of the initiation of any administrative or enforcement action in any court or administrative tribunal by any federal or state governmental agency or other regulatory authority, related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan, against the pooled plan provider, or any officer, director, or employee of the pooled plan provider. (See instructions). If you check this box, you must complete lines 8e (1)-(4).
8e(1) Name of agency, state, other regulatory authority taking action _____
(2) Enter date proceeding initiated _____
(3) Enter name of court or other tribunal where action is proceeding _____
(4) Identify caption and docket or other identifying number for the proceeding _____

8f [] Received written notice of a finding by a federal or state court or governmental agency of fraud or dishonesty related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan against the pooled plan provider, or any officer, director, or employee of the pooled plan provider. If you check this box, you must complete lines 8f (1)-(4).
8f(1) Name of agency, state, other regulatory authority, or other person taking action _____
(2) Enter date of finding _____
(3) Enter name of court or other tribunal where action is proceeding _____
(4) Identify caption and docket or other identifying number for the proceeding _____

8g [ ] Received written notice of the filing of any federal or state criminal charges against the pooled plan provider or any officer, director, or employee of the pooled plan provider, related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan. If you check this box, you must complete lines 8g (1)-(4).

8g(1) Name of agency, state, other regulatory authority taking action _____

(2) Enter date proceeding initiated _____

(3) Enter name of court or other tribunal where action is proceeding _____

(4) Identify caption and docket or other identifying number for the proceeding

SIGNATURE AND DATE: I hereby acknowledge that the pooled plan provider will serve as the named fiduciary and plan administrator of its pooled employer plans. I also declare under penalties of perjury that I have examined this registration, as well as the electronic version, and to the best of my knowledge and belief, it is true, correct, and complete.

Sign and Date	**Sign Here**_____
	Spell Out Name_____
	Date_____

BILLING CODE 4510–29–C

Instructions for Form PR (Registration for Pooled Plan Provider)

About the Form PR

The Form PR is used to report information for a person or entity that intends to serve as a pooled plan administrator to pooled employer plans within the meaning of sections 3(44) and 3(43) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, and 29 CFR 2510. 3–44.

You must file the Form PR electronically. You cannot file a paper Form PR by mail or other delivery service. Your Form PR will be initially screened electronically. For more information, see the instructions for Electronic Filing Requirement and the Form PR filing system at [insert correct web address/hyperlink].

If you have any questions (such as whether you are required to file this report) or if you need any assistance in completing this report, please call the EBSA Form PR help desk at 202–693–XXXX.

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Section 1: Who Must File

Any person who wishes to serve as a pooled plan provider to one or more pooled employer plans must file Form PR (Registration Statement of Pooled Plan Provider) with the Department of Labor. See ERISA sections 3(43) and 3(44) enacted by the Setting Every Community Up for Retirement Enhancement Act of 2019, Division O of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94) (December 20, 2019).

Note. ''Person'' for these purposes includes corporations, partnerships, and sole proprietorships.

Section 3(44) of ERISA establishes requirements for ''pooled plan providers,'' including a requirement that a person wishing to so act must register with the Department of Labor and the Department of the Treasury. The effective date for these provisions allows ''pooled employer plans'' to begin operating on January 1, 2021.

Under section 3(2) of ERISA, a pooled employer plan is treated for purposes of ERISA as a single plan that is a multiple employer plan. A ''pooled employer plan'' is defined in section 3(43) as a plan: (1) That is an individual account plan established or maintained for the purpose of providing benefits to the employees of two or more employers, (2) that is a qualified retirement plan or a plan funded entirely with individual retirement accounts (IRA plan), and (3) the terms of the plan must meet certain requirements set forth in the statute.[42] Specifically, the terms of the plan must—

- designate a pooled plan provider and provide that the pooled plan provider is a named fiduciary of the plan;
- designate one or more trustees (other than an employer in the plan) to be responsible for collecting contributions to, and holding the assets of, the plan, and require the trustee(s) to implement written contribution collection procedures that are reasonable, diligent, and systematic;
- provide that each employer in the plan retains fiduciary responsibility for the selection and monitoring, in accordance with ERISA fiduciary requirements, of the person designated as the pooled plan provider and any other person who is also designated as a named fiduciary of the plan, and, to the extent not otherwise delegated to another fiduciary by the pooled plan provider (and subject to the ERISA rules relating to self-directed investments), the investment and management of the portion of the plan's assets attributable to the employees of that employer (or

[42] The term ''pooled employer plan'' does not include a multiemployer plan or plan maintained by employers that have a common interest other than having adopted the plan. The term also does not include a plan established before the date the SECURE Act was enacted unless the plan administrator elects to have the plan treated as a pooled employer plan and the plan meets the ERISA requirements applicable to a pooled employer plan established on or after such date.

beneficiaries of such employees) in the plan;

• provide that employers in the plan, and participants and beneficiaries, are not subject to unreasonable restrictions, fees, or penalties with regard to ceasing participation, receipt of distributions, or otherwise transferring assets of the plan in accordance with applicable rules for plan mergers and transfers;

• require the pooled plan provider to provide to employers in the plan any disclosures or other information that the Secretary of Labor may require, including any disclosures or other information to facilitate the selection or any monitoring of the pooled plan provider by employers in the plan, and require each employer in the plan to take any actions that the Secretary of Labor or pooled plan provider determines are necessary to administer the plan or to allow for the plan to meet the ERISA and Code requirements applicable to the plan, including providing any disclosures or other information that the Secretary of Labor may require or that the pooled plan provider otherwise determines are necessary to administer the plan or to allow the plan to meet such ERISA and Code requirements;, and

• provide that any disclosure or other information required to be provided to participating employers may be provided in electronic form and will be designed to ensure only reasonable costs are imposed on pooled plan providers and employers in the plan.

The fidelity bonding requirements in ERISA section 412 apply to fiduciaries and other persons handling the assets of a pooled employer plan, but the maximum bond amount for each such plan official is $1,000,000 as compared to the $500,000 maximum that applies in the case of other ERISA-covered plans that do not hold employer securities. See 29 CFR 2550.412–1, 29 CFR part 2580; see also Field Assistance Bulletin 2008–04 (providing a general description of statutory and regulatory requirements for bonding).

A ''pooled plan provider'' with respect to a pooled employer plan is defined in ERISA section 3(44) to mean a person that:

• Is designated by the terms of the plan as a named fiduciary under ERISA, as the plan administrator, and as the person responsible to perform all administrative duties (including conducting proper testing with respect to the plan and the employees of each employer in the plan) that are reasonably necessary to ensure that the plan meets the Code requirements for tax-favored treatment and the requirements of ERISA and to ensure that each employer in the plan takes actions as the Secretary or the pooled plan provider determines necessary for the plan to meet Code and ERISA requirements, including providing to the pooled plan provider any disclosures or other information that the Secretary may require or that the pooled plan provider otherwise determines are necessary to administer the plan or to allow the plan to meet Code and ERISA requirements;

• acknowledges in writing its status as a named fiduciary under ERISA and as the plan administrator;

• is responsible for ensuring that all persons who handle plan assets or are plan fiduciaries are bonded in accordance with ERISA requirements; and

• registers as a pooled plan provider.

Filing a true, complete, and correct registration statement, including any required updates, satisfies the requirement under section 3(44) of ERISA to register as a pooled plan provider with the Department of Labor. See section 3(44) of ERISA for other requirements.

Section 2: When To File

You must file your initial registration statement no earlier than 90 days and no later than 30 days before beginning operations as a pooled plan provider. *See* 29 CFR 2510.3–44(b)(1).

For this purpose, ''beginning operations as a pooled plan provider'' means publicly marketing services as a pooled plan provider or offering a pooled employer plan. *See* 29 CFR 2510.3–44(b)(6).

Before the initiation of operations of a plan as a pooled employer plan with respect to a particular plan, you must supplement your registration statement with the name and EIN for the pooled employer plan, and the name, address, and EIN for the trustee for the plan. If an entity's first operations as a pooled plan provider will be with respect to a particular plan, the supplemental information required regarding each plan may be combined with the entity's initial registration.

You must also supplement your registration statement within 30 days of any changes to previously reported information or of the occurrence of the reportable events described below.

See 29 CFR 2510.3–44(b)(3). You should amend your registration statement within 30 days of discovering an error on your statement, but no later than the date for filing a Form 5500 Annual Return/Report of Employee Benefit Plan (Form 5500), where identifying information about the pooled plan provider, any pooled employer plans it administrators, or any trustees for those plans would conflict with the information required on the Form 5500.

Section 3: Electronic Filing

The Form PR must be filed electronically with the Department of Labor by going to [insert correct title/hyperlink]. Your entries must be in the proper format in order for the electronic system to process your filing. For example, if a question requires you to enter a numerical account number, you cannot enter a word.

To reduce the possibility of correspondence and penalties:

• Complete all lines on the Form PR unless otherwise specified.

• Do not enter ''N/A'' or ''Not Applicable'' on the Form PR unless specifically permitted.

• ''Yes'' or ''No'' questions on the Form PR cannot be left blank, unless specifically permitted. Answer either ''Yes'' or ''No,'' but not both.

Do not enter social security numbers in response to questions asking for an employer identification number (EIN). Because of privacy concerns, the inclusion of a social security number on the Form PR or on an attachment that is open to public inspection may result in the rejection of the filing.

To correct errors and/or omissions on a previously filed Form PR, submit a completed Form PR indicating the filing is an amended report in Part I.

Failure To File

You are not permitted to act as a pooled plan provider unless you electronically file and sign a registration statement in accordance with the Department's regulation at 29 CFR 2510.3–44 and these instructions. You may be liable for breaches of fiduciary duty under ERISA and other state and federal law violations, including for misrepresentation regarding status as a pooled plan provider. The failure to file an update would not automatically result in a conclusion that, by operation of law, the pooled employer plans administered by the pooled plan provider would no longer be single plans and instead, a group of individual plans that use the same arrangement for operating their plans.

Identifying Information and EIN: You must use the same identifying information for the pooled plan provider on Form PR, including name and EIN, on the Form 5500 for each plan the pooled plan provider administers.

Signature and Date

A person filing to satisfy the conditions of section 3(44) of ERISA and

29 CFR 2510.3–44 must sign this registration statement, indicating that the contents are true and correct to the best of the signer's knowledge. If the pooled plan provider does not electronically sign a filing, the filing status will indicate that there is an error with the filing. With respect to the initial registration, if it is unsigned, the filing will not constitute the required registration statement for such provider to operate a pooled employer plan.

The pooled plan provider or, if the pooled plan provider is an entity, a person authorized to sign on behalf of the pooled plan provider must electronically sign the Form PR submitted to the electronic filing system.

The Form PR must be filed electronically and signed. To obtain an electronic signature, go to [*insert correct web address/hyperlink*] and register as a signer. You will be provided with a UserID and PIN. Both the UserID and PIN are needed to sign the Form PR. The system will prevent the submission of any filing that does not include all required information. A completed filing will generate an online receipt. The pooled plan provider must keep a copy of the receipt as part of the plan's records as required by section 107 of ERISA.

If you have questions about using or completing the Form PR, please contact the Form PR Help Desk at [*insert telephone number*].

Section 4: Line-by-Line Instructions

Important: ''Yes/No'' questions must be marked ''Yes'' or ''No,'' but not both. ''N/A'' is not an acceptable response unless expressly permitted in the instructions to that line.

Part I—Filing Type. Check the appropriate box to indicate filing type.

Initial filing. This is the registration statement for a person that intends to serve as a pooled plan provider to pooled employer plans. Only one registration must be filed for each person intending to act as a pooled plan provider, regardless of the number of pooled employer plans it operates.

Supplemental reportable event filing. This is to report any reportable event information additional to the initial or the most recent supplemental filing. This includes identifying each plan the pooled plan provider establishes and certain changes in the pooled plan provider's status.

Check ''Supplemental Filing'' and on Line 6 check the box to identify whether you are reporting information about a new pooled employer plan, a change in information previously reported, *e.g.,* a change in the pooled plan provider's address since the last filing or the identification of a new affiliate providing services to the pooled employer plans operated by the pooled plan provider, or other change in circumstances. If you are correcting a mistake in a previous filing of the Form PR, check the ''Amended'' filing box.

Note. The information reported on the Form PR regarding the pooled plan provider and any affiliates providing services to the pooled employer plans operated by the pooled plan provider and on the Forms 5500 filed by the pooled plan provider, as plan administrator on behalf of the pooled employer plans it operates, must match. A mismatch could result in Form 5500 correspondence.

Amended filing. Check ''amended filing'' only if you are correcting information previously reported on a Form PR you filed; for example, you entered an incorrect name for an affiliate of the pooled plan provider.

Final filing. Once an entity has terminated operations as a pooled plan provider, including having ceased operating all pooled employer plans, the pooled plan provider must file a final supplemental filing. For purposes of the Form PR, a pooled employer plan would be treated as terminated and having ceased operations for this purpose when a resolution has been adopted terminating the plan, all assets under the plan (including insurance/annuity contracts) have been distributed to the participants and beneficiaries or legally transferred to the control of another plan, and when a final Form 5500 Return/Report has been filed for the plan. The final filing would be due within 30 days of the filing of the last final Form 5500 for the last pooled employer plan the provider operates. A single combined filing may be used to report both that the last pooled employer plan operated by the provider has been terminated and ceased operating and as the final Form PR filing for the pooled plan provider.

Caution: Each pooled employer plan operated by the pooled plan provider must have met the conditions for the filing of a final Form 5500 and such return/report must have been filed for each pooled employer plan operated by the pooled plan provider before the pooled plan provider can submit a final filing. See Instructions for the Form 5500.

Part II—Registration Information.

Make sure to use the same identifying information as you use for other state and federal registration and reporting requirements.

Line 1a. Enter the legal name of the person (person includes both individuals and entities) registering as the pooled plan provider. If the person uses a ''trade'' or ''doing business as'' name, also enter that name (both the legal and trade (d/b/a) name).

Line 1b. Enter a telephone number where participating employers will be able to reach the pooled plan provider. This does not preclude the pooled plan provider from also providing to participating employers a separate, dedicated telephone contact number for a particular pooled employer plan.

Line 1c. If the pooled plan provider and/or an affiliate uses one or more public websites to market such person as a pooled plan provider to the public or to provide participating employers (regardless of whether there is a registration requirement for full access) with information about the pooled employer plans in which they participate, enter the address(es) of such website(s) here.

Line 1d. Enter the business mailing address (include room, apt., suite No., and street; or P.O. Box, city or town, state, and ZIP code).

Line 1e. You must enter the Employer Identification Number (EIN) the pooled plan provider obtained from the Internal Revenue Service (IRS). You must use the same EIN number as the pooled plan provider uses for other federal and state filings, including with the IRS and the U.S. Securities and Exchange Commission (SEC). You must also use this EIN in the plan administrator field for all Forms 5500 filed for the pooled employer plans administered by the pooled plan provider.

Do not enter social security numbers in response to questions asking for an employer identification number (EIN). Because of privacy concerns, the inclusion of a social security number or any portion thereof on the Form PR may result in the rejection of the filing.

Persons wishing to act as pooled plan providers that are without an EIN must apply for one as soon as possible. The EBSA does not issue EINs. To apply for an EIN from the IRS:

- Mail or fax Form SS–4, Application for Employer Identification Number, obtained at *https://www.irs.gov/pub/irs-pdf/fss4.pdf.*
- See *https://www.irs.gov/forms-pubs/about-form-ss-4* for additional information. The EIN is issued immediately once the application information is validated. (The online application process is not yet available for corporations with addresses in foreign countries.)

Lines 1f, 1g, and 1h. Enter the name, mailing address, telephone number, and email address for the primary

compliance officer of the pooled plan provider.

Line 1i. Enter the full name of the agent for service of legal process and the address at which process may be served on the agent.

Line 2. Enter the approximate date the pooled plan provider expects to begin operating pooled employer plan(s). (Use MM/DD/YYYY format.)

Caution: The date entered here must be no earlier than 90 and no later than 30 days before the date of filing this registration statement.

Line 3. For each plan service or investment product listed in Lines 3a through 3f, indicate whether the pooled plan provider will use itself or an affiliate to operate the plan. Complete as many entries as necessary.

For purposes of the Form PR, the term affiliate includes all persons who are treated as a single employer with the person intending to be a pooled plan provider under section 414(b), (c), (m), or (o) of the Internal Revenue Code and are expected to provide services to pooled employer plans sponsored by the pooled plan provider, and any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and any corporation or partnership of which such person is an officer, director, or partner.

Note. The pooled plan provider must serve as the named fiduciary and acknowledge in writing its status as such. The pooled plan provider must acknowledge that it is the plan administrator and responsible for the administration of each pooled employer plan and acknowledge in writing its status as such.

Line 4a. You must answer Line 4a; you may not leave it blank. Answer ''Yes,'' if there have been any criminal convictions, terms of imprisonment served, or civil judgments against the pooled plan provider or any officer, director, or employee of the pooled plan provider, in the 10 years preceding the registration related to the provision of services to, operation of, or investments of any employee benefit plan in any criminal, civil, or administrative enforcement proceeding by a federal or state agency or other regulatory authority in any federal or state court or administrative tribunal. If you answer ''Yes,'' you must complete all the elements in Line 4b. For purposes of responding to the Form PR, employees of the pooled plan provider include employees of the pooled employer plan, but only those who handle assets of the plan within the meaning of section 412 of ERISA or who are responsible for the operations or investments.

Line 5a. You must answer Line 5a; you may not leave it blank. Answer ''Yes,'' if there any pending criminal, civil, or administrative enforcement proceeding, related to the provisions of services to, operation of, or investments of any employee benefit plan, by a federal or state agency or other regulatory authority in any federal or state court or administrative tribunal against the pooled plan provider or any officer, director, or employee of the pooled plan provider. If you answer ''Yes,'' you must complete elements in Line 5b.

Part III—Supplemental Reportable Event Information.

You must supplement your registration statement by reporting information about each pooled employer plan before beginning operations as a pooled employer plan. You must also supplement your registration statement by reporting any change in the information previously reported or other change in pooled plan provider circumstances within 30 days of the occurrence of the change or of the reportable events described below. You may file a single supplement to your Form PR to report multiple simultaneous changes, *e.g.,* beginning to operate two or more pooled employer plans, or to report a change that applies to the pooled plan provider with respect to all pooled employer plans it operates.

Line 6. Type of Supplemental Information. Check the box to identify whether Part III includes information about a new pooled employer plan, any change in information previously reported, or a change in pooled plan provider circumstances. Make sure that all the information in the Form PR you are submitting is up to date.

To correct information in a previously filed Form PR, check the ''Amended'' filing box, along with correcting the information.

Line 7. Pooled Employer Plan Information. Complete as many repeating entries as necessary to identify each pooled employer plan that the pooled plan provider begins operating. In elements a and b, respectively, enter the name and EIN for each pooled employer plan. In elements c(1) and c(2), respectively, enter the name, address and the EIN for the trustee(s) for the pooled employer plans operated by the pooled plan provider. In element c(3) enter the date the plan began operating as a pooled employer plan. Complete as many repeating entries as needed to identify all pooled plans administered by the registrant pooled plan provider and their trustees. In element c(4) enter the date the plan terminated and ceased operating as a pooled employer plan.

Caution: You must use the same names, EINs, and other identifying information provided regarding any pooled employer plan as is provided on the Forms 5500 for such plans. Failure to use consistent identifying information on this form and the Forms 5500 for any pooled employer plan for which you serve as the pooled plan provider could result in correspondence from the Department of Labor or the Internal Revenue Service.

Line 8. Change in Pooled Plan Provider Circumstances. Check the appropriate box(es) and enter all the requested information. Use as many repeating entries to enter all the required information. For example, if more than one action has been initiated, complete an entry for each action.

Line 8a. If there has been a merger between the pooled plan provider and another entity, enter the date of the merger and identify the parties involved in the transaction.

Line 8b. If there has been an acquisition by or of the pooled plan provider, enter the date of the acquisition and identify the parties to the transaction.

Line 8c. If the pooled plan provider (or any affiliates) involved in the operations of or providing services to the pooled employer plan files for bankruptcy or receivership of the pooled plan provider enter date of filing, enter name of court where action is proceeding, and enter caption and docket number for the proceeding.

Line 8d. Enter the date the pooled plan provider ceased operations.

Line 8e. You must complete Line 8e upon receiving written notice that there has been an initiation of any administrative enforcement action in any court or administrative tribunal by any federal or state government agency or other regulatory authority against the pooled plan provider or any officer, director, or employee of the pooled plan provider, related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan.

Line 8f. You must complete Line 8f upon receiving written notice of a finding by a federal or state court or governmental agency of fraud or dishonesty against the pooled plan provider or any officer, director, or employee of the pooled plan provider, related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan.

Line 8g. You must complete Line 8g upon learning that any criminal charges

have been filed in any federal or state court against the pooled plan provider or any officer, director, or employee of the pooled plan provider, related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan.

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the law as specified in ERISA sections 3(43) (29 U.S.C. 1002(43)) and 3(44) (29 U.S.C. 1002(44)). You are required to give us the information if you wish to operate as a pooled plan provider. We need it to determine whether the pooled plan provider is eligible to operate as such under ERISA and the Code. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books and records relating to a form or its instructions must be retained as long as their contents may become material in the administration of the Internal Revenue Code or are required to be maintained pursuant to ERISA.

Generally, filings on Form PR (Registration Statement for Pooled Plan Providers) are open to public inspection and are subject to publication on the internet. You are not required to respond to this collection of information unless it displays a current, valid OMB control number. The average time needed to complete and file the form is estimated below. These times will vary depending on individual circumstances.

The estimated average time to complete are as follows:

Initial filing: 45 minutes
Supplemental filing: 30 minutes
Amended filing: 30 minutes
Final filing: 30 minutes

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to: U.S. Department of Labor, Office of Policy and Research, Attention: PRA Official, 200 Constitution Avenue NW, Room N–5711, Washington, DC 20210 and reference Form PR (Registration Statement for Pooled Plan Providers). Do not send this form to this address. The forms and schedules must be filed electronically. See How To File–Electronic Filing Requirement.

OMB CONTROL NUMBERS

Agency	OMB No.
Employee Benefits Security Administration	1210–
Internal Revenue Service	1545–

[FR Doc. 2020–18504 Filed 8–27–20; 4:15 pm]
BILLING CODE 4510–29–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 214, 228, and 261

RIN 0596–AD33

Oil and Gas Resources

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture (USDA), Forest Service (Agency) is proposing revisions to its regulations governing Federal oil and gas resources on National Forest System lands. The Agency proposes these revisions to update and modernize its existing regulations. In addition, conforming technical amendments to other parts of the Code of Federal Regulations (CFR) affected by this rule are proposed. The proposed regulations would revise the procedures the Forest Service will follow in the future to make lands available for leasing. The proposed regulations would also clarify requirements for conducting operations and revise procedures that the Agency will follow to monitor operator compliance on leases. These requirements would apply to operations on both existing and future leases. Public input has informed the development of the rules, including through an advance notice of proposed rulemaking (ANPR). The Agency is now requesting public comments on the proposed revisions to the rule. The Agency will carefully consider public comments in preparing the final rule. The Agency is also requesting comments on the information collection associated with the Subpart E revision and the Environmental Assessment (EA).

DATES: Comments concerning this proposed rule, the associated information collection, and/or the EA must be received by November 2, 2020.

ADDRESSES: Please submit comments via one of the following methods:

1. *Electronically:* Via the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter 0596–AD33, which is the RIN for this proposed rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule link to locate this document. You may submit a comment by clicking on ''Comment Now!''

2. *Mail:* Send written comments to USDA-Forest Service. Attn: Director-MGM Staff, 1617 Cole Boulevard, Building 17, Lakewood, CO 80401.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us, as it is part of the public record.

FOR FURTHER INFORMATION CONTACT: Sherri Thompson at 303–275–5147 or by mail at 1617 Cole Boulevard, Building 17, Lakewood, CO 80401. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 10 a.m. and 7 p.m., Eastern Daylight Time, Monday through Thursday.

SUPPLEMENTARY INFORMATION:

Background of 36 CFR Part 228, Subpart E

The USDA, Forest Service is proposing revisions to its Oil and Gas Resources (36 CFR part 228, subpart E) regulations. Acting under established legal authorities, the Forest Service manages the surface-disturbing aspects of oil and gas leasing and operations on national forests and grasslands. Revisions to existing USDA regulations governing Federal oil and gas resource management are being pursued at this time for several reasons. The existing regulations were first promulgated in 1990 with a minor modification in 2007 to reflect revisions to the Forest Service and U.S. Department of Interior, Bureau of Land Management (Bureau of Land Management) joint rule, the Onshore Oil and Gas Order No. 1 (see 43 CFR 3164.1). Updating the regulations will afford an opportunity to address statutory and other requirements enacted since 1990 and modernize existing procedures to streamline processes and promote efficiency.

This rulemaking only affects Federal oil and gas resources on National Forest System lands, it does not affect nonfederal (*i.e.* reserved and outstanding private) oil and gas resources. Some lands that the Forest Service acquires are subject to previously reserved or outstanding rights (See Forest Service Manual Chapters 5470, 2830 and 2710). Reserved rights are legal rights in property that the seller retains at the time the property is conveyed to the United States. Reserved rights may be made subject in the deed of conveyance to the Secretary of Agriculture's rules

and regulations. When reserved rights are made subject to the Secretary's rules and regulations, the exercise of reserved rights generally requires a special use authorization, a plan of operation, or some other appropriate legal authorization. Outstanding rights, sometimes called valid existing rights (VERs), are legal rights in property owned by third parties other than the United States' grantor. Outstanding rights are those rights which have been severed and purchased by third parties before the United States' acquisition. The United States has limited control over outstanding rights except to prevent undue degradation or nuisance to adjacent surrounding National Forest System land.

The proposed rule would contribute to increasing efficiencies in managing Federal oil and gas activities and would help the Agency achieve its strategic goal to deliver benefits to the public. The Agency is proposing the revision of its existing regulations to clarify internal processes related to oil and gas leasing and approving operations, clarify oil and gas operators' responsibility to protect natural resources and the environment, clarify the Agency's procedures regarding inspections and compliance, and update material noncompliance procedures to reflect existing agency practices and better reflect requirements of law. The changes to 36 CFR part 228 require minor conforming changes to regulations at 36 CFR parts 214 and 261.

The proposed changes would not materially alter the basic responsibility of either the Agency or of oil and gas operators on NFS lands. The proposed changes aim to clarify procedures, reduce redundancy and promote consistency with other existing rules such as Onshore Order 1. For example, one notable proposed change aims to simplify the administrative process the Agency follows to determine which lands are open to leasing, reducing the amount of time it takes the Agency to make these decisions while at the same time maintaining all environmental and human health and safety protections of the current rule. Another proposed change would simplify the compliance process in Agency inspections, which is projected to result in better management and protection of surface resources.

The intent of these proposed changes is to streamline and reduce redundancies to improve agency efficiency and better align Forest Service regulations with those used by the Bureau of Land Management. The Bureau of Land Management is the federal agency primarily responsible for managing federally-owned minerals, including those underlying National Forest System lands. The Forest Service and the Bureau of Land Management jointly manage leasing and operations when oil and gas activities involve National Forest System lands, and oftentimes project proponents operate on lands managed by each agency. Subject to specific provisions as further noted herein, the Secretary of the Interior has the final decision whether to issue oil and gas leases on Federal lands, including National Forest System lands. Better alignment is most practically achieved by the Forest Service aligning its single subpart regulation with the multiple components of the Bureau of Land Management's more extensive oil and gas regulations in 43 CFR, subchapter C, parts 3000 through 3190.

Congress has long recognized the importance of the mineral resources located on lands within the National Forest System and has repeatedly made special provisions for the administration and development of these minerals. The Forest Service manages the surface-disturbing aspects of oil and gas leasing and operations on national forests and grasslands. The Agency seeks to ensure that development of subsurface resources is carried out in a manner that will minimize the impact on these surface resources.

Congress passed the Mineral Leasing Act of 1920 (30 U.S.C. 181, *et seq.*) directing that disposal of Federal oil and gas resources would be subject to a leasing system. Initially, under the Mineral Leasing Act, the Department of the Interior did not have to obtain the consent of the Forest Service to offer oil and gas leases on National Forest System lands. That was changed with the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Pub. L. 100–203, the Reform Act), which amended the Mineral Leasing Act of 1920, and established that the Department of the Interior may not issue any lease on National Forest System Lands reserved from the public domain 'over the objection of' the USDA, Forest Service. The Reform Act also revised leasing procedures, and gave the Department of Agriculture specific authority to approve surface uses related to oil and gas exploration and development on National Forest System lands.

In 1947, Congress enacted legislation governing leasing on acquired National Forest System lands (Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. 351–359). This Act applies to acquired National Forest System lands (*e.g.* those lands added to the National Forest System by the Weeks Act of 1911 or the Bankhead Jones Farm Tenant Act of 1937). The Mineral Leasing Act for Acquired Lands authorized the Secretary of the Interior to lease oil and gas deposits on acquired National Forest System lands ''under the same conditions as contained in the leasing provisions of the mineral leasing laws'' upon obtaining the consent of the Secretary of Agriculture, 30 U.S.C. 352. The Act also required the Secretary of the Interior to include in such leases any conditions prescribed by the Secretary of Agriculture to ''insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered . . .''.

In 2005, Congress directed Federal agencies to streamline and reduce timeframes for processing proposals to lease and conduct oil and gas operations on Federal lands. *See* Energy Policy Act of 2005 (Pub. L. 109–58), Subtitle F, sections 361, 362, and 390.

It is in the national interest to promote clean and safe development of our Nation's vast energy resources while preserving the surface resources of national forests and grasslands. To that end, the Forest Service seeks to facilitate orderly development of Federal oil and gas resources in an environmentally sound manner. The proposed regulatory revisions are consistent with those goals.

The Mineral Leasing Act directs that no permit to drill may be granted without the analysis and approval by the Secretary of Agriculture of a Surface Use Plan of Operations (SUPO) covering proposed surface-disturbing activities within a lease area on National Forest System lands. In 2007, the Forest Service and the Bureau of Land Management jointly established coordination procedures for review and analysis of permits to drill, including the SUPO portion, in Onshore Order 1.

The Mineral Leasing Act also specifies requirements for inspections and compliance, and consequences of noncompliance, for approvals to operate on National Forest System lands. The proposed rule would streamline these requirements and would clarify consequences for an operator found to be noncompliant on National Forest System lands.

The proposed rule would also clarify the procedures that the Forest Service follows to require an operator to take corrective actions if operations are found to be out of compliance with approved SUPOs, including establishing a formal option to refer instances of continued noncompliance to the Bureau of Land Management. The proposed rule would retain operator requirements for

emergency abatement when the Agency acts to remedy emergency situations such as fires or spills to which the operator cannot or will not respond. The proposed rule would also revise the Agency's material noncompliance proceedings by streamlining the process and reflecting consequences defined in the Mineral Leasing Act.

Executive Order 13783 on March 28, 2017, Promoting Energy Independence and Economic Growth (E.O. 13783), declared that it is in the national interest to promote clean and safe development of the Nation's energy resources while avoiding regulatory burdens that unnecessarily encumber energy production. E.O. 13783 indicates that development of these energy resources is essential to ensuring the Nation's geopolitical security. Section 2 of E.O. 13783 directs agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law. As directed, agencies submitted reports to the Office of Management and Budget recommending specific actions that, to the extent permitted by law, could alleviate or eliminate aspects of agency policy that burden domestic energy production. In its report, the USDA identified revisions to the 36 CFR part 228, subpart E, regulation as appropriate to meet the intent of the E.O.

There are currently 5,490 Federal oil and gas leases covering about 4.2 million acres (about 2%) of National Forest System lands. Approximately 2,700 of these leases, covering 1.6 million acres across 39 national forests and grasslands, have producing Federal oil or gas operations, and the footprint of actual operations comprises a small percentage (less than 10% percent) of that. There are 3,165 wells producing oil or natural gas operating on these leases. In 2018, production from these wells was over 25 million barrels of oil and gas products (0.6% of the nation's total), and over 117 million cubic feet of natural gas (0.3% of the nation's total). The production was valued at over $1.7 billion and returned approximately $207 million in royalties to the U.S. Treasury.

The Agency also anticipates that new and updated interpretive guidance for implementing the proposed regulations will be developed and set out in the Agency's directive system in 2021. For example, the Agency intends to update guidance related to proposed revisions for the Agency's leasing consent decision, Guidance may also include clarification of terms not explicitly defined but nonetheless important to execution of these regulations. The Agency also expects that public comment on this proposed rulemaking could help inform necessary updates and additions to the manual or handbook directive system.

Advance Notice of Proposed Rulemaking

The Agency published an advance notice of proposed rulemaking in the **Federal Register** on September 13, 2018 (83 FR 46458), inviting public input on key issues regarding implementation of existing regulations and other areas of concern. The public comment period occurred from September 13 to October 15, 2018, and served as the scoping period for the environmental analysis. The Forest Service received 91 responses.

Fifty-seven public comments included statements of general opposition, and twenty-three included statements of general support for the proposed rule. The remainder expressed neither opposition nor support.

Stated reasons for general opposition include the destruction of national forests and natural resources for financial or political interests; inadequate protection of human and environmental health; adverse impacts to recreation opportunities and tourism; and unsustainable reliance on fossil fuels.

Stated reasons for general support include the generation of revenue; large existing demands for oil and gas; decreases in regulatory burden on the oil and gas industry; promotion of domestic energy production; and creation of a simplified process leading to quicker leasing decisions and elimination of duplication with the Bureau of Land Management.

Comments expressed both support and opposition to streamlining and process reform. Supporters noted a need to address a Forest Service backlog in leasing decisions and provide an efficient National Environmental Policy Act (NEPA) process, while opponents believe that the existing process provides efficient analysis and decision-making. Some commenters stated that the Forest Service should retain authority of leasing decisions and abide by stewardship responsibilities when managing oil and gas resources.

Commenters noted and gave opinions on other areas where they believed that the Forest Service could make improvements. Their comments included the following: The Forest Service should not rely upon old documents (such as the 1989 Bureau of Land Management Uniform Format for Oil and Gas Lease Stipulations, and Onshore Order 1) to review oil and gas leasing activities; the Forest Service should seek to reduce timelines for Endangered Species Act Section 7 consultation; and the Forest Service should complete leasing analyses in conjunction with land management planning.

Some respondents noted streamlining the process for coordination between the Bureau of Land Management and Forest Service, or consolidating decisions under one agency, would improve efficiency. Commenters continued to express concerns surrounding Forest Service organizational capacity to implement efficient decisions, including apparent disconnects between Forest Service staff titles and day-to-day responsibilities. This leads to proponents being confused about whom to contact for a particular issue. Respondents also expressed concern that the Forest Service staff lacks understanding of processes and requirements related to the oil and gas regulations; that there are insufficient staff to efficiently complete tasks, leading to outdated leasing analyses; and that there is a need for the Forest Service to create strategies to solve staffing challenges prior to updating regulations. Respondents recommended that the Agency expand use of third-party consultants to prepare NEPA documents.

Regarding the intent to update the process for considering requests for waivers, exceptions, or modifications to lease stipulations, some commenters expressed opposition to waivers, exceptions, and modifications to permits, or stated that any revisions must continue to ensure environmental protection, monitoring, reporting, inspections, and compliance. Other commenters questioned whether the process duplicates work and decisions of the Bureau of Land Management.

On the topic of clarifying procedures for review and approval of SUPOs, some commenters expressed support for clarification of procedures to ensure a consistent format for review and approval. However, some commenters stated that existing regulations already provide a simple, clear process for review and approval of SUPOs, and that new revisions could result in insufficient review and increase potential for environmental impact.

Respondents noted that the Forest Service should clarify what is required of the Forest Service and the Bureau of Land Management in conducting

''analysis and approval'' of a surface-use plan. Other respondents recommended clarifying procedures to include maintaining public participation and objection opportunities; implementing deadlines and expiration dates for the approval process; improving coordination between the Forest Service and the Bureau of Land Management on SUPO processing and encouraging applicant support during processing; continuing to implement the surface use requirements in § 228.108 and NEPA review requirements in § 228.107; and using categorical exclusions for oil and natural gas activities.

With respect to the Forest Service's intent to update regulations addressing the operator's responsibility to protect natural resources and the environment, several comments expressed concern that changes to existing regulations would reduce operator obligations to protect the environment. Respondents suggested that specific requirements and best practices in 36 CFR 228.108 should remain in place, or be strengthened, to protect surface resources. Commenters suggested that the Forest Service describe environmental responsibilities of the Forest Service, the Bureau of Land Management and the operator; that the Forest Service add language regarding operator responsibility to comply with Secretary of the Interior standards for cultural resource protection; and, that the Forest Service not place restrictions on development to protect migratory birds or their habitat. One commenter expressed the view that the regulation changes must not impact drilling activities.

Public comments received in response to the ANPR can be found on the *http://www.regulations.gov.* Search on Docket ID: FS–2018–0053.

Section-by-Section Explanation of the 36 CFR Part 228, Subpart E, Proposed Rule

This rule proposes updates to the existing Forest Service regulations governing Federal oil and gas resource management to reflect requirements of legislation and Executive orders enacted since 1990. This rule proposes revisions based on Agency experience implementing existing regulations, and seeks to better align these regulations with established joint Forest Service and the Bureau of Land Management Onshore Order 1 (see 43 CFR 3164.1), and the Bureau of Land Management's independent regulations (43 CFR part 3100), where it may be appropriate and applicable.

The proposed rule would clarify and streamline the processes for identifying National Forest System lands open for leasing, while emphasizing an operator's responsibilities for compliance, and would clarify management steps that the Forest Service may take when operators do not comply with Forest Service regulations. The proposed rule would also aim to unify Forest Service regulations with those of the Bureau of Land Management regarding sundry notices and instances of bonding. The proposed rule would clarify the applicability of the existing procedures in Onshore Order 1 by which the Bureau of Land Management and the Forest Service jointly respond to operating proposals.

The proposed rule would incorporate the content of § 228.110, Indemnification, in the existing regulations into § 228.105, Responsibilities of Operators, of the proposed rule, thereby reducing the number of sections by one. The proposed rule would also, reorder, renumber and re-title various sections that would result in the following organization of the regulations:

Section 228.100 Scope and Applicability
Section 228.101 Definitions
Section 228.102 Issuance of Onshore Orders and Notices to Lessees and Operators
Section 228.103 Leasing Analysis and Consent Decision
Section 228.104 Consideration of Requests to Waive, Except, or Modify Lease Stipulations
Section 228.105 Responsibilities of Operators
Section 228.106 Operator's Submission of Surface Use Plan of Operations
Section 228.107 Review and Approval of Surface Use Plan of Operations
Section 228.108 Sundry Notices
Section 228.109 Bonds
Section 228.110 Temporary Cessation of Operations
Section 228.111 Compliance and Inspection
Section 228.112 Notice of Noncompliance
Section 228.113 Material Noncompliance
Section 228.114 Posting Requirements
Section 228.115 Information Collection Requirements

The paragraphs below provide a section-by-section description of the proposed changes.

Section 228.100 Scope and Applicability

The proposed rule would not change the scope and applicability from the existing rule. The changes or additions to the section are proposed to improve readability, clarity, and provide specific reference to the applicability of the Bureau of Land Management regulations at 43 CFR parts 3160 and 3170 and onshore orders to Federal oil and gas leasing and subsequent lease operations. The proposed rule would include references to the applicable legal framework and the role of the Secretary of Agriculture in implementing those statutes and would revise the language in paragraph (a) for readability and include specific language regarding lessees and operators. The proposed rule would revise paragraph (b) to describe that the rule applies to National Forest System lands concerning Federal oil and gas leases, and to operations conducted thereon, and to explicitly inform the public that the rule would not apply to oil and gas activity conducted as part of a non-Federal mineral right. The proposed rule would revise paragraph (c) to incorporate the applicability of the joint Forest Service and Bureau of Land Management rule, Onshore Order 1. The proposed rule would reference applicability of other Bureau of Land Management requirements such as its regulations at 43 CFR part 3100, Onshore Oil and Gas orders other than No. 1, and the Bureau of Land Management-issued Notices to Lessees and Operators. The proposed rule would replace the term 'leasehold' with 'lease' or 'agreement' as appropriate to better reflect the Bureau of Land Management terminology regarding oil and gas leasing.

Section 228.101 Definitions

The proposed rule would add, remove, and revise some terms in the existing regulations to provide greater clarity. The proposed changes would benefit the regulated community, the Forest Service, and the Bureau of Land Management with a more harmonious set of definitions between the agencies' regulations.

The proposed rule would retain as is or with minor wording changes to improve clarity the following definitions: Acquired lands; authorized Forest Service officer; consent; infrastructure or facilities; lease; lessee; material noncompliance; National Forest System lands; Notices to Lessees and Operators; Onshore Oil and Gas Order; Operations; Operator; substantial modification; and Surface Use Plan of Operations.

The proposed rule would add the following terms and their definitions to provide functionality to proposed regulation text and improve consistency with the Bureau of Land Management terms: Agreement; Conditions of

Approval; Final Abandonment Notice; lease notice; Master Development Plan; Master Surface Use Plan of Operations; Reasonably Foreseeable Development Scenario; stipulation; Sundry Notice; and Waiver, Exception or Modification.

The proposed rule would remove the definitions of the following terms, because they are redundant, lack applicability to the rule, or do not merit a stand-alone definition due to limited use or no special meaning beyond the plain English usage within the regulation: Leasehold; operating right; operating rights owner; person; transfer; and transferee.

Section 228.102 Issuance of Onshore Orders and Notices to Lessees and Operators

The proposed rule would move the content of the existing § 228.102 regarding leasing analysis and decisions to § 228.103. The proposed rule would move the requirements for Issuance of Onshore Orders and Notices to Lessees and Operators from § 228.105 in the existing regulations to this section. The proposed rule would then combine procedures for the Chief of the Forest Service to issue onshore oil and gas orders into paragraph (a) and those for issuing Notices to Lessees and Operators into paragraph (b). The proposed rule would make editorial changes to the text for clarity and readability.

Section 228.103 Leasing Analysis and Consent Decision

The Leasing Analysis and Consent Decision section addresses development of a nationwide schedule for leasing analyses in coordination with the Bureau of Land Management, the components of a leasing analysis, the components of a leasing decision, the ability of the Forest Service to withdraw its consent prior to the Bureau of Land Management conducting a lease sale, and notification of how stakeholders may appeal a leasing consent decision.

The proposed rule would remove reference to the former post-decisional appeal process (36 CFR part 217) because it has been rendered obsolete by subsequent regulations. The proposed change remedies the outdated reference and provides direction to 36 CFR part 219, subpart B, which is the codified sole process by which the public may file objections seeking predecisional administrative review for proposed projects and activities implementing land management plans and documented with a Record of Decision (ROD) or Decision Notice (DN). (78 FR 18481)

The proposed rule would streamline the approach that the Agency follows to identify lands open to leasing and stipulations to protect surface resources on lands open to leasing by establishing that the Forest Service has one decision point. That being consent to leasing made at the completion of the leasing analysis. This approach better aligns the Forest Service leasing availability analysis methods with those followed by the Bureau of Land Management. The proposed rule would also clearly state that the Forest Service may withdraw its consent to lease prior to the Bureau of Land Management conducting a lease sale.

The proposed rule would remove references to other laws and regulatory requirements, particularly with respect to complying with NEPA and the Endangered Species Act and their implementing regulations, in favor of letting those laws and regulations speak for themselves and to reduce likelihood that direction could be confused in the future if other regulations change. While several citations to specific laws and regulations have been removed, the Forest Service and lessees must still comply with all applicable laws and regulations.

Paragraph (a) of § 228.103 would modernize language regarding scheduling leasing analyses. The existing regulation references scheduling analyses within 6 months of April 20, 1990 and calls for an annual update of the schedule. The proposed rule would remove reference to a specific date, emphasize coordination between National Forests and Grasslands and the Bureau of Land Management for scheduling, inform the public that the agencies would consider public interest in leasing, and would require an annual update to the schedule. The changes would help align the efforts of Forest Service and the Bureau of Land Management with each other and interested parties in conducting leasing analyses.

Paragraph (b) of § 228.103 would define the required components of a leasing consent analysis. The proposed rule maintains the same components of analysis but provides additional direction on cooperation with the Bureau of Land Management, development of alternatives, and use of stipulations. These requirements would include clarifying how stipulations must be designed to carry out provisions of the Energy Policy Act of 2005 (42 U.S.C. 15922) to ensure that lease stipulations are applied consistently, coordinated between agencies, and only as restrictive as necessary to protect the resource for which the stipulations are applied. This section would incorporate parts of the existing § 228.102(b) and (c). The leasing consent analysis process proposed in the rule would direct that the Forest Service will make a single decision identifying lands on which the Agency would consent to the Bureau of Land Management's offering oil and gas leases for the affected National Forest System lands. The existing regulation directs an administrative review by the Forest Service at the time that specific lands, which have already been subject to an area or forest-wide leasing analysis, are being scheduled for leasing by the Bureau of Land Management. This is not a second, more detailed analysis, but a validation review verifying that oil and gas leasing of the specific lands has been adequately addressed in a NEPA document and is consistent with the applicable land management plan. The proposed rule would remove this largely duplicative administrative procedure. The existing regulation's flexible approach to the sequence or timing of Forest Service consent determinations has sometimes caused confusion among government personnel and the public. The proposed regulation settles on a specific point in the process in which Forest Service consent will be determined allowing uniformity of practice that should eliminate such confusion. The proposed rule includes a provision that would allow the Forest Service to withdraw its consent at any time prior to a Bureau of Land Management lease sale.

Paragraph (c) of § 228.103 would carry forward the components of a leasing consent decision from the existing regulations but is renamed ''Leasing Consent Decision.'' The paragraph would clarify that the Forest Service has one decision point in the process and would clearly define the required components of the Forest Service decision: Which lands are open to leasing and under what conditions (standard lease terms and conditions or added stipulations); and which lands are closed through exercise of management direction, statute, regulation, or withdrawal.

Paragraph (d) clarifies the notification to the Bureau of Land Management of a consent decision.

The proposed rule would eliminate content in § 228.102(e) of the existing regulation that discusses leasing decisions for specific lands as authorizing specific lands for lease. This existing language has been subject to litigation. For example, the Forest Service's interpretation of the existing leasing analysis and consent process set out in § 228.102(c), (d), and (e) has been disputed in litigation, such as the trilogy of *Wyoming Outdoor Council* rulings (*Wyoming Outdoor Council* v. *U.S.*

Forest Service, 981 F.Supp. 17 (D.D.C. 1997), aff'd, 165 F.3d 43 (D.C. Cir 1999); *Wyoming Outdoor Council* v. *Dombeck,* 148 F.Supp.2d 1 (D.D.C. 2001); *Wyoming Outdoor Council* v. *Bosworth,* 284 F.Supp.2d 81 (D.D.C. 2003)). A more recent and ongoing case, *Center for Biological Diversity* v. *USFS,* No. 2:17–cv–372, 2020 WL 1429569 (S.D. Ohio Mar. 13, 2020), addresses the Agency's analysis and consent process, including whether Forest Service consent can be withdrawn. The proposed rule seeks to simplify the overall process by settling on a specific point in the process in which Forest Service consent will be determined, allowing uniformity of practice. The Agency anticipates that new interpretive guidance for implementing the leasing consent decision will be developed and set out in the Agency's manual or handbook directive system in 2021.

Finally, paragraph (e) of the proposed rule would codify the existing practice that the Forest Service could withdraw its consent decision prior to a Bureau of Land Management lease sale.

Section 228.104 Consideration of Request To Waive, Except or Modify Lease Stipulations

The proposed rule would add direct reference regarding the applicability of procedures in Onshore Order 1 for requesting waivers or exceptions from or modifications to a lease stipulation (see proposed regulation text in § 228.104). The proposed rule would direct the Forest Service to provide notice to the Bureau of Land Management on its determination as to whether to grant or deny a request for a waiver, exception, or modification. The existing regulation directs notification to both the Bureau of Land Management and operator. As the administrator of Federal leases, the appropriate notification to the operator is from the Bureau of Land Management. The proposed rule would remove obsolete references to administrative appeal regulations that are no longer in use, in deference to the Agency's existing administrative appeal regulations at 36 CFR part 214 and the Agency's objection procedures at 36 CFR part 219.

The existing regulation requires the Forest Service to consult with other agencies when considering a waiver, exception or modification to a lease stipulation included at the other agency's request. Examples of instances when this might occur would be if the Forest Service include a stipulation that restricted occupancy in the vicinity of an electrical transmission line operated by a Federal power authority, or a stipulation to protect a special status wildlife species required by the U.S. Fish and Wildlife Service.

Section 228.105 Responsibilities of Operators

The proposed rule would move the content of the existing § 228.105 to § 228.102. The proposed rule would move the content of the existing § 228.108 to § 228.105 and re-title it *Responsibilities of Operators.* To improve efficient implementation of the regulations, the proposed rule would generally revise the content to not duplicate requirements in Onshore Order 1; readers will be referred to Onshore Order 1 as applicable.

The proposed rule would retain requirements from the existing regulations in paragraphs (g), (i), and (j)(2), place them in paragraph (a), and reorder them for readability. Paragraph (a) of the proposed rule would reinforce existing practices for operators to maximize use of existing roads and utility corridors in planning and constructing new infrastructure and report to the Forest Service any spills, blowouts, fires, or personal injuries that are reported to the Bureau of Land Management under its requirements.

Paragraph (b) of the proposed rule would require the operator to comply with all other applicable state and Federal statutes and regulations. Paragraph (c) of the proposed rule would require the operator to allow the Forest Service access to its operations for compliance inspection purposes. Paragraph (d) of the proposed rule would inform the operator of existing requirements that it would be responsible for obtaining Forest Service permits for uses of National Forest System lands and resources not otherwise included in a Surface Use Plan of Operation, most notably for uses outside an operator's lease area. Paragraph (e) of the proposed rule would maintain the requirement that the operator shall conduct its activities in a manner that avoids the cause or minimizes the spread of fire.

The proposed rule would move § 228.110 in the existing regulation to paragraph (f) of this section and retitle it *Liability.* The proposed rule would maintain the same conditions of liability to the United States for injury, loss, or damage, including fire suppression costs incurred by the government resulting from the operator and all lessees' activities.

Section 228.106 Operator's Submission of Surface Use Plan of Operations

The proposed rule would revise language clarifying the applicability of the requirements in Onshore Order 1 when an operator submits a Surface Use Plan of Operation and would address use of Master Development Plans and Master Surface Use Plans of Operation. The Bureau of Land Management is principally responsible to track applications for operations on Federal oil and gas leases and does so through a database called the Automated Fluid Minerals Support System (AFMSS). The Forest Service has access to AFMSS to track Surface Use Plans of Operation and Master Surface Use Plans of Operation. The proposed rule revises paragraph (c) to emphasize the need for operators to include in their applications a description of infrastructure or facilities to the extent known that would be used to support their operations such as pipelines or roads, and whether it would be within the boundaries of a lease or agreement, or outside lease or agreement boundaries. The proposed rule would remove paragraph (d), which uses terminology that is inconsistent with the Bureau of Land Management regulations and would instead clarify Sundry Notices in § 228.108.

Section 228.107 Review and Approval of Surface Use Plan of Operations

The proposed rule would rename and reduce the number of paragraphs in this section. The proposed rule would improve references to Onshore Order 1, including the timeframes established in the Order for agency response. The proposed rule would remove obsolete references to Agency administrative appeal procedures since they are no longer in use, in deference to the Agency's existing administrative appeal regulations at 36 CFR part 214 and the Agency's objection procedures at 36 CFR part 219. The proposed rule would remove § 228.107(e), which uses terminology that is inconsistent with the Bureau of Land Management's regulations and would instead clarify Sundry Notices in § 228.108.

Section 228.108 Sundry Notices

The proposed rule would move the content of the existing § 228.108 to § 228.105, Responsibility of Operator. The proposed rule would rename this section Sundry Notices replacing references to supplemental plans in §§ 228.106 and 228.107 of the existing regulations. This would remove language inconsistent with the Bureau

of Land Management regulations and align the proposed rule with the Bureau of Land Management procedures. New content regarding sundry notices would include that the operator must follow the Bureau of Land Management procedures for submitting a sundry notice and that Forest Service approval of a sundry notice would be required if the notice proposed surface-disturbing activities. The proposed rule would clarify that surface-disturbing activities may be subject to environmental analysis. The new content is informative of compliance with existing requirements.

Section 228.109 Bonds

The proposed rule maintains the same bond requirement as the existing rule but provides additional instruction to Forest Service managers and operators with regard to clarity and consistency with Onshore Order 1. The proposed rule would make general clarifications and editorial corrections for readability. The proposed rule clarifies how the Forest Service would coordinate with the Bureau of Land Management if an operator chooses to increase its Bureau of Land Management bond to cover additional bonding required by the Forest Service for surface reclamation purposes. The Forest Service's experience in managing Federal oil and gas resources since the existing regulations were promulgated in 1990 indicates that in many cases the Bureau of Land Management lease bonds are insufficient to support surface reclamation needs if a lessee or operator defaults. The proposed rule retains language for the Forest Service to exercise its authority under the Mineral Leasing Act to ensure adequate financial assurance is in place to reclaim surface disturbance. The proposed rule would add language that describes what factors authorized Forest Service officers would consider when determining if Bureau of Land Management lease bonds are adequate. The proposed rule would retain language to the effect that the operator may increase the Bureau of Land Management performance bond or post a separate surface reclamation bond with Forest Service when the Forest Service determines additional bonding is necessary. The proposed rule would add paragraph (d) to clarify methods for posting bonds, and paragraph (e) to clarify methods for releasing a Forest Service-held surface reclamation bond.

Section 228.110 Temporary Cessation of Operations

The proposed rule would move the content of the existing § 228.110 to paragraph (f) of § 228.105, *Responsibilities of Operator,* and rename it *Liability.* The proposed rule would place the content from the existing § 228.111 in this section. The proposed rule would make editorial clarifications.

Section 228.111 Compliance and Inspection

The proposed rule would move the content of the existing § 228.111, except paragraph (c), to § 228.110. The proposed rule would move the content of the existing paragraph (c) to § 228.105(b), *Responsibility of Operator,* and simplify it to reference *Compliance with Other Statutes.* The proposed rule would place the content of the existing § 228.112 in this section. The proposed rule would reorder and rename the paragraphs in this section and make editorial corrections to clarify the Agency's responsibility to inspect operations for compliance with terms of applicable approvals and the regulations in this subpart.

Section 228.112 Notice of Noncompliance

The proposed rule would move the content of the existing section to § 228.111. The proposed rule would also move the content of the existing § 228.113 to this section. The proposed rule would reorder, rename, and revise the paragraphs in this section. The proposed rule would streamline the procedures that the Agency would use to notify an operator of issues concerning noncompliance with the terms of approvals or the regulations in this subpart. The proposed rule would streamline these procedures by moving from a two-step process to a one-step process. The proposed rule would clarify when the Agency would either engage the Bureau of Land Management to take action under 43 CFR part 3163, refer a noncompliance action to law enforcement, or refer a noncompliance issue to the Agency's material noncompliance proceedings. The proposed rule would clarify an operator's opportunity to correct issues of noncompliance and would clarify an operator's appeal opportunities. The proposed rule would update the methods for notifying operators of noncompliance issues by including electronic means of notification.

Section 228.113 Material Noncompliance

The proposed rule would move the content of the existing section to § 228.112, and move the content of § 228.114 to this section. The proposed rule would revise, reorder, and rename the paragraphs in this section. The proposed rule would streamline the procedures that the Agency would follow when determining if an operator would be in material noncompliance with reclamation or other requirements or standards and would better reflect the requirements and consequences established in the Mineral Leasing Act. The 1990 procedures for oil and gas material noncompliance proceedings were designed to be consistent with other debarment procedures that are now defunct, thus prompting the need to revise these procedures.

Section 228.114 Posting Requirements

The proposed rule would move the content of the existing section to § 228.113; move the content of § 228.115 to this section; retitle this section; and revise it to make the timeframes consistent with the timeframes in the Bureau of Land Management's direction and Onshore Order 1. The proposed rule would remove internal direction regarding posting decisions, which is addressed in the Agency's NEPA regulations.

Section 228.115 Information Collection Requirements

The proposed rule would move the content of the existing section to § 228.114, and retitle it *Information Collection Requirements.* The proposed rule would include statements regarding Office of Management and Budget requirements from the existing § 228.115.

Conforming Technical Amendments

The proposed rule identifies minor, non-substantive changes to two other regulations for purposes of conforming with the modifications that would be made to 36 CFR part 228, subpart E.

In 36 CFR 214.4(b)(3), which specifies the decisions that are appealable under part 214, the phrase ''request to supplement a surface use plan of operation'' would be changed to ''request for surface use portion of sundry notice'' to track language in the proposed rule. The proposed rule would add two additional appealable decisions: (1) Requests for a waiver or exemption from, or modification to an oil and gas lease stipulation, and (2) requests for an extension of the time period for taking action in response to a notice of noncompliance.

In 36 CFR 261.2, which includes definitions applicable to the Agency's law enforcement regulations, the definition of ''operating plan'' would be changed by replacing the phrase ''supplemental surface use plan of operation'' with ''surface use portion of a sundry notice.''

Regulatory Certifications

E.O. 12866 Regulatory Planning and Impact Analysis (Analysis of Costs and Benefits)

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant regulatory actions. The Office of Information and Regulatory Affairs has determined that this proposed rule is significant pursuant to section 3(f) of E.O. 12866. Therefore, a Regulatory Impact Analysis (RIA) analyzing the costs and benefits of the proposed regulation is needed to comply with E.O. 12866. The potential benefits and costs, as well as distributional impacts, associated with the proposed rule were analyzed to fulfill the RIA requirements, consistent with E.O.12866 and OMB Circular A–4.

The RIA considers costs and benefits associated with updates, modifications, or clarifications to different sections of 36 CFR part 228, subpart E, as they relate to key procedural steps for oil and gas leasing and permitting on National Forest System lands. Changes in costs and benefits are discussed in a primarily qualitative manner due to the challenges with quantifying costs and benefits at a programmatic level. Quantitative proxies are used when feasible to help describe the potential frequency or magnitude of activities and corresponding costs affected by the proposed rule.

The direct benefits of the proposed rule are reduced costs and time spent on identifying available lease areas, approving operations, and addressing compliance actions, including costs and time incurred by the Agency as well as by proponents engaged in or pursuing oil and gas operations on National Forest System lands. Indirect benefits can result from expedited access to leasable oil and gas resources on National Forest System lands, including time-valued oil and gas revenue or returns to operators as well as time-valued bids, lease rentals, and royalties paid by operators to the Federal Government and public.

The proposed rule is not expected to have a significant or measurable impact on rates of oil and gas production on National Forest System lands; oil and gas prices and other market factors are likely to drive future changes in growth of development and production. Because of minimal impacts to production, the proposed rule is equally unlikely to have significant distributional impacts on job or income contributions from oil and gas activities on National Forest System lands.

The total or aggregate net benefits associated with the proposed rule cannot be quantified but are likely to be small or slightly more than the estimated agency cost savings of $100,000 to $200,000 per year. The Regulatory Impact Analysis is available with the supporting documents at *http://www.regulations.gov.*

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804(2). Findings in the Regulatory Impact Analysis for the proposed rule indicate that it is unlikely to have significant impacts on job or income contributions from oil and gas activities on National Forest System lands. Therefore, the revised regulation is not classified as major.

Energy Effects

The proposed rule was reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The proposed rule is not expected to have a measurable effect (positive or negative) on oil and/or gas supply or distribution. The Agency regulation does not make decisions about which lands are open or closed to leasing and subsequent development, but instead manages the process. The proposed rule should streamline the oil and gas leasing process and should clarify processing procedures for the Surface Use Plan of Operation portion of an Application for Permit to Drill on National Forest System lands. The streamlining should reduce time and costs of permitting or leasing.

The proposed rule is not expected to have a significant adverse effect on the supply, distribution, or use of energy; on competition or prices; or on other agency actions related to energy. The proposed rule is not expected to raise novel issues regarding adverse effects on energy. The proposed rule is therefore not expected to be a significant energy action or to require a statement of energy effects, consistent with OMB guidance for implementing E.O. 13211.

Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

The Agency has reviewed this proposed rule under U.S. Department of Agriculture procedures and Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, issued January 30, 2017. The Office of Management and Budget has reviewed this proposed rule and designated it as significant per E.O. 12866. E.O. 13771 requires that agencies account for the incurred costs that a significant regulatory action may have on the public and offset such costs with the removal of two other significant regulatory actions.

The total or aggregate net benefits associated with the proposed rule cannot be quantified; however, they are expected to be small or slightly more than the estimated agency cost savings of $100,000 to $200,000 per year for leasing analysis and processing expressions of interest. Thus, the proposed rule is considered a deregulatory action per E.O.13771.

National Environmental Policy Act

The Agency prepared a programmatic environmental assessment (PEA) to determine whether this proposed rule would have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) The PEA describes and analyzes two alternatives: The Proposed Rule (Proposed Action) and continuing with the existing regulations (No Action). The PEA is available for review with the supporting documents for this proposed regulation at *http://www.regulations.gov.* If the final PEA supports a Finding of No Significant Impact for the rule, the preparation of an environmental impact statement pursuant to the NEPA would not be required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

This rule has been reviewed in accordance with the requirements of Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments.* Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications (including regulations, legislative comments or proposed legislation, and other policy statements or actions) that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. To ensure tribal perspectives are heard and fully considered during rulemaking, the Agency contacted all federally recognized Indian tribes and Alaska Native Corporations in accordance with E.O. 13175, (Consultation and Coordination with Indian Tribal Governments); USDA Departmental

Regulation 1350–02 (Tribal Consultation, Coordination and Collaboration); and Forest Service Handbook 1509.13, Chapter 10 (Consultation with Indian tribes and Alaska Native Corporations). The Agency initiated formal consultation on the rulemaking by contacting the Indian tribes and Alaska Native Corporations by mail.

The consultation period began in September 2018 and will continue until the close of the comment period on the proposed rule. Consultation materials included the advance notice of proposed rulemaking, briefing documents that outline possible revisions of the existing regulations and the reasons why these changes are being proposed, and a list of frequently asked questions. As consultation continues, the Agency will also provide Indian tribes and Alaska Native Corporations with the proposed rule.

So far, the consultation process has included two in-person regional tribal consultation meetings in the Forest Service's Southwest Region: One was held on October 29, 2018, in Albuquerque, New Mexico, and the other on October 31, 2018 in Flagstaff, Arizona. During the October 31, 2018 consultation meeting, the Hopi Tribe requested additional face-to-face consultation with the Regional Forester. The Agency also received written comments from the Hopi Tribe and the Rincon Band of Luiseno Indians by letter and from the Federated Indians of Graton Rancheria by email. Most comments stated that the tribes will be provided additional review and comment once the Agency releases the proposed rule, as part of the consultation process. The Agency will continue to conduct government-to-government consultation on the rule until the close of the public comment period on the proposed rule.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian tribes and has determined that this rule has tribal implications that require continued communication efforts to determine if further tribal consultation under E.O. 13175 is required. To date, as part of their regulatory review process noted above, the Forest Service has engaged in various outreach efforts to American Indian and Alaska Native tribes, villages, and Corporations regarding the development of this proposed rule and the ongoing tribal cooperation in this process. If further consultation is required or otherwise appropriate, the Forest Service will work with the USDA's Office of Tribal Relations to ensure that meaningful consultation is provided.

Regulatory Flexibility Act and Small Business Analysis

The Agency considered the impacts of the proposed rule on small entities, consistent with requirements of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Flexibility Enforcement Fairness Act of 1996 (SBREFA), and Executive Orders 13272 and 13563 (Proper Consideration of Small Entities in Agency Rulemaking). Under the RFA, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities potentially impacted by the proposed rule include small businesses (firms) involved in oil and gas extraction operations (North American Industry Classification System (NAICS) 211111), drilling oil and gas wells (NAICS 213111), and support activities for oil and gas operations (NAICS 213112). The proposed rule does not affect the terms, conditions, and stipulation of existing leases. The proposed rule can impact businesses that express interest in or decide to bid on new leases, or otherwise decide to engage in oil and gas development and operations on National Forest System lands currently under lease or that may come under lease in the future. The proposed rule provides both direct and indirect benefits to small businesses depending on whether the business holds leases or provides drilling and other support services.

There were 328 different firms operating oil and gas producing wells on National Forest System lands as of September 2018, of which 316 (96 percent) are estimated to be small businesses based on the Small Business Administration (SBA) small business criterion of 1,250 employees for NAICS 211111. The proposed rule will primarily impact a subset of operators that express interest in leasing National Forest System land or apply for permits to drill new wells on National Forest System lands in the future. As an estimate for the subset of affected small businesses, the Forest Service used the average of 35 Surface Plans of Operation for new wells that were approved annually, from 2013—2017, and assumed each new Surface Use Plan of Operations is submitted by a different firm (which is unlikely and provides a high side estimate). Other aspects of the proposed rule will likely go unnoticed by operators. For example, compliant operators will likely experience no affects from proposed procedures that the Agency will follow to monitor for compliance. For comparison to the effect on 35 small businesses annually, the estimated number of small firms associated with the oil and gas extraction sector (NAICS 211111) for the nation is approximately 5,600. The percent of small businesses affected by the proposed rule on an annual basis is projected to be small (35 of 5,600 is less than 1 percent).

The aggregate impact of the proposed rule, compared to baseline regulatory conditions, is expected to be positive for a majority of the entities involved in oil and gas leasing, development and operations on National Forest System lands, as noted in the Regulatory Impact Analysis. Provisions of the proposed rule are expected to reduce the times for reviewing and approving leases and permits, thereby saving operator costs and expediting opportunities for production and revenue. Exceptions might include cases where some operators may be faced with increases in reclamation bond amounts or have to apply for special use authorizations; however, these situations arise only when operators are not in full compliance with existing regulations. Based on the evidence summarized above, the proposed rule is expected to increase opportunities for net benefits to small entities on average. The number of small entities that would be impacted is not likely to be substantial. We therefore certify that this rule will not have a significant economic impact on a substantial number of small entities indicating that an initial regulatory flexibility analysis is not required

More information on the RFA and SBREFA determination is available with the supporting documents for this proposed regulation at *http://www.regulations.gov.* The Agency acknowledges that the analysis took place prior to the COVID–19 pandemic-induced recession and its impact on oil and gas markets. Because the expected impacts on small businesses are expected to be very small, difficult to quantify, and beneficial, we do not expect updated data on oil and gas markets or Forest Service production and development activity to change the overall conclusion and certification. However, the Agency intends to use the

most current data available in its analyses prior to finalizing the rule. The Agency is seeking public comment specific to this analysis, and public comment on what effect the COVID–19 pandemic may have on the proposed revisions to the regulation.

Federalism

The Agency considered this proposed rule under the requirements of Executive Order 13132, Federalism. The Agency has concluded that the rule conforms to the federalism principles set out in this Executive Order. It will not impose any compliance costs on the States and will not have substantial direct effects on the States or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary.

Taking of Private Property (E.O. 12630)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the rule does not pose the risk of a taking of protected private property. This rule affects management of Federal oil and gas resources and does not apply to privately held oil and gas rights.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. More specifically, this rule meets the criteria of section 3(a), which requires agencies to review all regulations to eliminate errors and ambiguity and to write all regulations to minimize litigation. This rule also meets the criteria of section 3(b)(2), which requires agencies to write all regulations in clear language with clear legal standards.

Environmental Justice

The Department considered impacts of the proposed rule on civil rights and environmental justice (pursuant to Executive Order 12898, February 16, 1994). The Civil Rights Impact Analysis prepared according to USDA DR 4300–4 and 5600–002 may be viewed with this proposed regulation's supporting documents at *http://www.regulations.gov.* No adverse or disproportionate impacts on civil rights or environmental justice to underrepresented populations, or to other U.S. populations or communities, are expected from the proposed rule.

Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of the proposed rule on State, local, and Tribal governments, and on the private sector. This proposed rule would not compel the expenditure of $100 million or more by State, local, or Tribal governments, in the aggregate, or by the private sector. Therefore, this proposed rule is not subject to the requirements of section 202 and 205 of the UMRA.

Paperwork Reduction Act

This proposed rule contains a collection of information for which the Agency is seeking Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). To accomplish the information collection approval, the Agency is currently seeking reinstatement of OMB Control No. 0596–0101, which has previously been approved for collection of information associated with the existing 36 CFR part 228, subpart E. The proposed rule does not establish any new information collection requirements not previously approved under OMB Control No. 0596–0101.

It is important to note that the information collection requirements of this subpart are supplemental to the Bureau of Land Management's various OMB information collection approvals for issuing and managing operations on Federal oil and gas leases. The following sections of proposed subpart E contain information requirements as defined in 5 CFR part 1320:

Section 228.104—Consideration of Requests to Waive, Except, or Modify Lease Stipulations. Under the Bureau of Land Management regulations at 43 CFR 3101.1–4, the Bureau of Land Management may waive, except, or modify a lease stipulation. For leases on National Forest System lands, the Bureau of Land Management must obtain approval from the Forest Service before granting such a request. Section 228(c) provides criteria for approval that the Authorized Forest Service officer must determine are in place to grant approval. The additional information collection burden estimate is for the extra time an operator would take to organize and focus its request to assist the Forest Service in its review and consideration for approval.

Section 228.106(a), (c), and (d)—Operator's Submission of Surface Use Plan of Operations. Where a well is located on National Forest System lands, the Forest Service must approve the Surface Use Plan of Operations included as part of an operator's Application for Permit to Drill (reference BLM Form 3160–3, OMB Control No. 1004–0136). The Agency estimates that there are no additional burden hours for an operator's submission of a Surface Use Plan of Operations on National Forest System lands versus lands managed by the Bureau of Land Management.

Section 228.109(e) Bond Release. This section would provide an operator the ability to seek an incremental reduction in the performance bond based on partial completion of the reclamation requirements of the approved Surface Use Plan of Operations. This is an information collection specific to subpart E regulations.

Section 228.110(a) Notice of Temporary Cessation of Operations. This section would require an operator to provide verbal notification followed by a written statement to the Forest Service if operations will be temporarily paused for a period of 45 days or more. This is an information collection specific to subpart E regulations.

Section 228.112(c) Extension of Deadline in Notice of Noncompliance. Under this section, when issued a notice of noncompliance an operator may request an extension of the deadline contained within the notice. In its request, an operator would provide the rationale for the needed delay for it to come into compliance. This is an information collection specific to subpart E regulations.

Section 228.113(b)(2)—Response to a Referral of Material Noncompliance. When the Agency determines that an operator has failed to remedy a state of noncompliance and is being referred to the Compliance Officer for a determination of material noncompliance, this section would inform an operator that it may submit a written response to the referral or request an oral presentation to the Compliance Officer. This is an information collection specific to subpart E regulations.

OMB Control Number: 0596–0101.

Title: Oil and Gas Resources, 36 CFR, Part 228, Subpart E.

Type of Review: Reinstatement without Change.

Respondents/Affected Public: Individuals and private sector businesses who wish to engage in activities on National Forest System lands pursuant to a Federal oil and gas lease.

Total Estimated Number of Annual Respondents: Approximately 50.

Total Estimated Number of Annual Responses: Approximately 70.

Estimated Completion Time per Response: Varies from 5 minutes to 2 hours, depending on activity, with weighted average of 0.2 hours per response.

Total Estimated Number of Annual Burden Hours: 14 hours.

In accordance with the Paperwork Reduction Act of 1995, we provide the public and other agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed information collection request. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Agency minimize the burden of this collection on the respondents, including through the use of information technology.

Request for Public Comment

Public input has informed the development of the rules, including through an advance notice of proposed rulemaking (ANPR). The Agency reiterates its request for public comments on any aspects of the proposed revisions to the rule. The Agency will carefully consider public comments in preparing the final rule.

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 the Office of Management and Budget to approve this information collection request. 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.

Please see the **ADDRESSES** section for directions on where to submit comments for this information collection request.

List of Subjects

36 CFR Part 214

Administrative practice and procedure, National forests.

36 CFR Part 228

Environmental protection, Mines, National forests, Oil and gas exploration, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

36 CFR Part 261

Law enforcement, National forests.

Therefore, for the reasons set forth in the preamble, the Forest Service is proposing to amend parts 214, 228, and 261 of title 36 of the Code of Federal Regulations as follows:

PART 214—POSTDECISIONAL ADMINISTRATIVE REVIEW PROCESS FOR OCCUPANCY OR USE OF NATIONAL FOREST SYSTEM LANDS AND RESOURCES

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

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 472, 551.

■ 2. Amend § 214.4 by revising paragraph (b)(3) to read as follows:

§ 214.4 Decisions that are appealable.

* * * * *

(b) * * *

(3) Approval or denial of a surface use plan of operations, request for a surface use portion of a sundry notice, request for a waiver or exception from or modification to an oil and gas lease stipulation, suspension of oil and gas operations, issuance of a notice of noncompliance, or denial of a request for noncompliance notice deadline extension pursuant to 36 CFR part 228, subpart E;

* * * * *

PART 228—MINERALS

■ 3. The authority citation for part 228 continues to read as follows:

Authority: 16 U.S.C. 478, 551; 30 U.S.C. 226, 352, 601, 611; 94 Stat. 2400.

■ 4. Revise subpart E to read as follows:

Subpart E—Oil and Gas Resources

Sec.
228.100 Scope and applicability.
228.101 Definitions.
228.102 Issuance of onshore orders and notices to lessees and operators.
228.103 Leasing analysis and consent decision.
228.104 Consideration of request to waive, except, or modify lease stipulations.
228.105 Responsibilities of operator.
228.106 Operator's submission of Surface Use Plan of Operations.
228.107 Review and approval of Surface Use Plan of Operations.
228.108 Sundry notices.
228.109 Bonds.
228.110 Temporary cessation of operations.
228.111 Compliance and inspection.
228.112 Notice of noncompliance.
228.113 Material noncompliance.
228.114 Posting requirements.
228.115 Information collection requirements.

Subpart E—Oil and Gas Resources

Authority: 16 U.S.C. 478, 551; 30 U.S.C. 226, 352, 601, 611.

§ 228.100 Scope and applicability.

(a) *Scope.* This subpart sets forth the rules and procedures by which the Forest Service of the United States Department of Agriculture will carry out its statutory responsibilities for the conservation of surface resources associated with oil and natural gas leasing on National Forest System lands, for approving surface use requirements related to exploration and development of oil and gas on National Forest System lands subject to a Federal oil and gas lease, for inspecting surface-disturbing operations on such leases, for enforcing surface use and reclamation requirements, and for the general management of subsequent oil and gas operations on National Forest System lands. This subpart also establishes minimum requirements for lessees and/or operators for use and protection of National Forest System lands and resources.

(b) *Applicability.* The rules of this subpart apply to National Forest System lands subject to Federal oil and gas leases, and to operations that are conducted within such leases. The regulations in this subpart do not apply to the development of non-Federal oil and gas interests pursuant to reserved and outstanding rights.

(c) *Applicability of other rules.* Other rules that apply are:

(1) Application requirements for proposing oil or gas wells, along with the procedures the Federal agencies follow for approving oil and gas wells, certain subsequent well operations, and abandonment, are established in the Forest Service and Bureau of Land Management joint rule, Onshore Oil and Gas Order Number 1 (see 43 CFR 3164.1), referred to as Onshore Order 1 in this subpart.

(2) The Bureau of Land Management regulations at 43 CFR parts 3160 and 3170, Onshore Oil and Gas Orders 2 and

7, and Bureau of Land Management-issued Notices to Lessees and Operators also apply to oil and gas leasing and operations on National Forest System lands, where applicable.

(3) Surface uses associated with oil and gas activities that are conducted on National Forest System lands outside a lease or agreement are subject to Forest Service authorization under regulations set forth elsewhere in 36 CFR chapter II, including but not limited to the regulations set forth in 36 CFR part 251, subpart B, and 36 CFR part 261.

§ 228.101 Definitions.

For the purposes of this subpart, the terms listed in this section have the following meaning:

Acquired lands. Lands which the United States obtained by deed through purchase or gift, or through condemnation proceedings, including lands previously disposed of under the public land laws including the mining laws.

Agreement. A Bureau of Land Management-approved Oil and Gas Unit Agreement or Communitization Agreement (see 43 CFR 3180.0–5).

Authorized Forest Service officer. The Forest Service employee delegated the authority to perform a duty described in this subpart and who is generally a Regional Forester, Forest, Grassland or Prairie Supervisor, or District Ranger, depending on the scope and level of the duty to be performed.

Compliance Officer. The Deputy Chief, or the Associate Deputy Chief, National Forest System or the line officer designated to act in the absence of the Deputy Chief.

Conditions of Approval. Site-specific requirements that may be included with the approval of a Surface Use Plan of Operations that may limit or modify the specific activities covered in the plan. Conditions of Approval may minimize, mitigate, or prevent impacts to National Forest System lands or resources.

Consent. For the purposes of this subpart means to authorize the Bureau of Land Management to offer oil and gas leases on National Forest System lands, and refers to either the Forest Service's not objecting to such leasing on lands reserved from the public domain or the Forest Service's consenting to such leasing on acquired National Forest System lands.

Final Abandonment Notice (FAN). An operator submits a FAN to notify the Bureau of Land Management and the surface management agency that final reclamation has been completed, that the surface has been reclaimed in accordance with previous approval(s), and that the well site or other facility is ready for inspection and consideration for release from liability under the bond.

Infrastructure or facilities. The basic physical components (*e.g.,* buildings, roads, power supply, equipment, pipelines, storage tanks) necessary for the development and production of oil and gas.

Lease. Any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas on Federal lands, including National Forest System lands.

Lease Notice. A notice attached to an oil and gas lease that provides more detailed information concerning limitations that already exist in law, lease terms, regulations, or operational orders. A Lease Notice also addresses special terms the lessee should consider when planning operations but does not impose new or additional restrictions. Lease Notices attached to leases should not be confused with NTLs—Notices to Lessees (43 CFR 3160.0–5).

Lessee. A person or entity holding record title in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title (43 CFR 3100.0–5).

Master Development Plan. A plan submitted by an operator(s) to the Bureau of Land Management that contains information common to multiple planned wells, including drilling plans, Surface Use Plans of Operations, and plans for future production.

Master Surface Use Plan of Operations. A plan for surface use, disturbance, and reclamation for two or more wells.

Material noncompliance. A Forest Service determination that an operator or lessee has materially failed or refused to take necessary corrective actions, complete reclamation, maintain required bonds, or reimburse the Agency for the costs of abating an emergency, as further described in § 228.113, in a timely manner.

National Forest System lands. All lands, waters, or interests therein administered by the USDA Forest Service as provided in 16 U.S.C. 1609.

Notices to Lessees and Operators. A written notice issued by the authorized Forest Service officer or the Bureau of Land Management. Notices to Lessees and Operators serve as requirements related to specific item(s) of importance within a State, Forest Service Region, National Forest, Grassland or Prairie, or Ranger District, or other area.

Onshore Oil and Gas Order. An order issued by the Chief of the Forest Service that implements and supplements the regulations in this subpart. Onshore Oil and Gas Orders may also be issued by the Bureau of Land Management and co-signed by the Chief, as with Onshore Oil and Gas Order 1 (see 43 CFR 3164.1), referred to as Onshore Order 1 in this subpart. The Bureau of Land Management may also issue Onshore Oil and Gas Orders governing other oil and gas activities under their jurisdiction that apply to National Forest System lands.

Operations. Activities conducted on a lease or agreement area on National Forest System lands pursuant to an approved Surface Use Plan of Operations, including but not limited to exploratory drilling, development, and production of oil or gas resources and reclamation of surface resources.

Operator. Any person or entity, including, but not limited to, the lessee or operating rights owner, who has stated in writing to the authorized officer of the Bureau of Land Management that the person or entity is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

Reasonably Foreseeable Development Scenario (RFDS). A projection of oil and gas exploration, development, production, and reclamation activity. The RFDS estimates the oil and gas activity in a defined area for a specified period of time. The RFDS projects a baseline scenario of activity assuming all potentially productive areas are open to lease under standard lease terms, except those areas designated as closed to leasing by statute or regulation or areas withdrawn by the Secretary of the Interior.

Stipulation. A provision that modifies standard lease terms and is attached to, and made a part of, the lease by the Bureau of Land Management. The Forest Service may include stipulations as part of its consent to lease determination to conserve surface resources and to minimize, mitigate, or prevent impacts to lands and resources. Stipulations constrain where, when, or how the surface lands may be used for exploration and development activities.

Sundry Notice. An operator's request submitted to the Bureau of Land Management to perform work or conduct lease operations not covered by another type of permit or authorization, or to change operations in a previously approved permit; or a subsequent report of completed activities; or a final abandonment notice.

Surface Use Plan of Operations. A plan for surface use, disturbance, and reclamation, and is a component of an Application for Permit to Drill or Sundry Notice. The requirements for the Surface Use Plan of Operations are described in detail in Onshore Order 1.

Waiver, exception, or modification. Refers to a change to a lease stipulation including:

(1) *Waiver.* Permanent exemption from a lease stipulation. The stipulation no longer applies anywhere within the lease.

(2) *Exception.* Case-by-case exemption from a lease stipulation. The stipulation continues to apply to all other sites within the lease to which the restrictive criteria, as described in the lease stipulation, apply.

(3) *Modification.* Fundamental change to the provisions of a lease stipulation, either temporarily or for the term of the lease. A modification may, therefore, include an exemption from or alteration to a stipulated requirement. Depending on the specific modification, the stipulation may or may not apply to all other sites on the lease to which the restrictive criteria, as described in the lease stipulation, apply.

§ 228.102 Issuance of onshore orders and notices to lessees and operators.

(a) *Onshore Oil and Gas Orders.* The Chief of the Forest Service may issue, or cosign with the Director, Bureau of Land Management, Onshore Oil and Gas Orders necessary to implement and supplement the regulations of this subpart. Additional Onshore Oil and Gas Orders shall be published in the **Federal Register** for public comment.

(b) *Notices to Lessees and Operators.* The authorized Forest Service officer may issue, or cosign with the authorized officer of the Bureau of Land Management, Notices to Lessees and Operators necessary to implement the regulations of this subpart. Notices to Lessees and Operators apply to all operations conducted by Federal lessees on the National Forest System lands or portion thereof supervised by the authorized Forest Service officer who issued or cosigned such notice.

§ 228.103 Leasing analysis and consent decision.

(a) *Scheduling leasing consent analysis.* The Forest Service Washington Office shall develop, in cooperation with the Bureau of Land Management, Forest Service Regional Offices, and Forest and Grassland units, a schedule for analyzing all National Forest System lands with oil and gas resource potential for leasing in consideration of the following:

(1) The schedule shall identify whether each analysis will be part of a land management plan or will be a separate leasing analysis.

(2) Scheduling shall consider the level of leasing interest expressed by the public.

(3) The Forest Service shall review, revise, or make additions to the schedule at least annually.

(b) *Leasing consent analysis.* The authorized Forest Service officer shall conduct a forest-wide or area-specific leasing analysis in either a land management plan or a separate leasing analysis. The Bureau of Land Management shall be invited to participate as a cooperating agency in the consent analysis. In determining lands open or closed for leasing, the authorized Forest Service officer shall:

(1) Identify and exclude from further review the lands which are ineligible for leasing by statute, regulation, or withdrawal by the Secretary of the Interior.

(2) Consider a Reasonably Foreseeable Development Scenario that projects the type/amount of post-leasing activity that is reasonably foreseeable on eligible lands within the analysis area.

(3) Develop reasonable alternatives, including a no-leasing alternative. The alternatives should include lease stipulations that may be applied.

(4) Project the level of post-leasing activity that would occur for each alternative.

(5) Analyze the impacts of post-leasing activity projected under paragraph (b)(4) of this section.

(6) Develop lease stipulations that are consistently applied and coordinated between agencies and are only as restrictive as necessary to protect the resource or resources for which the stipulations are applied.

(7) Include, in the analysis, maps showing lands open to leasing, lands closed to leasing, and applicable stipulations for each alternative.

(c) *Leasing consent decision.* (1) Upon completion of the leasing consent analysis, the authorized Forest Service officer shall issue a leasing consent decision to the authorized officer of the Bureau of Land Management that identifies all National Forest System lands covered by the leasing consent analysis as:

(i) Open to leasing, subject to the terms and conditions of the standard oil and gas lease form (including an explanation of the typical standards and objectives to be enforced under the standard lease terms);

(ii) Open to leasing, subject to constraints that will require the use of lease stipulations; or

(iii) Closed to leasing, distinguishing between those areas that are being closed through exercise of management direction and those areas that are closed by virtue of a statute, regulation, or withdrawal.

(2) Leasing consent decisions made pursuant to this subpart shall be subject to a pre-decisional objection process conducted in accordance with the procedures set forth in 36 CFR part 219, subpart B, whether the leasing consent decision is made as part of a land management plan or separately.

(d) *Effect of leasing consent decision.* An authorized Forest Service officer's identification of lands as open to leasing does not commit the Bureau of Land Management to future leasing actions, nor does it constitute an irretrievable or irreversible commitment of resources.

(e) *Withdrawing leasing consent.* The authorized Forest Service officer may withdraw consent to lease prior to a Bureau of Land Management lease sale.

§ 228.104 Consideration of requests to waive, except, or modify lease stipulations.

(a) *General.* (1) The Bureau of Land Management's oil and gas leasing regulations at 43 CFR 3101.1–4 and Onshore Order 1 outline requirements for operators to request waivers, exceptions, or modifications to lease stipulations.

(2) Where the request involves stipulations included on the lease as prescribed by the Forest Service, the Bureau of Land Management must obtain approval from the Forest Service before granting a request for a waiver, exception, or modification.

(b) *Requesting a waiver, exception, or modification.* Requests to waive, except, or modify a lease stipulation are subject to procedures in Onshore Order 1. In addition to information required in Onshore Order 1, the operator should submit any information that might assist the authorized Forest Service officer in assessing whether or not to approve a waiver, exception, or modification.

(c) *Criteria for approval.* A request for a waiver, exception, or modification to a lease stipulation may be approved by the authorized Forest Service officer if the officer determines the following, after reviewing the present condition of the surface resources involved and the nature, location, timing, and design of the proposed operations:

(1) The action would be consistent with applicable Federal laws.

(2) The action would be consistent with the current land management plan.

(3) The management objectives which led the Forest Service to require the inclusion of the stipulation in the lease

can be met if the waiver, exception, or modification is granted.

(4) The action is acceptable to the authorized Forest Service officer based upon a review of the environmental consequences.

(d) *Coordination with other agencies.* If a lease stipulation was included in a lease by the Forest Service at the request of another agency, or if another agency has specific jurisdiction over the specific resource, the authorized Forest Service officer shall coordinate with that agency prior to approving a waiver, exception, or modification. This paragraph (d) does not require the consent of such an agency to the waiver, exception, or modification unless such consent is independently required by statute or regulation.

(e) *Notice of determination.* The authorized Forest Service officer shall notify the Bureau of Land Management in writing whether or not the request should be granted and shall provide all information used to make the determination.

§ 228.105 Responsibilities of operator.

(a) *General.* The lessee or operator shall conduct operations on National Forest System lands in a manner that minimizes effects on surface resources and prevents unnecessary or unreasonable surface resource disturbance.

(1) At a minimum, the operator must:

(i) Control soil erosion and mitigate land instability caused by their operations;

(ii) Control water runoff from their operations;

(iii) Remove, or control, solid wastes, toxic substances, and hazardous substances attributable to their operations;

(iv) Reshape and revegetate areas disturbed by their operations;

(v) Remove structures, improvements, facilities, and equipment no longer needed in the conduct of operations, unless otherwise authorized;

(vi) Take measures to preclude introduction of nonnative invasive species that could otherwise result from their operations;

(vii) Take measures to reclaim surface areas disturbed by their operations, as required by the authorized Forest Service officer;

(viii) Unless otherwise approved by the authorized Forest Service officer, initiate interim reclamation activity within 1 year of completion of operations on the affected area. Interim reclamation shall be conducted concurrently with other operations; and

(ix) Promptly clean up and remove from National Forest System lands, waters, or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the system (16 U.S.C. 1609) any released oil, produced water, toxic substances, or other contaminating substances attributable to their operations in accordance with all applicable Federal, State and local laws and regulations.

(2) Operators shall use existing roads and utility corridors wherever possible.

(3) All spills or leakages of oil, gas, produced water, toxic liquids, or waste materials; blowouts; fires; personal injuries; and fatalities that are reported to the Bureau of Land Management according to applicable orders, notices to lessee, and/or approved Surface Use Plan of Operations shall also be reported to the authorized Forest Service officer.

(b) *Compliance with other statutes and regulations.* The operator is responsible for complying with applicable Federal and State laws and regulations. The operator must also comply with onshore oil and gas orders and notices to lessees issued pursuant to this subpart.

(c) *Access for inspections.* Operators must allow Forest Service employees access, for inspection purposes, to drilling and production sites and to any other locations on National Forest System lands where operations pursuant to a lease are being conducted.

(d) *Other Forest Service authorizations.* To the extent required by applicable statutes and regulations, the operator shall obtain other Forest Service authorizations such as timber contracts, road use permits, or special use authorizations for other uses of National Forest System lands.

(e) *Safety measures.* (1) The operator must maintain structures, facilities, improvements, and equipment located on the area of operation in a safe and well-maintained manner and in accordance with the applicable approval(s).

(2) The operator must take appropriate measures in accordance with applicable Federal and State laws and regulations to protect the public from hazardous sites or conditions resulting from the operations. Such measures may include, but are not limited to, posting signs, building fences, or otherwise identifying a hazardous site or condition.

(3) The operator shall conduct its activities in a manner that avoids the cause or minimizes the spread of fire.

(f) *Liability.* The operator and lessee are jointly and severally liable in accordance with Federal and State laws to the United States for:

(1) Injury, loss, or damage, including fire suppression costs, incurred by the United States as a result of the operations; and

(2) Payments made by the United States in satisfaction of claims, demands, or judgments for an injury, loss, or damage, including fire suppression costs, incurred as a result of the operations.

§ 228.106 Operator's submission of Surface Use Plan of Operations.

(a) *General.* (1) The provisions of this section apply to both Surface Use Plans of Operations and Master Surface Use Plans of Operations. Operators shall submit Applications for Permit to Drill or Master Development Plans in accordance with Onshore Order 1 to the Bureau of Land Management. The Application for Permit to Drill or Master Development Plan shall include the Surface Use Plan of Operations or Master Surface Use Plan of Operations.

(2) A Master Surface Use Plan of Operations can be submitted with a Master Development Plan or with an individual Application for Permit to Drill. If a Master Surface Use Plan of Operations has been submitted, then subsequent Applications for Permit to Drill can reference the Master Surface Use Plan of Operations if they are consistent with the Master Surface Use Plan of Operations.

(b) *Preparation of the Surface Use Plan of Operations.* In preparing a Surface Use Plan of Operations, the operator must ensure that it contains the mandatory components of Onshore Order 1 and provisions of § 228.105. The operator is also encouraged to contact the local Forest Service office to make use of such information as is available from the Forest Service concerning surface resources and uses, standard conditions of approval, environmental considerations, and local reclamation procedures. The Surface Use Plan of Operations must be consistent with lease terms and stipulations.

(c) *Content of Surface Use Plan of Operations.* The type, size, and intensity of the proposed operations and the sensitivity of the affected surface resources by the proposed operations determine the level of detail and the amount of information which the operator includes in a proposed Surface Use Plan of Operations. The Surface Use Plan of Operations shall also include planned infrastructure or facilities, to the extent known, to be used to execute the Surface Use Plan of Operations. This submission should specify what facilities or infrastructure are located within lease or agreement boundaries,

and those that are located outside lease or agreement boundaries.

§ 228.107 Review and approval of Surface Use Plan of Operations.

(a) *General.* The provisions of this section apply to both Surface Use Plans of Operations and Master Surface Use Plans of Operations. An operator must obtain an approved Application for Permit to Drill from the Bureau of Land Management before conducting operations. No permit to drill on National Forest System lands may be granted without a Forest Service-approved Surface Use Plan of Operations covering proposed surface-disturbing activities. Approval or denial of a Surface Use Plan of Operations proposed to be documented in a Decision Notice or Record of Decision is subject to the pre-decisional objection process set forth in 36 CFR part 218 and post-decisional appeal process as provided in 36 CFR 214.4(b)(3).

(b) *Review.* The authorized Forest Service officer shall review the Surface Use Plan of Operations following the procedures in Onshore Order 1 to ensure that:

(1) The Surface Use Plan of Operations contains the mandatory components of Onshore Order 1 and § 228.105;

(2) The Surface Use Plan of Operations is consistent with the lease, including the lease stipulations, and applicable Federal laws; and

(3) To the extent consistent with the rights conveyed by the lease, the Surface Use Plan of Operations is consistent with, or can be modified to be consistent with, the applicable land management plan.

(c) *Analysis and decision.* When the review of the Surface Use Plan of Operations is completed, the authorized Forest Service officer shall:

(1) Approve the Surface Use Plan of Operations as submitted; or

(2) Approve the Surface Use Plan of Operations subject to specified Conditions of Approval; or,

(3) Deny the Surface Use Plan of Operations for the reasons stated.

(d) *Timing of decision.* If a decision on a Surface Use Plan of Operation cannot be made within 30 days of a complete application, the authorized Forest Service officer shall advise the appropriate Bureau of Land Management office as soon as it becomes apparent that additional time will be needed to process the plan. The authorized Forest Service officer shall follow procedures described in Onshore Order 1 to explain why additional time is needed and project the date by which a decision on the Surface Use Plan of Operation will likely be made. The authorized Forest Service officer shall also notify the applicant of any action the applicant could take that would enable the Forest Service officer to issue a final decision on the Surface Use Plan of Operations.

(e) *Notifying the Bureau of Land Management.* The authorized Forest Service officer shall promptly notify the Bureau of Land Management if a Surface Use Plan of Operations is approved, including Conditions of Approval, if any, or whether it has been denied. This transmittal shall include the estimated additional surface use bond amount to be required (§ 228.109), if any.

§ 228.108 Sundry notices.

(a) *General.* For activities that require a Sundry Notice under Bureau of Land Management regulations (43 CFR 3162.3–2), the operator must obtain approval from the Bureau of Land Management. If the activity would cause effects on surface resources, a Surface Use Plan of Operations that is subject to Forest Service approval is required. The sundry notice need only address those operations that differ from those authorized by the current approved Surface Use Plan of Operations. If the activity would cause effects on surface resources not authorized by the currently approved Surface Use Plan of Operations, the sundry notice is subject to the same requirements of §§ 228.106 and 228.107.

(b) *Review and approval.* If Forest Service approval is required, the authorized Forest Service officer shall determine whether the activity would be subject to additional environmental review or analysis. Following review or analysis, the authorized Forest Service officer shall notify the Bureau of Land Management whether the Forest Service approves the activity.

§ 228.109 Bonds.

(a) *General.* (1) As part of the review of a proposed Surface Use Plan of Operations, the authorized Forest Service officer shall review existing bond amount(s) to determine if they are sufficient to ensure complete and timely reclamation of surface disturbances and restoration of any lands or surface waters adversely affected by lease operations. The review shall include a determination of whether the performance bond held by the Bureau of Land Management is adequate to meet the requirements of this paragraph (a)(1).

(2) If at any time prior to, or during the conduct of operations, the authorized Forest Service officer determines that the performance bond amount held by the Bureau of Land Management is not adequate to ensure complete and timely reclamation and restoration of National Forest System lands, the authorized Forest Service officer may review and require a bond amount specifically for reclaiming surface disturbance.

(b) *Considerations for reviewing bond adequacy.* In assessing whether a bond is sufficient, the authorized Forest Service officer:

(1) Shall consider the scope and full extent of the operator's proposed operations, associated surface disturbance, and infrastructure, and performance history and risk posed by the operator.

(2) Shall consider the costs to the Forest Service to undertake reclamation or restoration actions in case of operator default.

(c) *Determining level of bond amount.* If additional bonding is determined necessary, the authorized Forest Service officer may specify a bond amount to any level, provided that the amount does not exceed the total estimated cost of reclamation based on surface disturbance.

(d) *Posting bonds.* If the authorized Forest Service officer determines that additional bonding is necessary, the officer shall give the operator the option of either increasing the bond held by the Bureau of Land Management or filing a separate reclamation bond with the Forest Service in the amount deemed adequate. The Forest Service must notify the Bureau of Land Management if the operator chooses to increase its Bureau of Land Management bond. If an additional surface use bond is determined to be necessary, the bond must be posted prior to commencing any surface disturbing-activities.

(e) *Bond release.* When the Forest Service holds a bond, the operator may request that the Forest Service authorize an incremental reduction in bond amount at any time during operations as restoration or reclamation activities are completed. When the Bureau of Land Management holds the bond, an operator may request the authorized Forest Service officer to notify the Bureau of Land Management to reduce the bond amount. The authorized Forest Service officer shall, if appropriate, notify the Bureau of Land Management of the amount by which the bond may be reduced.

§ 228.110 Temporary cessation of operations.

(a) *General.* As soon as it becomes apparent that there will be a temporary cessation of operations for a period of 45 days or more, the operator must verbally

notify and subsequently file a written statement with the authorized Forest Service officer verifying the operator's intent to maintain structures, facilities, improvements, and equipment that will remain on the area of operation during the cessation of operations, and specifying the expected date by which operations will be resumed.

(b) *Interim measures.* The authorized Forest Service officer may require the operator to take reasonable interim reclamation or erosion control measures to protect surface resources during temporary cessation of operations, including during cessation of operations resulting from adverse weather conditions.

(c) *Notice of operations.* The operator shall notify the authorized Forest Service officer at least 48 hours prior to resuming operations following a temporary cessation of 45 days or more.

§ 228.111 Compliance and inspection.

(a) *General.* Operations must be conducted in accordance with this subpart, the applicable lease (including stipulations made part of the lease at the direction of the Forest Service), an approved Surface Use Plan of Operations, applicable Onshore Oil and Gas Orders (§ 228.102(a)), and applicable Notices to Lessees and Operators (§ 228.102(b)).

(b) *Inspection of operations.* The Forest Service shall periodically inspect the area of operations to determine and document whether operations are being conducted in compliance with the requirements in paragraph (a) of this section.

(c) *Inspection of reclamation.* The Forest Service shall inspect sites for reclamation compliance when a Final Abandonment Notice is submitted. The Forest Service shall ensure that reclamation meets the requirements of the approved Surface Use Plan of Operations and § 228.105. The Forest Service shall promptly notify the Bureau of Land Management in writing when reclamation is satisfactory.

(d) *Penalties.* If surface-disturbing operations are being conducted that are not authorized by an approved Surface Use Plan of Operations, or that violate a term or operating condition of an approved Surface Use Plan of Operations, the entity conducting those operations is subject to the applicable prohibitions and penalties under 36 CFR part 261. See also § 228.112.

§ 228.112 Notice of noncompliance.

(a) *General.* When an authorized Forest Service officer finds that operations are not being conducted in accordance with regulations of this subpart, the lease (including stipulations made part of the lease at the direction of the Forest Service), an approved Surface Use Plan of Operations, applicable Onshore Oil and Gas Orders, and applicable Notices to Lessees and Operators, the operator shall be notified and given opportunity to come into compliance according to paragraph (b) of this section. The Forest Service shall provide courtesy copies to the local Bureau of Land Management office when a written notice of noncompliance is sent to an operator.

(b) *Notice of noncompliance.* Upon finding that an operator is in noncompliance, the authorized Forest Service officer shall send the operator written notification by certified mail that:

(1) Describes the requirement(s) with which the operator is in noncompliance;

(2) Describes the measure(s) that are required to correct the noncompliance;

(3) Specifies a reasonable period of time within which the noncompliance(s) must be corrected;

(4) Describes the possible consequences of continued noncompliance as described in paragraph (e) of this section; and

(5) Provides notification that the authorized Forest Service officer is willing to work cooperatively with the operator to resolve the noncompliance.

(c) *Extension of deadlines.* The operator may request an extension of a deadline specified in a notice of noncompliance if the operator is unable to come into compliance by the deadline. The operator must provide written rationale for delaying compliance. The authorized Forest Service officer has sole discretion to extend compliance deadlines, subject to provisions for appeal as noted in paragraph (d) of this section.

(d) *Appeal.* An operator may appeal a Notice of Noncompliance issued under paragraph (b) of this section or a denial of a request for extension under paragraph (c) of this section, as provided for in 36 CFR part 214.

(e) *Continued noncompliance.* If an operator fails or refuses to comply with a Notice of Noncompliance, the authorized Forest Service officer may take action in one or more of the following ways:

(1) Refer the issue to the local Bureau of Land Management office for action under 43 CFR part 3163.

(2) Refer the issue to a Forest Service law enforcement officer if the noncompliance also constitutes a violation of the prohibitions in 36 CFR part 261.

(3) Refer the issue to the Compliance Officer for a determination of material noncompliance per § 228.113.

(f) *Suspension of operations.* When the noncompliance is likely to result in danger to public health or safety or in irreparable resource damage, the authorized Forest Service officer shall, in coordination with the Bureau of Land Management, suspend the operations, in whole or in part.

(1) Suspension of operations shall remain in effect until the authorized Forest Service officer determines that the operations are in compliance with the applicable requirement(s) identified in the notice of noncompliance, or that it is no longer likely that any remaining noncompliance is likely to result in danger to public health or safety or in irreparable resource damage.

(2) The authorized Forest Service officer shall serve decisions suspending operations upon the operator in person, by certified mail, electronic mail or by telephone. If notice is initially provided in person, by electronic mail, or by telephone, the authorized Forest Service officer shall send the operator written confirmation of the decision by certified mail.

(g) *Abatement of emergencies.* When the noncompliance is resulting in an emergency, the authorized Forest Service officer may take action as necessary to abate the emergency. The total cost to the Forest Service of taking actions to abate an emergency becomes an obligation of the operator.

(1) Emergency situations include, but are not limited to, imminent dangers to public health or safety or irreparable resource damage.

(2) The authorized Forest Service officer shall promptly serve a bill for such costs upon the operator by certified mail.

§ 228.113 Material noncompliance.

(a) *General.* The authorized Forest Service officer shall refer actions to the Compliance Officer for a determination of material noncompliance when the operator or lessee has failed or refused to:

(1) Comply with necessary corrective actions directed according to the procedures in § 228.112 in cases where the noncompliance resulted in danger to public health or safety; caused irreparable resource damage; or resulted in an emergency;

(2) Complete reclamation;

(3) Maintain an additional bond in the amount required by the authorized Forest Service officer during the period of operation; and

(4) Reimburse the Forest Service in a timely manner for the cost of abating an emergency.

(b) *Compliance Officer determination of material noncompliance.* When determining whether an operator or lessee has failed or refused to comply in a material respect with reclamation requirements or other requirements or standards identified in paragraph (a) of this section, the Compliance Officer shall:

(1) Inform the operator or lessee by certified mail of the authorized Forest Service officer's material noncompliance referral and the Compliance Officer's intent to proceed with a material noncompliance review.

(2) Inform the operator or lessee of the opportunity to submit a written response to the referral and/or to request an oral presentation with the Compliance Officer within 30 calendar days of receipt of the certified letter.

(3) Ensure that:

(i) Opportunities for corrective action according to § 228.112(b) have been pursued;

(ii) Consideration is given to the status of any noncompliance referrals sent to the Bureau of Land Management for action per § 228.112(e); and

(iii) Consideration is given to the seriousness of the effects caused by the operator's failure or refusal to comply.

(4) Consider any pending judicial or administrative appeals involving the operator, including those within the purview of the Bureau of Land Management.

(5) Notify the operator or lessee by certified mail of the outcome of the material noncompliance referral review. If material noncompliance was determined, the notice shall state that the Bureau of Land Management will be advised to not issue a lease or approve the assignment of any lease to the entity. The notification shall also state that the decision is the final administrative determination of the Department of Agriculture.

(c) *Notifying the Bureau of Land Management.* Upon completion of a material noncompliance review, the Compliance Officer shall notify the Bureau of Land Management in writing of the outcome of the review. When an entity has been found to be in material noncompliance, the Forest Service shall advise the Bureau of Land Management not to issue or approve the assignment of any lease to the entity determined to be in material noncompliance.

(d) *Notification that material compliance has occurred.* If an entity found to be in material noncompliance subsequently comes into material compliance with reclamation requirements or other requirements or standards identified in paragraph (a) of this section, the Compliance Officer shall advise the Bureau of Land Management that the entity has come into material compliance.

§ 228.114 Posting requirements.

The affected National Forest or Grassland ranger district office shall promptly post notices provided by the Bureau of Land Management of:

(a) Competitive lease sales which the Bureau of Land Management plans to conduct that include National Forest System lands. These must be posted for a minimum of 45 days prior to the sale;

(b) Substantial modifications in the terms which the Bureau of Land Management proposes to make for leases on National Forest System lands (43 CFR 3101.1–4). These must be posted for a minimum of 30 days prior to the sale; and,

(c) Applications for Permits to Drill which the Bureau has received involving leases or agreements located on National Forest System lands according to provisions of Onshore Order 1. These must be posted for a minimum of 30 days.

§ 228.115 Information collection requirements.

The Office of Management and Budget reviewed and approved the information collection requirements contained in this subpart and assigned OMB Control No. 0596–0101. The collection of information allows the Forest Service to approve or take other appropriate actions on surface use plans of operations; requests to waive, except, or modify lease stipulations; requests for reduction in reclamation liability; noncompliance issues; and notices of cessation of operations. The information collection requirements of this subpart are supplemental to the Bureau of Land Management's various OMB information collection approvals for issuing and managing Federal oil and gas leases, but primarily to the following: OMB Control No. 1004–0134 for 43 CFR 3162.3; and OMB Control No. 1004–0136 for Form 3160–3, Application for Permit to Drill.

PART 261—PROHIBITIONS

■ 5. The authority citation for part 261 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 460l–6d, 472, 551, 620(f), 1133(c)—(d)(1), 1246(i).

■ 6. Amend § 261.2 by revising the definition for ''Operating plan'' to read as follows:

§ 261.2 Definitions.

* * * * *

Operating plan means the following documents, providing that the document has been issued or approved by the Forest Service: A plan of operations as provided for in 36 CFR part 228, subparts A and D, and 36 CFR part 292, subparts C and G; a supplemental plan of operations as provided for in 36 CFR part 228, subpart A, and 36 CFR part 292, subpart G; an operating plan as provided for in 36 CFR part 228, subpart C, and 36 CFR part 292, subpart G; an amended operating plan and a reclamation plan as provided for in 36 CFR part 292, subpart G; a surface use plan of operations as provided for in 36 CFR part 228, subpart E; a surface use portion of a sundry notice as provided for in 36 CFR part 228, subpart E; a permit as provided for in 36 CFR 251.15; and an operating plan and a letter of authorization as provided for in 36 CFR part 292, subpart D.

* * * * *

James E. Hubbard,

Under Secretary, Natural Resources and Environment.

[FR Doc. 2020–18518 Filed 8–31–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 405

[CMS–3372–P]

RIN 0938–AT88

Medicare Program; Medicare Coverage of Innovative Technology (MCIT) and Definition of ''Reasonable and Necessary''

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a Medicare coverage pathway to provide Medicare beneficiaries nationwide with faster access to new, innovative medical devices designated as breakthrough by the Food and Drug Administration (FDA). After the final rule is effective, the Medicare Coverage of Innovative Technology (MCIT) pathway would begin national Medicare coverage on the date of FDA market authorization and would continue for 4 years. We are also proposing regulatory standards to be used in making reasonable and necessary determinations under section

1862(a)(1)(A) of the Social Security Act (the Act) for items and services that are furnished under Part A and Part B.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 2, 2020.

ADDRESSES: In commenting, please refer to file code CMS–3372–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3372–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3372–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Linda Gousis or JoAnna Baldwin, (410) 786–2281 or *CAGinquiries@cms.hhs.gov.*

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. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

The Administration is committed to ensuring Medicare beneficiaries have access to new cures and technologies that improve health outcomes. Section 6 of the October 3, 2019 Executive Order 13890 (E.O. 13890) ''Executive Order on Protecting and Improving Medicare for Our Nation's Seniors,'' [1] directs the Secretary to ''propose regulatory and sub-regulatory changes to the Medicare program to encourage innovation for patients'' including by ''streamlining the approval, coverage, and coding process''.[2] The E.O. 13890 explicitly includes making coverage of breakthrough medical devices ''widely available, consistent with the principles of patient safety, market-based policies, and value for patients.'' [3] The E.O. also directs the Secretary to ''clarify the application of coverage standards.'' [4]

We are responding directly to these directives by proposing a definition of the term ''reasonable and necessary'' to clarify coverage standards and proposing the Medicare Coverage of Innovative Technology (MCIT) pathway to accelerate the coverage of new, innovative breakthrough devices to Medicare beneficiaries. To date, the factors used in making ''reasonable and necessary'' determinations based on section 1862(a)(1)(A) of the Act have not been established in regulations for Medicare coverage purposes. The Secretary has authority to determine whether a particular medical item or service is ''reasonable and necessary'' under section 1862(a)(1)(A) of the Act. (*See Heckler* v. *Ringer,* 466 U.S. 602, 617 (1984).) When making coverage determinations, our policies have long considered whether the item or service is safe and effective, not experimental or investigational, and appropriate. (For more information see the January 30, 1989 notice of proposed rulemaking (54 FR 4307)). These factors are found in Chapter 13 of the Medicare Program Integrity Manual (PIM) at section 13.5.4—*Reasonable and Necessary Provisions in LCDs* as instructions for Medicare contractors. We are proposing to codify in regulations the Program Integrity Manual definition of ''reasonable and necessary'' with modifications, including to add a reference to Medicare patients and a reference to commercial health insurer coverage policies. We propose that an item or service would be considered ''reasonable and necessary'' if it is—(1) safe and effective; (2) not experimental or investigational; and (3) appropriate for Medicare patients, including the duration and frequency that is considered appropriate for the item or service, in terms of whether it is—

- Furnished in accordance with accepted standards of medical practice for the diagnosis or treatment of the patient's condition or to improve the function of a malformed body member;
- Furnished in a setting appropriate to the patient's medical needs and condition;
- Ordered and furnished by qualified personnel;
- One that meets, but does not exceed, the patient's medical need; and
- At least as beneficial as an existing and available medically appropriate alternative.

We also propose that an item or service would be ''appropriate for Medicare patients'' under (3) if it is covered in the commercial insurance market, except where evidence supports that there are clinically relevant differences between Medicare beneficiaries and commercially insured individuals. An item or service deemed appropriate for Medicare coverage based on commercial coverage would be covered on that basis without also having to satisfy the bullets listed above. We believe this definition is a significant step in meeting the E.O.'s directive to bring clarity to coverage standards. Stakeholders have expressed interest in codifying a definition of ''reasonable and necessary'' for many years. This proposed definition is familiar and functional, can satisfy that interest and meet the E.O.'s ask, while also aligning with the goals of MCIT by providing clarity and predictability for innovation, including for beneficiaries and innovators.

The proposed MCIT coverage pathway is specifically for Medicare coverage of devices that are designated as part of the Food and Drug Administration's (FDA) Breakthrough Devices Program (hereafter referred to as ''breakthrough devices'') and are FDA market authorized. The MCIT pathway would be voluntary and device manufacturers would notify CMS if they want to utilize this coverage option.

We propose that national Medicare coverage under the MCIT pathway would begin immediately upon the date of FDA market authorization (that is, the

[1] Executive Order on Protecting and Improving Medicare for Our Nation's Seniors, *available at https://www.whitehouse.gov/presidential-actions/executive-order-protecting-improving-medicare-nations-seniors/.*

[2] *Id.*

[3] *Id.*

[4] *Id.*

date the medical device receives Premarket Approval (PMA); 510(k) clearance; or the granting of a De Novo classification request) for the breakthrough device. This coverage would occur unless the device does not have a Medicare benefit category or is otherwise excluded from coverage by statute (that is, the Medicare statute does not allow for coverage of the particular device.) This coverage pathway delivers on the Administration's commitment to give Medicare beneficiaries access to the newest innovations on the market, consistent with the statutory definitions of Medicare benefits. Because Medicare is a defined benefit program, devices that do not fit within the statutory definitions may not be considered for MCIT. As an example, medical equipment for home use by the beneficiary must be durable (that is, withstand repeated use) for it to be coverable by Medicare (as defined in statutes and regulations by the Secretary). At this time, we are limiting MCIT to medical devices because that is a category of products explicitly identified in E.O. 13890, and we have identified that breakthrough devices can experience variable coverage across the nation shortly after market authorization.

We propose this MCIT pathway because the prescribed statutory timeframes for the National Coverage Determination (NCD) process limit CMS' ability to institute immediate national coverage policies for new, innovative medical devices. NCDs and Local Coverage Determinations (LCD) take, on average, 9 to 12 months to finalize. Because of this length of time, there may be coverage uncertainty between the period of FDA market authorization and CMS finalization of an NCD or a Medicare Administrative Contractor's (MACs) finalization of an LCD. During this time period shortly after market authorization, MACs make coverage determinations on a case-by-case (individual beneficiary) basis, but those decisions do not usually establish agency policies for future claims because a case-by-case decision is for a particular beneficiary and their health circumstances.

Over the past few years, CMS has heard concerns from stakeholders that breakthrough devices are not automatically covered nationally by Medicare once they are FDA market authorized. Variation in coverage from one jurisdiction to another is also a concern. To date, 16 breakthrough devices have also been market authorized. The majority of these breakthrough devices (10 devices) experience variability in coverage for two reasons. One reason is because the breakthrough devices are coverable at MAC discretion, like many other item and services, on a case-by-case basis (that is, the breakthrough device may be covered for one patient, but not for another within the same jurisdiction). The other reason is because breakthrough devices are used by a hospital or other provider that operates under a bundled payment system (such as a diagnosis related group (DRG) system), so there may be no separate coverage policy for each item or service that may be included in the bundled payment. Another example of variable coverage is for one breakthrough device that is non-covered by a local policy in Florida, but coverable at MAC discretion on a case-by-case basis in other jurisdictions. One breakthrough device has national coverage through an NCD. One breakthrough device has uniform coverage because the same LCD has been adopted in all jurisdictions. There are three breakthrough devices that do not have a Medicare benefit category (for example, certain wearable devices); therefore, those breakthrough devices cannot be covered by the Medicare program.

In contrast to varied local coverage, the proposed MCIT would create a pathway for immediate national Medicare coverage of any FDA-market authorized breakthrough device if the device meets criteria outlined in this proposal.

A. Statutory Authority

We are also proposing to establish in regulations the factors we have historically used in making ''reasonable and necessary'' determinations under section 1862(a)(1)(A) of the Act, with some modification. To summarize, this section explains that Medicare payment may be made under part A or part B for any expenses incurred for items or services that are reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. Thus, with some exceptions, section 1862(a)(1)(A) of the Act requires that an item or service be ''reasonable and necessary'' to be covered by Medicare. The courts have recognized that the Secretary has significant authority to determine whether a particular item or service is ''reasonable and necessary.'' (*Heckler* v. *Ringer,* 466 U.S. 602, 617 (1984). *See also, Yale-New Haven Hospital* v. *Leavitt,* 470 F.3d 71, 84 (2d Cir. 2006); *Kort* v. *Burwell,* 209 F. Supp. 3d 98, 110 (D.C. 2016) (The statute vests substantial authority in the Secretary.)) So even though section 1862(a)(1)(A) of the Act limits the scope of Medicare coverage, the Secretary has discretion to revise his/her interpretation of the statute in order to ensure adequate coverage for items and services under Part A and Part B.

This proposal would provide national Medicare coverage for breakthrough devices that are FDA market-authorized and used consistent with the FDA approved or cleared indication for use (also referred to as the ''FDA-required labeling'').[5] This device coverage under the MCIT pathway is reasonable and necessary under section 1862(a)(1)(A) of the Act because the device has met the unique criteria of the FDA Breakthrough Devices Program.

B. FDA Breakthrough Devices Program

Under the proposed MCIT coverage pathway, CMS would coordinate with FDA and manufacturers as medical devices move through the FDA regulatory process for Breakthrough Devices to ensure seamless Medicare coverage on the date of FDA market authorization unless CMS determines those devices do not have a Medicare benefit category. The Breakthrough Devices Program is an evolution of the Expedited Access Pathway Program and the Priority Review Program (section 515B of the Federal Food, Drug, and Cosmetic Act (FD&C Act)), 21 U.S.C. 360e–3; see also final guidance for industry entitled, ''Breakthrough Devices Program,'' *https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM581664.pdf*).

The FDA's Breakthrough Devices Program is not for all new medical devices; rather, it is only for those that the FDA determines meet the standards for breakthrough device designation. In accordance with section 3051 of the 21st Century Cures Act (21 U.S.C. 360e–3),[6] the Breakthrough Devices Program is for medical devices and device-led combination products that meet two criteria. The first criterion is that the device provide for more effective treatment or diagnosis of life-threatening or irreversibly debilitating human disease or conditions. The second criterion is that the device must satisfy one of the following elements: It

[5] FDA Guidance for Industry, ''Medical Product Communications That Are Consistent With the FDA-Required Labeling—Questions and Answers,'' *available at https://www.fda.gov/media/133619/download.*

[6] 21st Century Cures Act, *available at https://www.congress.gov/114/plaws/publ255/PLAW-114publ255.pdf; see* FDA Guidance for Industry and Food and Drug Administration Staff, Breakthrough Devices Program *available at https://www.fda.gov/medical-devices/how-study-and-market-your-device/breakthrough-devices-program.*

represents a breakthrough technology; no approved or cleared alternatives exist; it offers significant advantages over existing approved or cleared alternatives, including additional considerations outlined in the statute; or device availability is in the best interest of patients (for more information see 21 U.S.C. 360e–3(b)(2)). These criteria make breakthrough designated devices unique among all other medical devices.[7] The parameters of the breakthrough devices program focus on innovations for patients, in turn, MCIT, focuses on these breakthrough devices consistent with E.O. 13890 and in order to streamline coverage of innovative medical devices.

C. Current Medicare Coverage Pathways

Currently, we utilize several coverage pathways for items and services, which includes medical devices. None of the coverage pathways described in this section offer immediate, predictable coverage concurrently with FDA market authorization like the proposed MCIT pathway would do. We summarize the other coverage pathways here to provide context for MCIT.

• National Coverage Determinations (NCDs): Section 1862(l)(6)(A) of the Act defines the term national coverage determination as ''a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under this title.'' In general, NCDs are national policy statements published to identify the circumstances under which particular items and services will be considered covered by Medicare. Traditionally, CMS relies heavily on health outcomes data to make NCDs. Most NCDs have involved determinations under section 1862(a)(1)(A) of the Act, but NCDs can be made based on other provisions of the Act, and includes a determination that the item or service under consideration has a Medicare benefit category. The NCD pathway, which has statutorily prescribed timeframes, generally takes 9 to 12 months to complete.[8]

• Local Coverage Determinations (LCDs): Medicare contractors develop LCDs based on section 1862(a)(1)(A) of the Act that apply only within their geographic jurisdictions. (Sections 1862(l)(6)(B) and 1869(f)(2)(B) of the Act.) MACs will not need to develop LCDs for breakthrough devices when they are nationally covered through MCIT.

The MACs follow specific guidance for developing LCDs for Medicare coverage in the CMS Program Integrity Manual, and in some instances, an LCD can also take 9 to12 months to develop (MACs must finalize proposed LCDs within 365 days from opening per Chapter 13—Local Coverage Determinations of the (PIM) 13.5.1). We note that the MCIT pathway will not alter the existing coverage standards in Chapter 13—Local Coverage Determinations of the PIM.[9] That chapter will continue to be used in making determinations under section 1862(a)(1)(A) of the Act for other items and services at the local level.

• Claim-by-claim Adjudication: In the absence of an NCD or LCD, MACs would make coverage decisions under section 1862(a)(1)(A) of the Act and may cover or not cover items and services on a claim-by-claim basis. The majority of claims are handled through the claim adjudication process.

• Clinical Trial Policy (CTP) NCD 310.1: The CTP pathway can be used for coverage of routine care items and services (but generally not the technology under investigation) in a clinical study that is supported by certain Federal agencies. The CTP coverage pathway was developed in 2000.[10] This coverage pathway has not generally been utilized by device manufacturers because they usually seek coverage of the device, which is not included in this pathway.

• Parallel Review: Parallel Review is a mechanism for FDA and CMS to simultaneously review the submitted clinical data to help decrease the time between FDA's approval of a premarket application or granting of a de novo classification and the subsequent CMS NCD. Parallel Review has two stages: (1) FDA and CMS meet with the manufacturer to provide feedback on the proposed pivotal clinical trial within the FDA pre-submission process; and (2) FDA and CMS concurrently review (''in parallel'') the clinical trial results submitted in the PMA, or De Novo request. FDA and CMS independently review the data to determine whether it meets their respective Agency's standards and communicate with the manufacturer during their respective reviews. This program is most successful for devices that have a significant amount of clinical evidence. (Candidates for parallel review would not be appropriate for simultaneous MCIT consideration.)

Even though CMS has multiple coverage pathways, at this time none are readily available to provide immediate national coverage for new breakthrough devices with a Medicare benefit category at the same time as FDA market authorization. Further, some of these new breakthrough devices are likely to have limited or developing bodies of clinical evidence because of the newness of the device; therefore, the MCIT pathway can support manufacturers that are interested in combining coverage with their own clinical study to augment clinical evidence of improved health outcomes, particularly for Medicare patients.

Given this summary of existing coverage pathways, we seek comment from the public regarding if any of these existing pathways should be modified to achieve the goals set out by E.O. 13890.

D. MCIT Pathway

We propose that the MCIT pathway would provide immediate national coverage for breakthrough devices beginning on the date of FDA market authorization and continue for up to 4 years, unless we determine the device does not have a Medicare benefit category as determined by us as part of the MCIT pathway process. The MCIT pathway is voluntary (that is, manufacturers would affirmatively opt-in), and would be initiated when a manufacturer notifies CMS of its intention to utilize the MCIT pathway. (This notification process is described further in section III. of this proposed rule.) We would subsequently coordinate with the manufacturer regarding steps that need to be taken for MCIT implementation purposes. The frequency of subsequent engagement will be largely driven by whether the manufacturer has questions for CMS, or CMS and FDA. The timing of coverage will depend upon the timing of the FDA's market authorization decision. Engagements can take place in the form of in-person meetings, phone calls, emails, etc. We intend to put devices that are covered through the MCIT pathway on the CMS website so that all stakeholders will be aware of what is covered through the MCIT pathway. Manufacturers of breakthrough devices will not be obligated or mandated by CMS to conduct clinical studies during

[7] FDA does not publish a list of breakthrough designated or breakthrough designated and subsequently market authorized devices. However if a breakthrough device gains market authorization through a PMA only, then the summary of safety and effectiveness data (SSED) will contain a reference for the breakthrough designation. This is not true for De Novos which have been granted or cleared 510(k)'s. In consideration of that approach, this notice of public rulemaking does not contain such lists.

[8] Section 1869(f)(4) of the Act.

[9] CMS Program Integrity Manual, Chapter 13 Local Coverage Determinations, *available at https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/pim83c13.pdf*

[10] CMS, National Coverage Determination for Routine Costs in Clinical Trials *available at https://www.cms.gov/medicare-coverage-database/details/ncd-details.aspx?NCDId=1&fromdb=true.*

coverage under the proposed MCIT pathway. However, we seek comment as to whether CMS should require or incentivize manufacturers to provide data about outcomes or should be obligated to enter into a clinical study similar to CMS's Coverage with Evidence Development (CED) paradigm.[11] We are aware some manufacturers may be required by the FDA to conduct post market data collection as a condition of market authorization, and nothing in this proposed rule would alter that FDA requirement. Manufacturers are encouraged to develop the clinical evidence base needed for one of the other coverage pathways after the MCIT pathway ends. This evidence is encouraged not only for CMS and private commercial health insurer coverage policies but also to better inform the clinical community and the public generally about the risks and benefits of treatment. CMS encourages early manufacturer engagement, both before and after FDA market authorization, for manufacturers to receive feedback from CMS on potential clinical study designs and clinical endpoints that may produce the evidence needed for a definitive coverage determination after MCIT. This feedback would not involve CMS predicting specific coverage or non-coverage.

In order to further the goals of E.O. 13890, CMS proposes to rely on FDA's breakthrough device designation and market authorization of those devices to define the universe of devices eligible for MCIT, except for those particular devices CMS determines do not have a Medicare benefit category or are statutorily excluded from coverage under Part A or Part B. In order to provide immediate national coverage to innovative medical devices, we propose to establish a time limit on how long a breakthrough device can be eligible for MCIT (that is, considered a breakthrough device for coverage purposes). MCIT has a time limit on newness similar to our New Technology Add-on Payment (NTAP) policy. Eligibility for the NTAP is also time limited and this time limit applies to all new technologies, including breakthrough devices, for which an application for additional payment is submitted. Additionally, the time-limited characteristic of MCIT will drive some manufacturers to leverage this period of coverage to demonstrate the value of their device in the competitive marketplace. The 4-year coverage period is particularly important for manufacturers of breakthrough devices that choose to further develop the clinical evidence basis on which the FDA granted marketing authorization. From our experience with clinical studies conducted as part of an NCD, 4 years is approximately the amount of time it takes to complete a study.

At the end of the 4-year MCIT pathway, coverage of the breakthrough device would be subject to one of these possible outcomes: (1) NCD (affirmative coverage, which may include facility or patient criteria); (2) NCD (non-coverage); or (3) MAC discretion (claim-by-claim adjudication or LCD). Manufacturers that are interested in a NCD are encouraged to submit a NCD request during the third year of MCIT to allow for sufficient time for NCD development. We seek public comment on whether CMS should open a national coverage analysis if a MAC has not issued an LCD for a breakthrough device within 6 months of the expiration date of the 4-year MCIT period.

In our analysis of the current coverage landscape to determine opportunities for innovation and efficiencies, we also considered modifying the coverage process for non-breakthrough devices (for example, PMAs because they are also new to the market), but ultimately determined that it was the unique characteristics of FDA designated breakthrough devices and their ability to serve unmet needs that resonated most with the E.O.'s direction to encourage innovation for patients. We also considered expedited coverage of newly market authorized and breakthrough devices when used in a clinical study.

We seek public comment on the proposed MCIT pathway, the considerations described, whether any of the existing coverage pathways should be modified to achieve the goals set out by the E.O., and alternatives to these proposals. We specifically seek public comment on whether the MCIT pathway should also include diagnostics, drugs and/or biologics that utilize breakthrough or expedited approaches at the FDA (for example, Breakthrough Therapy, Fast Track, Priority Review, Accelerated Approval)[12] or all diagnostics, drugs and/or biologics. We seek data to support including these additional item categories in the MCIT pathway. Also, we specifically seek manufacturer input on whether an opt-in or opt-out approach would work best for utilizing the MCIT pathway. We believe manufactures will welcome this new coverage pathway. We want to preserve manufacturers' business judgment and not assume which Medicare coverage pathway a given manufacturer of a breakthrough device would prefer (if any). Therefore, we have proposed an opt-in approach with an email to CMS to indicate affirmative interest in coverage. We are interested in whether an opt-out approach would be less burdensome for stakeholders. If so, we encourage public comment on a process for stakeholders to opt-out of MCIT that would not be burdensome. Also, we seek public comment on whether, once a manufacturer has opted-out of coverage, it can subsequently opt-in to MCIT.

II. Provision of Proposed Regulations

A. Defining ''Reasonable and Necessary''

As described in section I. of this proposed rule, the Secretary has authority to determine the meaning of ''reasonable and necessary'' under section 1862(a)(1)(A) of the Act. We are proposing to codify the longstanding Program Integrity Manual definition of ''reasonable and necessary'' into our regulations at 42 CFR 405.201(b), with modification. Under the current definition, an item or service is considered ''reasonable and necessary'' if it is (1) safe and effective; (2) not experimental or investigational; and (3) appropriate, including the duration and frequency that is considered appropriate for the item or service, in terms of whether it is—

- Furnished in accordance with accepted standards of medical practice for the diagnosis or treatment of the patient's condition or to improve the function of a malformed body member;
- Furnished in a setting appropriate to the patient's medical needs and condition;
- Ordered and furnished by qualified personnel;
- One that meets, but does not exceed, the patient's medical need; and
- At least as beneficial as an existing and available medically appropriate alternative.

In addition to codifying the above criteria, we propose to include a separate basis under which an item or service would be appropriate under (3) above that is based on commercial health insurers' coverage policies (that is, non-governmental entities that sponsor health insurance plans). The

[11] CMS, *Guidance for the Public, Industry, and CMS Staff Coverage with Evidence Development, available at https://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=27.*

[12] Fast Track, Breakthrough Therapy, Accelerated Approval, Priority Review, *available at https://www.fda.gov/patients/learn-about-drug-and-device-approvals/fast-track-breakthrough-therapy-accelerated-approval-priority-review.*

commercial market analysis would be initiated if an item/service fails to fulfill the existing factor (3) criteria defining appropriate for Medicare patients but fulfills (1) safe and effective and (2) not experimental or investigational. By considering commercial health insurer coverage policies, CMS would bring together the expertise of private payers and CMS. For example, in a recent NCD on acupuncture for chronic low back pain, CMS considered the technology assessments and coverage criteria among commercial health insurer coverage policies.[13] We believe that this approach would be in line with E.O. 13890 that directs us to make technologies ''widely available, consistent with the principles of patient safety, market-based policies, and value for patients.'' Under this separate basis, we propose that an item or service would satisfy factor (3) if it is covered under a plan(s) coverage policy if offered in the commercial insurance market, unless evidence supports that differences between Medicare beneficiaries and commercially insured individuals are clinically relevant. Under our proposal, we would exclude Medicaid managed care, Medicare Advantage, and other government administered healthcare coverage programs from the types of coverage CMS would consider, as these enrollees are not in the commercial market. In the following paragraphs, we seek comment on this proposal and on how best to implement this mechanism.

We solicit comments on sources of data that could be used to implement this policy, and whether CMS should make this information public and transparent. We seek public comment on the most appropriate source(s) for these coverage policies and the best way to determine which commercial plan(s) we would rely on for Medicare coverage.

We seek comment on whether beneficiaries, providers, innovators, or others wishing to gain coverage for an item or service demonstrate that the item or service is covered by at least one commercial insurance plan policy. If they can provide CMS with evidence of commercial coverage or if CMS or its MACs identify such coverage from its review of compilations of health insurance offerings or data from other sources, CMS would consider factor (3) to be satisfied.

We solicit comment on whether we should limit our consideration of commercial plan offerings or covered lives to a subset of the commercial market in the interest of simplicity, including looking at geographic subsets, subsets based on number of enrollees, subsets based on plan type (HMO, PPO, etc.), or other subsets of plans—including utilizing a singular plan. We also seek comment on whether, given considerations such the variation and distribution of coverage policies and access to innovations, we should only cover an item or service if it is covered for a majority, or a different proportion such as a plurality, of covered lives amongst plans or a majority, plurality, or some other proportion of plan offerings in the commercial market. (A plan offering is a contract an insurer offers to its enrollees, and a single insurance company may provide many different offerings.)

We also recognize that plan offerings may impose certain coverage restrictions on an item or service, *e.g.* related to clinical criteria, disease stage, or number and frequency of treatment. As greater access to innovative treatments provides beneficiaries with more opportunity to improve health and drive decisions, we would, when coverage is afforded on the basis of commercial coverage, adopt the least restrictive coverage policy for the item or service amongst the offerings we examine. However, given potential unreasonable or unnecessary utilization, we also solicit comment on whether we should instead adopt the most restrictive coverage policy. We are further considering, as another variation, that if coverage restrictions are largely similar and present across the majority of offerings, CMS would adopt these in its coverage policies. We note that such coverage restrictions include the basic requirement for medical necessity at the level of individual patients. Medicare will still only pay for an item or service received by a beneficiary if it is medically necessary for the beneficiary. We seek comment on whether, if we were to take this approach, we should instead use a proportion other than a majority, as low as any offering and as high as all offerings, as a sufficient threshold. As a final variation, we could defer, in the absence of an NCD or national policy, to the MACs to tailor the restrictions on coverage based on what they observe in the commercial market, just as we rely on MACs with regards to the current definition.

We further solicit comment on whether to grant coverage for an item or service to the extent it meets the first and second factors and the commercial coverage basis for the third factor. Under this approach, we would only use the current definition of ''appropriate'' from the current PIM when the exception for clinically relevant differences between Medicare beneficiaries and commercially insured individuals applies (or if the commercial coverage basis is determined by a proportion like a majority and there is insufficient commercial coverage information available). We note that referring to commercial coverage in this way may expand or narrow the circumstances under which we will cover a particular item or service and therefore solicit comment on whether, under such an approach, we should grandfather our current coverage policies for items and services. We also emphasize that the MACs will continue to make judgements in evaluating individual claims for reimbursement, such that a decision by CMS that an item or service is reasonable and necessary in general does not mean that it is reasonable and necessary in all circumstances with respect to individual claims for reimbursement.

We seek public comment on the most appropriate source(s) for these coverage policies. Further, under our proposal, each MAC would be responsible for reviewing commercial offerings to inform their LCDs or claim by claim decisions, which would include individual medical necessity decisions. We may also allow the MACs to develop approaches to address any or all of the considerations outlined above, parallel to their current practice of making coverage decisions in the absence of an NCD or national policy. We solicit comment on the best role of the MACs, along these lines or otherwise. We also solicit comment on whether the discretion to use the current criteria in the PIM when there is evidence to believe Medicare beneficiaries have different clinical needs should be exercised through the NCD process or in other ways, as well as what quantum of evidence should be sufficient.

In sum, we are proposing to define the term ''reasonable and necessary'' based on the factors currently found in the PIM, plus an alternative basis for meeting factor (3) based on any coverage in the commercial market. We are also soliciting comment on an alternative under whether an item or service satisfies the commercial coverage basis for factor (3) is determined by how it is treated across a majority of covered lives amongst commercial plan offerings, as well as an alternative whereby an item or service would be appropriate for Medicare patients to the extent it is covered in the commercial market.

[13] CMS, Decision Memorandum for Acupuncture for Chronic Low Back Pain, *available at https://www.cms.gov/medicare-coverage-database/details/nca-decision-memo.aspx?NCAId=295#:~:text=Decision,of%20the%20Social%20Security%20Act.*

When evidence supports that differences between Medicare beneficiaries and commercially insured individuals are clinically relevant, we would rely on the criteria in the current PIM. We would continue relying on local administration of the program by MACs (including coverage on a claim by claim basis and LCDs) and maintain our discretion to issue NCDs based on the final rule.

We solicit comment on this proposed definition of reasonable and necessary, and alternatives outlined above, as well as other mechanisms or definitions we could establish for the term ''reasonable and necessary'', and the merits and drawbacks associated with each, including the potential impact on Medicare program expenses or complexity. We may finalize any variation or outgrowth of the policies described in this proposal, or some combination of these options in lieu of or in conjunction with our proposed definition.

B. Application of the ''Reasonable and Necessary'' Standard to the MCIT Pathway

We are proposing that, under the proposed MCIT pathway, an item or service that receives a breakthrough device designation from the FDA would be considered ''reasonable and necessary'' under section 1862(a)(1)(A) of the Act because breakthrough devices have met the FDA's unique breakthrough devices criteria, and they are innovations that serve unmet needs. While other devices are still considered new to the market, for example, PMAs and even some 510(k)s, the devices designated by the FDA as breakthrough are representative of true innovations in the marketplace. This application of the ''reasonable and necessary'' standard in this way would ensure that the MCIT pathway can provide a fast-track to Medicare coverage of innovative devices that may more effectively treat or diagnose life-threatening or irreversibly debilitating human disease or conditions.

MCIT would improve healthcare for Medicare beneficiaries by providing national Medicare coverage for devices receiving the FDA breakthrough device designation, which are FDA market-authorized and used consistent with the FDA approved or cleared indication for use (also referred to as the ''FDA required labeling''),[14] so long as the breakthrough device is described in an appropriate Medicare benefit category under Part A or Part B and is not specifically excluded by statute. We believe the criteria for qualification as a breakthrough device, as defined in section 515B(b) of the Food, Drug and Cosmetic Act (21 U.S.C. 360e–3(b)) is sufficient to satisfy the elements of the ''reasonable and necessary'' standard. The first breakthrough device designation criterion is that a device must ''provide for more effective treatment or diagnosis of life-threatening or irreversibly debilitating human disease or conditions'' (21 U.S.C. 360e–3(b)(1)). The second criterion is that the device must satisfy one of the following elements: It represents a breakthrough technology; there are no approved or cleared alternatives; it offers significant advantages over existing approved or cleared alternatives, including additional considerations outlined in the statute; or availability of the device is in the best interest of patients (21 U.S.C. 360e–3(b)(2)). Thus, breakthrough devices are those that HHS has determined may provide better health outcomes for patients facing life-threatening or irreversibly debilitating human disease or conditions. We believe that a device meeting these criteria, once also FDA market authorized, is ''reasonable and necessary'' for purposes of Medicare coverage.

This proposed rule recognizes that the FDA market authorization of breakthrough devices warrants immediate coverage under the ''reasonable and necessary'' clause in section 1862(a)(1)(A) of the Act. We previously stated that FDA determinations were not controlling determinations for Medicare coverage purposes under section 1862(a)(1)(A) of the Act. (For more information see the January 30, 1989 **Federal Register** (54 FR 4307) (''FDA approval for the marketing of a medical device will not necessarily lead to a favorable coverage recommendation . . . '') and the August 7, 2013 **Federal Register** (78 FR 48165) (''However, FDA approval or clearance alone does not entitle that technology to Medicare coverage.'') Under the Secretary's broad authority to interpret section 1862(a)(1)(A) of the Act (*supra* section I.A.), we are revising our interpretation of the statute because of the practical concerns that our current standards have delayed access to a unique set of innovative devices that FDA has found to be safe and effective, and we believe are ''reasonable and necessary'' for purposes of Medicare coverage.

In light of E.O. 13890, the Secretary has determined that application of the current standards for making ''reasonable and necessary'' determinations may take too long following FDA market authorization of breakthrough devices. More importantly, the existing standard has not always provided Medicare beneficiaries adequate access to certain breakthrough medical devices when needed to improve health outcomes. We are proposing that breakthrough devices per se meet the reasonable and necessary standard in order to increase access and to reduce the delay from FDA market authorization to Medicare coverage.

C. MCIT Pathway

We are proposing the MCIT pathway to deliver on the Administration's commitment to provide access to breakthrough devices to Medicare beneficiaries. The MCIT pathway provides up to 4 years of national coverage to newly FDA market authorized breakthrough devices. We are aware that this coverage may also facilitate evidence development on devices for the Medicare population because manufacturers can gather additional data on utilization of the device during the MCIT coverage period.

1. Definitions

In § 405.601(a) we are proposing that the MCIT pathway is voluntary. Operationally, we propose that manufacturers of breakthrough devices notify CMS of their intention to elect MCIT shortly after receiving notice from the FDA of being granted the breakthrough device designation. Ideally, this notification would be sent to CMS within 2 weeks of receiving breakthrough designation. However, entities would not be penalized for notifying CMS after that time. Alternatively, submitting a notification to CMS shortly before or concurrently with the date of the FDA marketing submission should also afford CMS sufficient time to operationalize MCIT for the device. The CMS Coverage and Analysis Group would establish an email box for these inquires. This notification alerts CMS to offer guidance to manufacturers about the MCIT pathway and point to resources for coding and payment, which are key conversations to effectuate coverage upon FDA market authorization. We intend to utilize the existing coverage implementation processes to be prepared to offer coverage immediately upon the FDA market authorization.

In § 405.601(b), we propose the following definitions for the purposes of 42 CFR part 405. We propose to define

[14] FDA Guidance for Industry, ''Medical Product Communications That Are Consistent with the FDA—Required Labeling—Questions and Answers'', *available at https://www.fda.gov/media/133619/download.*

''breakthrough device'' as a medical device that receives such designation by the FDA (section 515B(d)(1) of the FD&C Act (21 U.S.C. 360e–3(d)(1))). We also propose to define, for the sake of clarity in the rule, that the acronym MCIT stands for Medicare Coverage of Innovative Technology.

2. MCIT Pathway Device Eligibility

In § 405.603(a) we propose that the pathway is available to devices that meet the definitions proposed in § 405.601. Based on the explicit mention of devices in E.O. 13890 and our interaction and feedback from stakeholders who expressed their concern that there is more uncertainty of coverage for devices than for other items and services (for example, diagnostics, drugs and biologics), this proposed policy is for devices only.

We propose in § 405.603(b) that the breakthrough devices that received FDA market authorization no more than 2 calendar years prior to the effective date of this subpart (the date the final rule is finalized) and thereafter will be eligible for coverage for claims submitted on or after the effective date of this rule. Claims for breakthrough devices with dates of service that occurred before the effective date of this rule would not be covered through MCIT. For example, a hypothetical breakthrough device that was FDA market authorized on October 1, 2018, and utilized on January 1, 2020 would not be eligible for coverage under MCIT because on January 1, 2020, the date of service, the final MCIT rule was not yet legally in effect. In contrast, a claim for utilization of the same hypothetical breakthrough device with a date of service on January 1, 2021 might be eligible for coverage if the claim occurred after the effective date of the rule (assuming that the effective date of the rule was prior to January 1, 2021). Breakthrough devices market authorized prior to the effective date of this rule will not be eligible for all 4 years of coverage. The 4-year period starts on the date of FDA market authorization. For example, a breakthrough device market authorized on October 1, 2018 would have claims covered through MCIT from the effective date of the final rule until October 1, 2022. If a manufacturer initially chooses to not utilize the MCIT pathway, and then chooses to do so some time after the breakthrough device's market authorization, coverage still only lasts 4 years from the date of FDA market authorization. We seek comment on this eligibility criterion for devices and specifically the 2 year lookback.

We propose in § 405.603(c) that to be part of the MCIT pathway, the device must be used according to its FDA approved or cleared indication for use. We propose that the device is only covered for use consistent with its FDA approved or cleared indication for use because that is the indication and conditions for use that were reviewed by the FDA and authorized for marketing. Data are unlikely to be available to support extending beyond the FDA required labeling for breakthrough devices on the date of marketing authorization. Use of the device for a condition or population that is not labeled (''off-label'') will not be covered as that use would not be FDA authorized. We specifically seek comment on whether off-label use of breakthrough devices should be covered and, if so, under what specific circumstances and/or evidentiary support.

In § 405.603(d) and (e), we additionally propose limitations to what is coverable under the Act. In § 405.603(e), we are proposing that if CMS has issued an NCD on a particular breakthrough device, that breakthrough device is not eligible for MCIT. We are proposing this because, once the device has been reviewed by CMS for the FDA required approved or cleared indication for use; CMS has made a coverage determination based on the available evidence for that technology. We believe this would happen rarely because breakthrough devices are new technologies that are not likely to have been previously reviewed through the NCD process. In § 405.603(f), we acknowledge that devices in the MCIT pathway may be excluded due to statute or regulation (for example, 42 CFR 411.15, Particular services excluded from coverage) and, like other items and services coverable by Medicare, the device must fall within the scope of a Medicare benefit category under section 1861 of the Act and the implementing regulations. If the device does not fall within a Medicare benefit category as outlined in the statute and implementing regulations, the device is not eligible for Medicare coverage; therefore, the device would not be eligible for the MCIT pathway.

3. General Coverage of Items and Services under the MCIT Pathway

We propose in § 405.605 that devices covered under the MCIT pathway are covered no differently from devices that are covered outside of MCIT. In other words, provided the items and services are otherwise coverable (that is, not specifically excluded and not found by CMS to be outside the scope of a Medicare benefit category), covered items and services could include the device, reasonable and necessary surgery to implant the device, if implantable, related care and services costs of the device (for example, replacing reasonable and necessary parts of the device such as a battery), and coverage of any reasonable and necessary treatments due to complications arising from use of the device. What the MCIT pathway offers compared to other pathways is predictable national coverage simultaneous with FDA market authorization that will generally last for a set time period.

The proposed MCIT pathway would support and accelerate beneficiary access to certain innovative devices. CMS encourages manufacturers that have breakthrough devices covered under MCIT to develop additional data for the healthcare community.

4. MCIT Pathway for Breakthrough Devices: 4 Years of Coverage

In § 405.607(a), we propose that the MCIT pathway for coverage would begin on the same date the device receives FDA market authorization. We propose this point in time to ensure there is no gap between Medicare coverage and FDA market authorization. This supports the MCIT pathway's focus of ensuring beneficiaries have a predictable access to new devices.

We propose in § 405.607(b)(1) that the MCIT pathway for breakthrough devices ends 4 years from the date the device received FDA market authorization. We propose this 4 year time period because it could allow manufacturers to develop clinical evidence and data regarding the benefit of the use of their device in a real world setting. For example, we believe 4 years would allow most manufacturers sufficient time to complete FDA required post-approval or other real-world data collection studies that may have been a condition of FDA market authorization. This assumption is based upon our historical experience with studies conducted through coverage with evidence development (CED). Further, this time period allows Medicare to support manufacturers that, whether required by the FDA or not, have an interest in better understanding the health outcomes of their device in the Medicare population, including impacts on patient-reported and longer-term outcomes.

Further, § 405.607(b) proposes reasons that the MCIT pathway may end prior to 4 years. This includes circumstances whereby the device becomes subject to an NCD, regulation, statute, or if the device can no longer be lawfully marketed.

D. Summary

In summary, the MCIT pathway would provide immediate Medicare coverage of newly FDA market authorized breakthrough devices for 4 years. We seek public comment on all of our proposals. In particular, we seek feedback on whether the proposed 4 year coverage period is sufficient. We also look to stakeholders and the public to determine the level of interest and expected use of the proposed MCIT pathway so the agency can begin to estimate the level of needed resources to support successful implementation. We are also seeking public comments on our proposal to codify in regulations the standards we have historically used in making reasonable and necessary decisions under Part A and Part B under section 1862(a)(1)(A) of the Act. After considering public comments we would prepare a final rule that we expect would be effective 60 days after publication of the final rule.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of the section 3506(c)(2)(A)-required issues for the following sections of this document that contain information collection requirements (ICRs).

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2018 National Occupational Employment and Wage Estimates for all salary estimates (*https://www.bls.gov/oes/current/oes131041.htm,* released May 2019). In this regard, the table that follows presents the mean hourly wage, the cost of fringe benefits (calculated at 100 percent of salary), and the adjusted hourly wage.

TABLE 1—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES FOR MCIT

Occupation title	Occupation code	Mean hourly wage ($/hr)	Fringe benefit ($/hr)	Adjusted hourly wage ($/hr)
Compliance Officer	13–1041	34.86	34.86	69.72

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer. Nonetheless, there is no practical alternative and we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

This proposed coverage pathway allows for a voluntary participation and therefore necessitates that manufacturers of breakthrough devices notify CMS of their intent to enter the MCIT pathway. Therefore, the burden associated with notifying CMS is the time and effort it would take for each of the organizations to send CMS an email or letter. We anticipate two MCIT pathway participants in the first year based upon the number of medical devices that received FY2020 NTAP and were non-covered in at least one MAC jurisdiction by LCDs and related articles.

We estimate notifying CMS of intent to participate in MCIT would involve 15 minutes at $69.72 per hour by a compliance officer. In this regard, we estimate 15 mins per notification at a cost of $17.43 per organization (0.25 hours × $69.72). In aggregate, we estimate 0.5 hours (0.25 hours × 2 submissions) at $34.86 ($17.43 × 2 submissions).

After the anticipated initial 2 submitters, over the next 3 years we expect 3 submitters in year 2, 4 submitters in year 3, and 5 submitters in year 4 to notify CMS of interested in the MCIT pathway. We expect this increase in submitters each year to level off at this point. In this regard, we estimate the same 0.25 hours per submission at a cost of $17.43 per organization. Similarly, in aggregate, we estimate, for year 2 (0.75 hours at $52.29 an hour), for year 3 (1.0 hour at $69.72 an hour), and for year 4 (1.25 hours at $87.15 an hour).

The proposed requirements and burden will be submitted to OMB under control number 0938–NEW.

We are requesting public comments on these information collection and recordkeeping requirements.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, CMS–3372–P, *Fax:* (202) 395–6974; or *Email: OIRA_submission@omb.eop.gov.*

Comments must be received on/by November 2, 2020.

IV. Regulatory Impact Statement

This proposed rule makes Medicare coverage policy updates pursuant to the authority at section 1862(a)(1)(A) of the Act. We are using regulatory action per the October 3, 2019 ''Executive Order on Protecting and Improving Medicare for Our Nation's Seniors'' to address the increasing need for a swift Medicare coverage mechanism to allow beneficiaries across the nation to access breakthrough devices faster after FDA market authorization. This proposed rule addresses that need by establishing a coverage pathway that will allow immediate beneficiary access to FDA market authorized breakthrough devices.

We have examined the impact of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4),

Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule does reach the economic threshold and thus is considered a major rule.

Regulatory alternatives to this proposed rule were to combine Medicare coverage with clinical evidence development under section 1862(a)(1)(E) of the Act, to take no regulatory action at this time, or to adjust the duration of the MCIT pathway. Combining coverage with clinical evidence development would have met the E.O. 13890 overarching goal of beneficiary access to breakthrough devices. However, this alternative did not meet the other E.O. 13890 aims of minimizing time between FDA market authorization and Medicare coverage and wide availability. The timing of coverage would depend upon the manufacturer being able to initiate a clinical study and the wide availability of coverage could be an issue if providers did not have the infrastructure necessary to participate in the clinical study. CMS chose to not to pursue combining coverage with evidence development for breakthrough devices because we wanted to meet the timing and wide availability aims of E.O. 13890. CMS also considered taking no regulatory action and trying to leverage the existing Medicare coverage pathways or proposing sub-regulatory policies to achieve the streamlined coverage process described in E.O. 13890. Taking no action would not have resulted in the desired national coverage and access envisioned in E.O. 13890 because, as described in this preamble, the existing coverage pathways do not consistently provide swift, national beneficiary access to innovative devices. As discussed elsewhere in the preamble, the nature of the problem being addressed by this proposed regulation is a potential delay between a milestone such as FDA market authorization and CMS coverage; as such, we request comment on a policy option of shortening of the duration of the MCIT pathway from the proposed 4 years to 1 year.

In addition to the alternatives just discussed, there are various possibilities regarding how to change the definition of ''reasonable and necessary''—for example, whether to include a new aspect of the proposed definition that focuses on commercial insurance coverage practices. As noted earlier in the preamble, the goal of this revision is to expand coverage. However, the nuances of the definition would affect the magnitude of the impact and we request comment that would facilitate quantification of effects and comparison of alternatives at the final rule stage.

The impact of implementing the MCIT pathway is difficult to determine without knowing the specific technologies that would be covered. In addition, many of these technologies would be eligible for coverage in the absence of this rule, such as through a local or national coverage determination, so the impact for certain items may be the acceleration of coverage or adoption by just a few months. Furthermore, some of these devices would be covered immediately if the MACs decide to pay for them, which would result in no impact on Medicare spending for devices approved under this pathway. However, it is possible that some of these innovative technologies would not otherwise be eligible for coverage in the absence of this rule. Because it is not known how these new technologies would otherwise come to market and be reimbursed, it is not possible to develop a point estimate of the impact. In general, we believe the MCIT coverage pathway would range in impact from having no impact on Medicare spending, to a temporary cost for innovations that are adopted under an accelerated basis.

The decision to enter the MCIT pathway is voluntary for the manufacturer. Because manufacturers typically join the Medicare coverage pathway that is most beneficial to them, this would result in selection against the existing program coverage pathways (to what degree is unknown at this point). In addition, the past trend of new technology costing more than existing technology could lead to a higher cost for Medicare if this trend continued for technologies enrolling in the MCIT pathway. Nevertheless, new technology may also mitigate ongoing chronic health issues or improve efficiency of services thereby reducing some costs for Medicare.

In order to demonstrate the potential impact on Medicare spending, the CMS Office of the Actuary (OACT) developed three hypothetical scenarios that illustrate the impact of implementing the proposed MCIT pathway. Scenarios two and three assume that the device would not have been eligible for coverage in the absence of this proposed rule. (See Table 2) The illustration used the new devices that applied for a NTAP in FY 2020 as a proxy for the new devices that would utilize the MCIT pathway. The submitted cost and anticipated utilization for these devices was published in the **Federal Register**.[15] In addition, we assumed that two manufacturers would elect to utilize the MCIT pathway in the first year, three manufacturers in the second year, four manufacturers in the third year, and five manufacturers in the fourth year each year for all three scenarios. This assumption is based on the number of medical devices that received FY 2020 NTAP and were non-covered in at least one MAC jurisdiction by LCDs and related articles and our impression from the FDA that the number of devices granted breakthrough status is increasing. For the first scenario, the no-cost scenario, we assumed that all the devices would be eligible for coverage in the absence of the proposed rule. If the devices received payment nationally and at the same time then there would be no additional cost under this pathway. For the second scenario, the low-cost scenario, we assumed that the new technologies would have the average costs ($2,044) and utilization (2,322 patients) of similar technologies included in the FY 2020 NTAP application cycle. Therefore, to estimate the first year of MCIT, we multiplied the add-on payment for a new device by the anticipated utilization for a new device by the number of anticipated devices in the pathway ($2,044 × 2,322 × 2 = $ 9.5 million). For the third scenario, the high-cost scenario, we assumed the new technologies would receive the maximum add-on payment from the FY 2020 NTAP application cycle ($22,425) and the highest utilization of a device (6,500 patients). Therefore, to estimate for the first year of MCIT, we estimated similarly ($22,425 × 6,500 patients × 2 = $ 291.5 million). For subsequent years, we increased the number of anticipated devices in the pathway by three, four, and five in the last two scenarios until 2024.[16] In addition to

[15] FY 2020 Hospital Inpatient Prospective Payment System (IPPS) Proposed Rule (84 FR 19640 and 19641) (May 3, 2019) *available at https://www.govinfo.gov/content/pkg/FR-2019-05-03/pdf/2019-08330.pdf* (accessed October 17, 2019).

[16] An indirect cost of the proposed rule would be increased distortions in the labor markets taxed to support the Medicare Trust Fund. Such distortions are sometimes referred to as marginal excess tax

not taking into account inflation, the illustration does not reflect any offsets for the costs of these technologies that would be utilized through existing authorities nor the cost of other treatments (except as noted). It is not possible to explicitly quantify these offsetting costs but they could substantially reduce or eliminate the net program cost. However, by assuming that only two to five manufacturers will elect MCIT coverage, we have implicitly assumed that, while more manufacturers could potentially elect coverage under MCIT, the majority of devices would have been covered under a different coverage pathway. Therefore, a substantial portion of the offsetting costs are implicitly reflected.

Based on this analysis, there is a range of potential impacts of the proposed MCIT coverage pathway as shown in Table 2. The difference between the three estimates demonstrates how sensitive the impact is to the cost and utilization of these unknown devices.

TABLE 2—ILLUSTRATED IMPACT ON THE MEDICARE PROGRAM BY PROPOSED MCIT COVERAGE PATHWAY

	Costs (in millions)			
	FY 2021	FY 2022	FY 2023	FY 2024
No-cost Scenario	$0	$0	$0	$0
Low-cost Scenario	9.5	23.7	42.7	66.4
High-cost Scenario	291.5	728.8	1,311.9	2,040.7

We believe the assumptions used in the three scenarios are reasonable to show the possible wide range of impacts for implementing this proposed pathway, in particular for a technology that would not have otherwise been eligible for coverage.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Some hospitals and other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We reviewed the Small Business Administration's Table of Small Business Size Standards Matched to North American Industry Classification System (NAICS) Codes to determine the NAICS U.S. industry titles and size standards in millions of dollars and/or number of employees that apply to small businesses that could be impacted by this rule.[17] We determined that small businesses potentially impacted may include surgical and medical instrument manufacturers (NAICS code 339112, dollars not provided/1,000 employees), Offices of Physicians (except Mental Health Specialists) (NAICS code 621111, $12 million/employees not provided), and Freestanding Ambulatory Surgical and Emergency Centers (NAICS code 621493, $16.5 million/employees not provided). During the first 4 years of MCIT, we anticipate approximately 14 surgical and medical instrument manufacturers may participate, and based off of U.S. Census data, the majority of this businesses type are small businesses with less than 1,000 employees (968 out of 1,093 businesses have less than 500 employees). [18] As such, this proposed rule would impact less than 5 percent of these businesses, and the revenue impact, if any, would not be negative. Rather, it would be a positive impact because MCIT would provide Medicare coverage (and subsequent payment) to providers who purchase the devices from these manufacturers. For Offices of Physicians (except Mental Health Specialists) and Freestanding Ambulatory Surgical and Emergency Centers that may be providing the breakthrough devices, the majority are small businesses with less than 1,000 employees (4,060 out of 4,385 and 160, 367 out of 161, 286 have less than 500 employees, respectively).[19] Given that we estimate, at most in the high-cost scenario, that 6,500 beneficiaries would utilize breakthrough devices through MCIT per year, and even if each beneficiary were to access services at only one of these small businesses (that is, no two beneficiaries used the same office or center), still less than 5 percent of these small businesses would be impacted by MCIT. As such, the revenue impact, if any, would not be negative, rather, it would be a positive impact because MCIT would provide Medicare coverage (and subsequent payment) to providers. Overall, this proposed rule results in a payment, not a reduction in revenue. We are not preparing a further analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule will not have a significant negative economic impact on a substantial number of small entities because small entities are not being asked to undertake additional effort or take on additional costs outside of the ordinary course of business through this proposed rule. Rather, for small entities that develop or provide breakthrough devices to patients, this proposed rule is a means for the device to be covered through the Medicare program, which does not detract from revenue and could be viewed as a positive economic impact. With the limited information we had to base this estimate, we solicit public comment on improvements to this estimate for the final rule.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital

burden (METB), and Circular A–94—OMB's guidance on cost-benefit analysis of federal programs, available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A94/a094.pdf*—suggests that METB may be valued at roughly 25 percent of the estimated transfer attributed to a policy change; the Circular goes on to direct the inclusion of estimated METB change in supplementary analyses. If secondary costs—such as increased marginal excess tax burden is, in the case of this proposed rule—are included in regulatory impact analyses, then secondary benefits must be as well, in order to avoid inappropriately skewing the net benefits results, and including METB only in supplementary analyses provides some acknowledgement of this potential imbalance.

[17] Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System (NAICS) Codes, *available at https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.*

[18] 2017 County Business Patterns and 2017 Economic Census. Number of Firms, Number of Establishments, Employment, Annual Payroll, and Preliminary Receipts by Enterprise Employment Size for the United States, All Industries: 2017 (release date: May 6, 2020).

[19] *Id.*

as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals because small rural hospitals are not being asked to undertake additional effort or take on additional costs outside of the ordinary course of business through this proposed rule. Obtaining breakthrough devices for patients is at the discretion of providers. We are not requiring the purchase and use of breakthrough devices. Providers should continue to work with their patients to choose the best treatment. For small rural hospitals that provide breakthrough devices to their patients, this proposed rule is a means for the device to be covered through the Medicare program.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold was approximately $156 million. This proposed rule would have no consequential effect on State, local, or tribal governments or on the private sector.

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. Since this regulation does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

Executive Order 13771 (E.O. 13771), titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. This proposed rule, if finalized as proposed, is expected to impose no more than *de minimis* costs and thus be neither an E.O. 13771 regulatory action nor an E.O. 13771 deregulatory action.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Diseases, Health facilities, Health professions, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

■ 1. The authority for part 405 continues to read as follows:

Authority: 42 U.S.C. 263a, 405(a), 1302, 1320b–12, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr, and 1395ww(k).

■ 2. Section 405.201 is amended in paragraph (b) by adding the definition of ''Reasonable and necessary'' in alphabetical order to read as follows:

§ 405.201 Scope of subpart and definitions.

* * * * *

(b) * * *

Reasonable and necessary means that an item or service is considered—

(1) Safe and effective;

(2) Except as set forth in § 411.15(o)) of this chapter, not experimental or investigational; and

(3) Appropriate for Medicare patients, including the duration and frequency that is considered appropriate for the item or service, in terms of whether it (i) Meets all of the following criteria:

(A) Furnished in accordance with accepted standards of medical practice for the diagnosis or treatment of the patient's condition or to improve the function of a malformed body member;

(B) Furnished in a setting appropriate to the patient's medical needs and condition;

(C) Ordered and furnished by qualified personnel;

(D) One that meets, but does not exceed, the patient's medical need; and

(E) At least as beneficial as an existing and available medically appropriate alternative; or

(ii) Is covered by commercial insurers, unless evidence supports that differences between Medicare beneficiaries and commercially insured individuals are clinically relevant.

* * * * *

■ 3. Subpart F, consisting of §§ 405.601–405.607, is added to read as follows:

Subpart F—Medicare Coverage of Innovative Technology

Sec.
405.601 Medicare coverage of innovative technology.
405.603 Medical device eligibility.
405.605 Coverage of items and services.
405.607 Coverage period.

Subpart F—Medicare Coverage of Innovative Technology

§ 405.601 Medicare coverage of innovative technology.

(a) *Basis and scope.* Medicare coverage of innovative technology (MCIT) is a program that provides national, time-limited coverage under section 1862(a)(1)(A) of the Act for certain breakthrough medical devices. Manufacturer participation in the pathway for breakthrough device coverage is voluntary.

(b) *Definitions.* For the purposes of this subpart, the following definitions are applicable:

Breakthrough device means a device that receives such designation by the Food and Drug Administration (FDA) (section 515B(d)(1) of the FD&C Act (21 U.S.C. 360e–3(d)(1)).

MCIT stands for Medicare coverage of innovative technology.

§ 405.603 Medical device eligibility.

The MCIT pathway is available only to medical devices that meet all of the following:

(a) That are FDA-designated breakthrough devices.

(b) That are FDA market authorized at most [date 2 years prior to effective date of final rule] and thereafter.

(c) That are used according to their FDA approved or cleared indication for use.

(d) That are within a Medicare benefit category.

(e) That are not the subject of a Medicare national coverage determination.

(f) That are not otherwise excluded from coverage through law or regulation.

§ 405.605 Coverage of items and services.

Covered items and services furnished within the MCIT pathway may include any of the following, if not otherwise excluded from coverage:

(a) The breakthrough device.

(b) Any reasonable and necessary procedures to implant the breakthrough device.

(c) Reasonable and necessary costs to maintain the breakthrough device.

(d) Related care and services for the breakthrough device.

(e) Reasonable and necessary services to treat complications arising from use of the breakthrough device.

§ 405.607 Coverage period.

(a) *Start of the period.* The MCIT pathway begins on the date the breakthrough device receives FDA market authorization.

(b) *End of the period.* The MCIT pathway for a breakthrough device ends as follows:

(1) No later than 4 years from the date the breakthrough device received FDA market authorization.

(2) Prior to 4 years if a manufacturer withdraws the breakthrough device from the MCIT pathway.

(3) Prior to 4 years if the breakthrough device becomes the subject of a national coverage determination or otherwise becomes noncovered through law or regulation.

Dated: May 4, 2020.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: June 11, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–19289 Filed 8–31–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FF09E21000 FXES11110900000 201]

Endangered and Threatened Wildlife and Plants; Two Species Not Warranted for Listing as Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 12-month findings on petitions to add Big Cypress epidendrum (*Epidendrum strobiliferum*) and Cape Sable orchid (*Trichocentrum undulatum*) to the List of Endangered and Threatened Plants under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best available scientific and commercial information, we find that it is not warranted at this time to list the Big Cypress epidendrum or Cape Sable orchid. However, we ask the public to submit to us at any time any new information relevant to the status of either of the species mentioned above or their habitats.

DATES: The findings in this document were made on September 1, 2020.

ADDRESSES: Detailed descriptions of the basis for these findings are available on the internet at *http://www.regulations.gov* under the following docket numbers:

Species	Docket No.
Big Cypress epidendrum	FWS–R4–ES–2020–0043.
Cape Sable orchid	FWS–R4–ES–2020–0044.

Please submit any new information, materials, comments, or questions concerning this finding to the person specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Roxanna Hinzman, Field Supervisor, U.S. Fish and Wildlife Service, South Florida Ecological Services Field Office, email: *roxanna_hinzman@fws.gov,* telephone: 772–469–4309. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Under section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), we are required to make a finding whether or not a petitioned action is warranted within 12 months after receiving any petition that we have determined contains substantial scientific or commercial information indicating that the petitioned action may be warranted (''12-month finding''). We must make a finding that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted but precluded. We must publish a notice of these 12-month findings in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists of Endangered and Threatened Wildlife and Plants (Lists). The Act defines ''species'' as any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. The Act defines ''endangered species'' as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and ''threatened species'' as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species because of any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself. However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The

Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

In considering whether a species may meet the definition of an endangered species or a threatened species because of any of the five factors, we must look beyond the mere exposure of the species to the stressor to determine whether the species responds to the stressor in a way that causes actual impacts to the species. If there is exposure to a stressor, but no response, or only a positive response, that stressor does not cause a species to meet the definition of an endangered species or a threatened species. If there is exposure and the species responds negatively, we determine whether that stressor drives or contributes to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species. The mere identification of stressors that could affect a species negatively is not sufficient to compel a finding that listing is or remains warranted. For a species to be listed or remain listed, we require evidence that these stressors are operative threats to the species and its habitat, either singly or in combination, to the point that the species meets the definition of an endangered or a threatened species under the Act.

In conducting our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether the Big Cypress epidendrum (*Epidendrum strobiliferum*) and Cape Sable orchid (*Trichocentrum undulatum*) meet the definition of ''endangered species'' or ''threatened species,'' we considered and thoroughly evaluated the best scientific and commercial information available regarding the past, present, and future stressors and threats. We reviewed the petitions, information available in our files, and other available published and unpublished information. These evaluations may include information from recognized experts; Federal, State, and tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

The species assessment forms for the Big Cypress epidendrum and Cape Sable orchid contain more detailed biological information, a thorough analysis of the listing factors, and an explanation of why we determined that these species do not meet the definition of an endangered species or a threatened species. This supporting information can be found on the internet at *http://www.regulations.gov* under the appropriate docket number (see **ADDRESSES**, above). The following are informational summaries for each of the findings in this document.

Previous Federal Actions

On April 20, 2010, we received a petition from the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy to list 404 aquatic, riparian, and wetland species, including the Big Cypress epidendrum and Cape Sable orchid, as endangered or threatened species under the Act. On September 27, 2011, we published 90-day findings for both species in the **Federal Register** (76 FR 59836), concluding that the petition presented substantial information indicating that listing the Big Cypress epidendrum and Cape Sable orchid may be warranted. This document constitutes our 12-month findings on the April 20, 2010, petition to list the Big Cypress epidendrum and Cape Sable orchid under the Act.

Big Cypress Epidendrum

Summary of Finding

The Big Cypress epidendrum is an epiphytic, herbaceous plant with small white flowers in the Orchidaceae family. The species is found across the tropical Americas and the Caribbean, including in Collier County, Florida, United States, as well as in Mexico, Cuba, Dominica, Dominican Republic, Guadeloupe, Haiti, Jamaica, St. Vincent, Trinidad and Tobago, Guatemala, Belize, Honduras, Nicaragua, Costa Rica, Panama, Colombia, Ecuador, Peru, Bolivia, Brazil, French Guiana, Surinam, Guyana, and Venezuela. The best available data suggest that the species' current range has not changed significantly from its historical range.

The Big Cypress epidendrum is a long-lived perennial with a typical orchid life cycle from seed to flowering plant. Mature Big Cypress epidendrum plants usually produce flowers in October and November, but they may flower at any time of the year; seed capsules have been observed on plants in March. All orchids produce capsules containing thousands of miniscule seeds that are dispersed by wind. The Big Cypress epidendrum can self-fertilize, but may also be pollinated by bees, flies, butterflies, and moths (Dressler 1990, p. 106; North American Orchid Conservation Center 2018).

For successful recruitment, the seed requires suitable host fungi to be present where they land. After successful germination on a suitable host tree, seedlings grow for several years before reaching maturity. The exact number of years to maturity is not known, but likely depends on resource availability (principally light and water). After approximately 10 years, adult plants may consist of many stems arising from leaf axils and the plant's base. Individual plant lifespan is unknown, but is likely many years to decades, due to continuous vegetative generation of pseudo-bulbs (sympodial growth).

In Florida, Big Cypress epidendrum plants are found in dense tangles high on the branches or trunks of canopy trees and occasionally standing dead wood (snags) in habitats classified as wooded slough and strand swamp. Slough and strand swamp habitats are broad, shallow channels with peat over mineral substrate, which are seasonally inundated with flowing water.

Outside of the United States, the Big Cypress epidendrum occurs in tropical hammocks, tropical rain forests, and lowland rainforests, up to 4,500 feet (ft) (1,371 meters (m)) in elevation. In Brazil, the species has been recorded in the following vegetation types: Riverine

Forest and/or Gallery Forest, Inundated Forest, Terra Firme Forest, Seasonally Semideciduous Forest, Ombrophyllous Forest (Tropical Rain Forest), and Coastal Forest that are within the following biomes: Amazon Rainforest, Central Brazilian Savanna, and Atlantic Rainforest (Flora do Brasil 2020, entire).

Habitat elements that are important to the Big Cypress epidendrum include host trees with partial sun exposure in epiphytic microhabitats in swamps, rainforests, and cloud forests; nearly continual high humidity without freezing temperatures; and germinating seeds requiring the presence of symbiotic fungal species in order to grow to maturity.

The primary stressors affecting the Big Cypress epidendrum's biological status include habitat destruction and modification and hydrologic modification. Habitat destruction and modification are caused by changes in the host trees' forest structure occurring now and into the future through impacts from sea-level rise, such as salt water intrusion and inundation, and deforestation. However, the species' distribution and occurrences across a wide range (25 countries with at least 81 to 300 populations) within a variety of habitat types ensure that the Big Cypress epidendrum will not be in danger of extinction in the foreseeable future.

We carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Big Cypress epidendrum, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors.

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We identified a concentration of threats acting on the Florida portion of the species' range. Sea-level rise affects the Florida population disproportionately compared to the rest of the species' range due to the population's proximity to the coast and occurrence in low-elevation areas, and is expected to reduce the amount of suitable habitat for the host trees. However, as explained in our species assessment form (available on *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0043), we found no substantial information to indicate that the Florida portion of the species' range is a biologically significant portion of the range. Accordingly, we find there is no significant portion of the range that is endangered or likely to become endangered within the foreseeable future.

Our review of the best available scientific and commercial information indicates the Big Cypress epidendrum does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. Therefore, we find that listing the Big Cypress epidendrum is not warranted at this time. A detailed discussion of the basis for this finding can be found in the Big Cypress epidendrum species assessment form and other supporting documents (see **ADDRESSES**, above).

Cape Sable Orchid

Summary of Finding

Cape Sable orchid is an epiphytic, lithophytic (growing on rock substrate), or sometimes terrestrial herbaceous plant that is found across the tropical Americas and the Caribbean, including in Monroe County, Florida, United States, as well as in Cuba, Mexico, Jamaica, Saint Vincent and the Grenadines, Trinidad and Tobago, Belize, Guatemala, Honduras, Nicaragua, Colombia, Ecuador, Peru, Venezuela, French Guiana, Surinam, Guyana, and Brazil. The best available data suggest that the species' current range has not changed significantly from its historical range.

The Cape Sable orchid is a long-lived perennial with a typical orchid life cycle from seed to flowering plant. Mature Cape Sable orchid plants usually produce flowers from April through October. All orchids produce capsules containing thousands of miniscule seeds that are dispersed by wind.

For successful recruitment, the seed requires a suitable host fungus to be present where it lands. After successful germination on a suitable host substrate, seedlings grow for several years before reaching maturity. For this species, the exact number of years to maturity is not known, but likely depends on resource availability (principally light and water). Adult plants may consist of many stems arising from leaf axils and the plant's base. The species' life span is unknown, but is likely many years, due to new outgrowths on the stem.

In Florida, the Cape Sable orchid occurs as an epiphyte on the branches or trunks of canopy trees and occasionally standing dead wood (snags) primarily in buttonwood hammock and, to a small extent, in mangrove forest habitat. The species historically occurred in coastal berm and rockland hammock habitat. The Cape Sable orchid has not been observed growing on rock substrate in Florida.

Outside the United States, the Cape Sable orchid occurs in the understory of mesic hilly broadleaf forests, montane rain forests, and cloud forests, on tree trunks or rocks, or in leaf mold on limestone rocks at elevations from 30 to 3,100 ft (10 to 950 m).

Habitat elements that are important to the Cape Sable orchid include host trees with partial sun exposure in epiphytic microhabitats in swamps, rainforests, and cloud forests; nearly continual high humidity without freezing temperatures; and germinating seeds requiring the presence of symbiotic fungal species in order to grow to maturity.

The primary stressors affecting the Cape Sable orchid's biological status include habitat destruction and modification, hydrologic modification, insect damage, and poaching. Habitat destruction and modification are caused by changes in the host trees' forest structure occurring now and into the future through impacts from sea-level rise, such as salt water intrusion and inundation, and deforestation. The species' distribution and occurrences across a wide range (in 19 countries and 81 populations) within a variety of habitat types ensure that the Cape Sable orchid will not become in danger of extinction in the foreseeable future.

We carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Cape Sable orchid, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors.

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We identified a concentration of threats acting on the Florida portion of the species' range. Sea-level rise affects the Florida population disproportionately compared to the rest of the species' range due to the population's proximity to the coast and occurrence in low-elevation areas, and is expected to reduce the amount of suitable habitat for the host trees. However, as explained in our species assessment form (available on *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0044), we found no substantial information to indicate that the Florida portion of the species' range is a biologically significant portion of the range. Accordingly, we find there is no significant portion of the range that is

endangered or likely to become endangered within the foreseeable future.

Our review of the best available scientific and commercial information indicates the Cape Sable orchid does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. Therefore, we find that listing the Cape Sable orchid is not warranted at this time. A detailed discussion of the basis for this finding can be found in the Cape Sable orchid species assessment form and other supporting documents (see **ADDRESSES**, above).

New Information

We request that you submit any new information concerning the taxonomy of, biology of, ecology of, status of, or stressors to the Big Cypress epidendrum or Cape Sable orchid to the person specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor these species and make appropriate decisions about their conservation and status. We encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts.

References Cited

A list of the references cited in the petition finding are available on the internet at *http://www.regulations.gov* in the dockets provided above in **ADDRESSES** and upon request from the person specified under **FOR FURTHER INFORMATION CONTACT**.

Authors

The primary authors of this document are the staff members of the Species Assessment Team, Ecological Services Program.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–16721 Filed 8–31–20; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 85, No. 170

Tuesday, September 1, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document Number AMS–NOP–20–0041–NOP–20–04]

Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, Agriculture (USDA).

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), is announcing a meeting of the National Organic Standards Board (NOSB). The NOSB assists the USDA in the development of standards for substances to be used in organic production and advises the Secretary of Agriculture on any other aspects of the implementation of the Organic Foods Production Act (OFPA).

DATES: The NOSB will meet via webinars (virtually) on three days, October 28–October 30, 2020, from 12 p.m. to approximately 5:00 p.m. Eastern Time (ET) each day. The Board will hear oral public comments prior to the meeting via webinars on Tuesday, October 20, 2020, and Thursday, October 22, 2020, from 12 p.m. to approximately 5 p.m. ET. The NOSB will also host an expert panel on sanitizers via webinar in November; the date and time will be announced on the AMS website. The deadline to submit written comments and/or sign up for oral comment is 11:59 p.m. ET, October 1, 2020.

ADDRESSES: All webinars for the public comment sessions, the meeting itself, and the subsequent expert panel can be accessed via the internet and/or phone. Access information will be available on the AMS website prior to each event. Detailed information can be found at *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-cedar-rapids-iowa.*

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Arsenault, Advisory Committee Specialist, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave. SW, Room 2642–S, Mail Stop 0268, Washington, DC 20250–0268; Phone: (202) 720–3252; Email: *nosb@usda.gov.*

SUPPLEMENTARY INFORMATION: The NOSB makes recommendations to the USDA about whether substances should be allowed or prohibited in organic production and/or handling, assists in the development of standards for organic production, and advises the Secretary on other aspects of the implementation of the OFPA. The NOSB is holding a public meeting to discuss and vote on proposed recommendations to the USDA, to receive updates from the USDA National Organic Program (NOP) on issues pertaining to organic agriculture, and to receive comments from the organic community. The meeting is open to the public. All meeting documents and instructions for participating will be available on the AMS website at *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-cedar-rapids-iowa.* Please check the website periodically for updates, including the date and time for the expert panel on sanitizers. Meeting topics will encompass a wide range of issues, including substances petitioned for addition to or removal from the National List of Allowed and Prohibited Substances (National List), substances on the National List that are under sunset review, and guidance on organic policies.

Public Comments: Comments should address specific topics noted on the meeting agenda.

Written Comments: Written public comments will be accepted on or before 11:59 p.m. ET on October 1, 2020, via *http://www.regulations.gov*: Docket #AMS–NOP–20–0041.Comments submitted after this date will be provided to the NOSB, but Board members may not have adequate time to consider those comments prior to making recommendations. The NOP strongly prefers comments be submitted electronically. However, written comments may also be submitted (*i.e.* postmarked) via mail to the person listed under **FOR FURTHER INFORMATION CONTACT** by or before the deadline.

Oral Comments: The NOSB will hear oral comments on Tuesday, October 20, 2020, and Thursday, October 22, 2020, from 12:00 p.m. to approximately 5 p.m. Eastern Time (ET). Each commenter wishing to address the Board must pre-register by 11:59 p.m. ET on October 1, 2020, and can register for only one speaking slot. Instructions for registering and participating in the webinars can be found at *www.ams.usda.gov/NOSBMeetings.*

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under **FOR FURTHER INFORMATION CONTACT**. Determinations for reasonable accommodation will be made on a case-by-case basis.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–17365 Filed 8–31–20; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

[Docket No. RUS–20–WATER–0032]

OneRD Annual Notice of Guarantee Fee Rates, Periodic Retention Fee Rates, Loan Guarantee Percentage and Fee for Issuance of the Loan Note Guarantee Prior to Construction Completion for Fiscal Year 2021

AGENCY: Rural Business-Cooperative Service, Rural Housing Service and Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBCS), Rural Housing Service (RHS), and the Rural Utilities Service (RUS), agencies of the Rural Development mission area within the U.S. Department of Agriculture (USDA), hereinafter collectively referred to as the Agency, offer loan guarantees through four programs: Community

Facilities (CF) administered by RHS; Water and Waste Disposal (WWD) administered by the RUS; and Business and Industry (B&I) and Rural Energy for America Program (REAP) administered by the RBCS. This notice provides applicants with the Guarantee Fee rates, Guarantee percent for Guaranteed Loans, the Periodic Retention Fee, and Fee for Issuance of the Loan Note Guarantee Prior to Construction Completion for FY 2021, to be used when applying for guarantee loans under the aforementioned guarantee loan types. This notice is being published prior to the passage of a FY 2021 appropriation. Should the fees need to be adjusted after passage of the FY 2021 appropriation bill, the agency will publish a subsequent notice in the **Federal Register**.

DATES: The fees in this notice are effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT: For information specific to this notice contact Michele Brooks, Director, Regulations Management, Rural Development Innovation Center—Regulations Management, USDA, 1400 Independence Avenue SW, STOP 1522, Room 4266, South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Email *michele.brooks@wdc.usda.gov.* For information regarding implementation contact your respective Rural Development State Office listed here: *http://www.rd.usda.gov/browse-state.*

SUPPLEMENTARY INFORMATION: As set forth in 7 CFR part 5001, 407, 454, 455 and 456published on July 14, 2020 in **Federal Register** Vol. 85, page number 42494 which will be effective on October 1, 2020, the Agency is authorized to charge a guarantee fee, a periodic guarantee retention fee, a fee for the issuance of the loan note guarantee prior to construction completion and establish a loan guarantee percentage for guaranteed loans made under this rule loans. Pursuant to this and other applicable authority, and subject to the current appropriated authority, the Agency is establishing the following for FY 2021:

Loan type	Guarantee fee	Periodic guarantee retention fee	Loan guarantee percentage	Fee for issuance of loan note guarantee prior to construction completion
B&I	3.0%	0.5%	80%	0.5%
B&I Reduced Fee	1.0	0.5	80	0.5
CF	1.5	0.5	80	0.5
REAP	1.0	0.25	80	0.5
WWD	1.0	N/A	80	0.5

The initial guarantee fee is paid at the time the loan note guarantee is issued. The periodic guarantee retention fee is paid by the lender to the Agency once a year. Payment of the periodic guarantee retention fee is required in order to maintain the enforceability of the guarantee. The fee for issuance of the loan note guarantee prior to construction completion DOES NOT apply to all construction loans. This additional fee only applies to loans requesting to receive a loan note guarantee prior to project completion.

Unless precluded by a subsequent FY 2021 appropriation, these rates will apply to all guarantee loans obligated in FY 2021. The amount of the periodic retention fee on each guaranteed loan will be determined by multiplying the periodic retention fee rate by the outstanding principal loan balance as of December 31, multiplied by the percentage of guarantee.

Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in, or administering, USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at: *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Bette B. Brand,

Deputy Undersecretary, Rural Development.

[FR Doc. 2020–19288 Filed 8–31–20; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–25–2020]

Foreign-Trade Zone (FTZ) 26—Atlanta; Georgia, Authorization of Production Activity, Janssen Pharmaceuticals Inc. (Pharmaceutical Products) Athens, Georgia

On April 29, 2020, Janssen Pharmaceuticals Inc., submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 26K, in Athens, Georgia.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including

notice in the **Federal Register** inviting public comment (85 FR 27205–27206, May 7, 2020). On August 27, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: August 27, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–19258 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–55–2020]

Foreign-Trade Zone (FTZ) 84—Houston, Texas Notification of Proposed Production Activity; Schlumberger Technology Corporation, Reslink Product Center (Sand Screens and Related Accessories); Baytown and Houston, Texas

Schlumberger Technology Corporation, Reslink Product Center (STC Reslink) submitted a notification of proposed production activity to the FTZ Board for its facilities in Baytown and Houston, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 13, 2020.

The facilities are located within Subzone 84AA. The facilities are used for the production of sand screens and related accessories for use in the oil and gas industry. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt STC Reslink from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, STC Reslink would be able to choose the duty rates during customs entry procedures that apply to sand screens (with or without filters), swell packers, joint adapters (bottom or top), and jumper tubes (duty rate ranges from duty-free to 5.0%). STC Reslink would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Plastic machine surface protectors; rubber O-rings; ceramic nozzle inserts; stainless steel components (wire; shunt tube; joint adapter (bottom or top); plug bolt; set screw; spring latch; snap- on clip; components for filtration system (shroud; shim; mesh filter tube; filter jacket; rings (end; weld; shunt; stop; slotted inner; retainer); bracket; manifold; spacer; housings (outer; nozzle); fin plate; fin plate base; end cap; stiffener plate); Y-manifold body; shunt tube extension; hanging sleeve; premium port control valve; shuttle valve); carbon steel components (hollow profile blankpipe; threaded coupling; spiral centralizer); alloy steel hollow profile blankpipes; cast fitting components (shunt tube connector; shunt tube transition); alloy threaded couplings; casted stainless steel components (shunt ring; bracket; rectangle stop ring; manifold; latch retainer; latch receptacle); nickel alloy components (wire; end ring; slotted inner ring); and, zinc spiral centralizers (duty rate ranges from duty-free to 6.2%). The request indicates that certain materials/components may be subject to duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) or Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is October 13, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: August 27, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–19263 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–151–2020]

Foreign-Trade Zone 65—Panama City, Florida; Application for Expansion of Subzone 65A; Eastern Shipbuilding Group, Inc.; Panama City and Port St. Joe, Florida

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Panama City Port Authority, grantee of FTZ 65, requesting expanded subzone status for the facilities of Eastern Shipbuilding Group, Inc. (Eastern Shipbuilding), located in Panama City and Port St. Joe, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on August 27, 2020.

The application is requesting authority to expand *Site 1* of Subzone 65A in Panama City, Florida to include an additional 1.69 acres located at 116 East Avenue South and an additional 4.38 acres located at 202 East Avenue South. The application also requests authority to include a new site (proposed Site 4—20 acres) located at 342 Howard Road, Port St. Joe, Florida.

Because the proposed new site of the subzone is outside of FTZ 65's Alternative Site Framework (ASF) service area, authorization of the expanded subzone would not be under the ASF. The proposed expanded subzone would be subject to the existing activation limit of FTZ 65.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is October 13, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 26, 2020.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: August 27, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–19260 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2105]

Approval of Subzone Status; Golden Pass LNG Terminal LLC; Port Arthur, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the Foreign-Trade Zone of Southeast Texas, Inc., grantee of Foreign-Trade Zone 116, has made application to the Board for the establishment of a subzone at the facility of Golden Pass LNG Terminal LLC, located in Port Arthur, Texas (FTZ Docket B–28–2020, docketed May 11, 2020);

Whereas, notice inviting public comment has been given in the **Federal Register** (85 FR 28930–28931, May 14, 2020) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves subzone status at the facility of Golden Pass LNG Terminal LLC, located in Port Arthur, Texas (Subzone 116E), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Dated: August 26, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2020–19180 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–24–2020]

Foreign-Trade Zone (FTZ) 7—San Juan, Puerto Rico; Authorization of Production Activity; Amgen Manufacturing Limited (Pharmaceuticals), Juncos, Puerto Rico

On April 28, 2020, Amgen Manufacturing Limited submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 7M, in Juncos, Puerto Rico.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 26923, May 6, 2020). On August 26, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: August 26, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–19179 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee will meet September 15, 2020, at 10:00 a.m., Eastern Daylight Time, via remote teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman
2. Opening remarks by the Bureau of Industry and Security
3. Presentation of papers or comments by the Public
4. Export Enforcement Update
5. Regulations Update
6. Working Group Reports
7. Automated Export System Update

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than September 8, 2020.

To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on August 17, 2020, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 § § 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2020–19200 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials and Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials and Equipment Technical Advisory Committee will meet on September 17, 2020, 10:00 a.m., Eastern Daylight Time, via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session

1. Opening Remarks and Introduction by BIS Senior Management.
2. Presentation by Trond Undheim, Author, on Pandemic Aftermath.
3. Question and Answers and Public Comments.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10 (a) (1) and 10 (a) (3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than September 10, 2020.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 19, 2019, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 § § 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2020–19196 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for October 2020

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in October 2020 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Carbazole Violet Pigment 23 from India (A–533–838) (3rd Review)	Jacqueline Arrowsmith (202) 482–5255.
Barium Chloride from China (A–570–007) (5th Review)	Matthew Renkey (202) 482–2312.
Carbazole Violet Pigment 23 from China (A–570–892) (3rd Review)	Jacqueline Arrowsmith (202) 482–2312.
Steel Grating from China (A–570–947) (2nd Review)	Matthew Renkey (202) 482–2312.
Countervailing Duty Proceedings	
Carbazole Violet Pigment 23 from India (C–533–839) (3rd Review)	Jacqueline Arrowsmith (202) 482–5255.
Steel Grating from China (C–570–948) (2nd Review)	Jacqueline Arrowsmith (202) 482–5255.
Suspended Investigations	
No Sunset Review of suspended investigations is scheduled for initiation in October 2020..	

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year* (*Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 26, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–19231 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) listed below. The International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s).

DATES: Applicable (September 1, 2020)

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s):

DOC Case No.	ITC Case No.	Country	Product	Commerce contact
A–570–018	731–TA–1259 ...	China	Boltless Steel Shelving Units Prepackaged (1st Review).	Matthew Renkey, (202) 482–2312.
C–570–019	701–TA–523	China	Boltless Steel Shelving Units Prepackaged (1st Review).	Matthew Renkey, (202) 482–2312.
A–570–945	731–TA–1160 ...	China	Prestressed Concrete Steel Wire Strand (2nd Review).	Matthew Renkey, (202) 482–2312.
C–570–946	701–TA–464	China	Prestressed Concrete Steel Wire Strand (2nd Review).	Mary Kolberg, (202) 482–1785.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.[1]

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties must use the certification formats provided in 19 CFR 351.303(g).[3] Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

On April 10, 2013, Commerce modified two regulations related to AD/CVD proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *https://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *https://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

documents containing business proprietary information, until further notice.[6]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[7]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: August 26, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–19232 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Temporary Rule Modifying AD/CVD Service Requirements Due to* COVID–19, 85 FR 41363 (July 10, 2020).

[7] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity to Request a Review: Not later than the last day of September 2020,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

Antidumping Duty Proceedings	
BELARUS: Steel Concrete Reinforcing Bars A–822–804	9/1/19—8/31/20
BRAZIL: Cold-Rolled Steel Flat Products A–351–843	9/1/19—8/31/20
BRAZIL: Emulsion Styrene-Butadiene Rubber A–351–849	9/1/19—8/31/20
INDIA: Cold-Rolled Steel Flat Products A–533–865	9/1/19—8/31/20
INDIA: Lined Paper Products A–533–843	9/1/19—8/31/20
INDIA: Oil Country Tubular Goods A–533–857	9/1/19—8/31/20
INDONESIA: Steel Concrete Reinforcing Bars A–560–811	9/1/19—8/31/20
JAPAN: Stainless Steel Wire Rod A–588–843	9/1/19—8/31/20
LATVIA: Stainless Concrete Reinforcing Bars A–449–804	9/1/19—8/31/20
MEXICO: Emulsion Styrene-Butadiene Rubber A–201–848	9/1/19—8/31/20
MEXICO: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes A–201–847	9/1/19—8/31/20
MEXICO: Magnesia Carbon Bricks A–201–837	9/1/19—8/31/20
MOLDOVA: Steel Concrete Reinforcing Bars A–841–804	9/1/19—8/31/20
POLAND: Emulsion Styrene-Butadiene Rubber A–455–805	9/1/19—8/31/20
POLAND: Steel Concrete Reinforcing Bars A–455–803	9/1/19—8/31/20
REPUBLIC OF KOREA: Cold-Rolled Steel Flat Products A–580–881	9/1/19—8/31/20
REPUBLIC OF KOREA: Emulsion Styrene-Butadiene Rubber A–580–890	9/1/19—8/31/20
REPUBLIC OF KOREA: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes A–580–880	9/1/19—8/31/20
REPUBLIC OF KOREA: Oil Country Tubular Goods A–580–870	9/1/19—8/31/20
REPUBLIC OF KOREA: Stainless Steel Wire Rod A–580–829	9/1/19—8/31/20
SOCIALIST REPUBLIC OF VIETNAM: Oil Country Tubular Goods A–552–817	9/1/19—8/31/20
TAIWAN: Forged Steel Fittings A–583–863	9/1/19—8/31/20
TAIWAN: Narrow Woven Ribbons With Woven Selvedge A–583–844	9/1/19—8/31/20
TAIWAN: Raw Flexible Magnets A–583–842	9/1/19—8/31/20
TAIWAN: Stainless Steel Wire Rod A–583–828	9/1/19—8/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Certain Steel Wheels 12 to 16.5 Inches in Diameter A–570–090	4/22/19—8/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Foundry Coke Products A–570–862	9/1/19—8/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Certain Kitchen Appliance Shelving and Racks A–570–941	9/1/19—8/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Lined Paper Products A–570–901	9/1/19—8/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Certain Magnesia Carbon Bricks A–570–954	9/1/19—8/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Narrow Woven Ribbons With Woven Selvedge A–570–952	9/1/19—8/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Raw Flexible Magnets A–570–922	9/1/19—8/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Steel Concrete Reinforcing Bars A–570–860	9/1/19—8/31/20
THE PEOPLE'S REPUBLIC OF CHINA: Steel Racks A–570–088	3/4/19—8/31/20
TURKEY: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes A–489–824	9/1/19—8/31/20
TURKEY: Oil Country Tubular Goods A–489–816	9/1/19—8/31/20
UKRAINE: Steel Concrete Reinforcing Bars A–823–809	9/1/19—8/31/20
UNITED KINGDOM: Cold-Rolled Steel Flat Products A–412–824	9/1/19—8/31/20
Countervailing Duty Proceedings	
BRAZIL: Cold-Rolled Steel Flat Products C–351–844	1/1/19—12/31/19
INDIA: Cold-Rolled Steel Flat Products C–533–866	1/1/19—12/31/19
INDIA: Lined Paper Products C–533–844	1/1/19—12/31/19
INDIA: Oil Country Tubular Goods C–533–858	1/1/19—12/31/19
REPUBLIC OF KOREA: Cold-Rolled Steel Flat Products C–580–882	1/1/19—12/31/19
THE PEOPLE'S REPUBLIC OF CHINA: Certain Steel Wheels 12 to 16.5 Inches in Diameter C–570–091	2/25/19—12/31/19
THE PEOPLE'S REPUBLIC OF CHINA: Kitchen Appliance Shelving and Racks C–570–942	1/1/19—12/31/19
THE PEOPLE'S REPUBLIC OF CHINA: Magnesia Carbon Bricks C–570–955	1/1/19—12/31/19
THE PEOPLE'S REPUBLIC OF CHINA: Narrow Woven Ribbons With Woven Selvedge C–570–953	1/1/19—12/31/19
THE PEOPLE'S REPUBLIC OF CHINA: New Pneumatic Off-the-Road Tires[3] C–570–013	1/1/19—2/3/19
THE PEOPLE'S REPUBLIC OF CHINA: Raw Flexible Magnets C–570–923	1/1/19—12/31/19
THE PEOPLE'S REPUBLIC OF CHINA: Steel Racks C–570–089	12/3/18—12/31/19

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

TURKEY: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes C–489–825	1/1/19—12/31/19
TURKEY: Oil Country Tubular Goods C–489–817	1/1/19—12/31/19
Suspension Agreements	
MEXICO: Fresh Tomatoes	9/1/19—8/31/20

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[4]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[5] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[6] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov.*[7] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[8]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of September 2020. If Commerce does not receive, by the last day of September 2020, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 26, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–19233 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–DS–P

[3] This order was revoked effective February 4, 2019. *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Sunset Reviews and Revocation of Antidumping Duty and Countervailing Duty Orders,* 84 FR 20616 (May 10, 2019).

[4] *See* the Enforcement and Compliance website at *https://legacy.trade.gov/enforcement/.*

[5] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[6] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[7] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–132]

Twist Ties From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable September 1, 2020.

FOR FURTHER INFORMATION CONTACT: Ajay Menon or Adam Simons, 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) 482–1993 or (202) 482–6172, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 16, 2020, the Department of Commerce (Commerce) initiated a countervailing duty (CVD) investigation of imports of twist ties from the People's Republic of China.[1] Currently, the preliminary determination is due no later than September 21, 2020.

Postponement of Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) The petitioner[2] makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.[3]

On August 24, 2020, the petitioner submitted a timely request that Commerce postpone the preliminary CVD determination by 65 days.[4] The petitioner requested postponement of the preliminary determination because it stated that additional time is necessary for Commerce to conduct its investigation and permit interested parties sufficient time to develop the record in this investigation.[5]

In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determination and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determination to November 23, 2020. Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 25, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–19178 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Twist Ties from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 85 FR 45188 (July 27, 2020).

[2] The petitioner is Bedford Industries, Inc.

[3] *See* 19 CFR 351.205(e).

[4] *See* Petitioner's Letter, ''Twist Ties from the People's Republic of China: Supplemental Request for Extension of Preliminary Determination By 130 Days,'' dated August 24, 2020; *see also* Petitioner's Letter, ''Twist Ties from the People's Republic of China: Request for Extension of Preliminary Determination,'' dated August 19, 2020.

[5] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–870]

Certain New Pneumatic Off-The-Road Tires From India: Rescission of Countervailing Duty Administrative Review: 2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on certain new pneumatic off-the-road tires (OTR tires) from India for the period of review (POR) January 1, 2019 through December 31, 2019, based on the timely withdrawal of the request for review.

DATES: Applicable September 1, 2020.

FOR FURTHER INFORMATION CONTACT: Gene Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–3586.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 2020, Commerce published a notice of opportunity to request an administrative review of the CVD order on OTR tires from India for the POR of January 1, 2019 through December 31, 2019.[1] On March 30, 2020, Commerce received a timely-filed request from Balkrishna Industries Limited (BKT) for an administrative review of BKT, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b).[2]

On May 6, 2020, pursuant to this request, and in accordance with 19 CFR 351.221(c)(1)(i), Commerce published a notice initiating an administrative review of the countervailing duty order on OTR tires from India for BKT.[3] On May 7, 2020, BKT timely withdrew its request for an administrative review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. BKT withdrew its request for review within the requisite 90 days. No other parties requested an administrative review of the order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of OTR tires from India. Countervailing duties shall be assessed

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 85 FR 12267 (March 2, 2020).

[2] *See* BKT's Letter, ''Certain New Pneumatic Off-The-Road Tires from India: Balkrishna Industries Limited's Request for Administrative Review,'' dated March 30, 2020.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 26931 (May 6, 2020).

[4] *See* BKT's Letter, ''Certain New Pneumatic Off-The-Road Tires from India: Balkrishna Industries Limited's Withdrawal of Request for Administrative Review,'' dated May 7, 2020.

at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Administrative Protective Orders

This notice also serves as a reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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 violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: August 26, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–19210 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Postpone the Asia EDGE Business Development Mission

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, is amending the Notice published at 85 FR 16058 (March 20, 2020), regarding the Asia EDGE (Enhancing Development and Growth through Energy) Business Development Mission to Indonesia and Vietnam, scheduled for September 14–22, 2020, to modify the dates and revise the application process for the event.

SUPPLEMENTARY INFORMATION: Amendments to revise the event dates and application process.

Background

The Department of Commerce has decided to postpone the Asia EDGE Business Development Mission, which was announced March 20, 2020 (85 FR 16058), from September 14–22, 2020, to March 17–26, 2021. The Department has been closely monitoring COVID–19 developments and believes postponing the mission is necessary to ensure safety and health. Mission stops will include Indonesia, Vietnam, and Thailand (optional). The Department of Commerce will accept additional applications for this mission through December 4, 2020 and plans to select a total of 20 firms and/or trade associations, including previously selected firms and new applicants. Firms and/or trade associations previously selected to participate in this mission will need to confirm their availability but need not reapply.

The proposed schedule is updated as follows: *

*** Note:** The final schedule of meetings, events, and site visits will depend on the availability of host government and business officials, specific goals of mission participants, flight availability and ground transportation options.

Tuesday March 16, 2021	• Travel to BANGKOK
Wednesday March 17, 2021	• *Optional Spin Off Program Commences* • BANGKOK (Visit Future Energy Asia trade show and conference)
Thursday March 18, 2021	• BANGKOK (Full Day Sessions)
Friday March 19, 2021	• BANGKOK (Full Day Sessions)
Saturday/Sunday March 20–21, 2021	• Travel to JAKARTA
Monday March 22, 2021	• *Official Trade Mission Program Commences* • JAKARTA (Full Day Sessions)
Tuesday March 23, 2021	• JAKARTA (Morning Sessions) • Travel to HO CHI MINH CITY
Wednesday March 24, 2021	• HO CHI MINH CITY (Full Day Sessions)
Thursday March 25, 2021	• Travel to HANOI • HANOI (Evening Reception)
Friday March 26, 2021	• HANOI (Full Day Sessions) • *Official Trade Mission Program Concludes*

FOR FURTHER INFORMATION CONTACT:

John Breidenstine, Regional Senior Commercial Officer, U.S. Embassy Bangkok (Thailand), U.S. Department of Commerce, Phone: 66–2–205–5090, Email: *john.breidenstine@trade.gov*

Cathy Gibbons, Global Energy Team Lead, U.S. Commercial Service, Westchester (New York), U.S. Department of Commerce, Phone: 1–914–682–6712, Email: *cathy.gibbons@trade.gov*

Victoria Yue, International Trade Specialist, Office of Energy and Environmental Industries, U.S. Department of Commerce, Phone: 1–202–482–3492, Email: *victoria.yue@trade.gov*

Eric Hsu, Senior Commercial Officer, U.S. Embassy Hanoi (Vietnam), U.S. Department of Commerce, Phone: 84–24–3850–5070, Email: *eric.hsu@trade.gov*

David Nufrio, International Trade Specialist, Global Markets Asia, U.S. Department of Commerce, Phone: 1–202–482–5175, Email: *david.nufrio@trade.gov*

Paul Taylor, Commercial Officer, U.S. Embassy Jakarta (Indonesia), U.S. Department of Commerce, Phone: 62–815–1080–0475, Email: *paul.taylor@trade.gov*

Gemal Brangman, Senior Advisor, Trade Missions, ITA Events Management Task Force, U.S. Department of Commerce, Phone: 1–202–482–3773, Email: *gemal.brangman@trade.gov*

Dated: August 21, 2020.

Edward O'Malley,

Director, I&A/Office of Energy and Environmental Industries.

[FR Doc. 2020–19198 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA438]

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 via webinar.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Joint Monkfish Committee and Advisory Panel 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 Thursday, September 17, 2020 at 9 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/2526647343401252623.*

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 Committee and Advisory Panel meet to discuss and make recommendations for 2021 Council monkfish management priorities and regulatory streamlining suggestions applicable to Executive Order 13921. 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 27, 2020.

Rey Israel Marquez,

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

[FR Doc. 2020–19294 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA434]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a two-day public virtual meeting to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The public virtual meeting will be held on September 16, 2020, from 10 a.m. to 5 p.m., and September 17, 2020, from 10 a.m. to 3 p.m. All meetings will be at Eastern Standard Time.

ADDRESSES: You may join the SSC public virtual meeting (via GoToMeeting) from a computer, tablet or smartphone by entering the following address:

Please join the meeting from your computer, tablet or smartphone. *https://global.gotomeeting.com/join/493085277*

You can also dial in using your phone.

United States: +1 (646) 749–3122

Access Code: 493–085–277

Join from a video-conferencing room or system.

Dial in or type: 67.217.95.2 or *inroomlink.goto.com*

Meeting ID: 493 085 277.

Or dial directly: 493085277@67.217.95.2 or 67.217.95.2##493085277.

If you are new to GoToMeeting? Get the app now and be ready when the meeting starts: *https://global.gotomeeting.com/install/493085277.*

In case there are problems with GoToMeeting:

Join with Google Meet: *meet.google.com/dit-cpex-tnp*

FOR FURTHER INFORMATION CONTACT: Graciela García-Moliner, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 403–8337.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

September 16, 2020

10 a.m.—12:30 p.m.

—Call to Order
—Adoption of Agenda
—Update Spiny Lobster Acceptable Biological Catch
—Overview SSC's Ecosystem Conceptual Model work to date
—Connections from sub-model to sub-model in the Ecosystem Conceptual Model

12:30 p.m.—1:30 p.m.

—Lunch

1:30 p.m.—3 p.m.

—Review Ecosystem Conceptual Model

3 p.m.—3:15 p.m.

—Break

3:15 p.m.—5 p.m.

—Finalize Ecosystem Conceptual Model

September 17, 2020

10 a.m.—12 p.m.

Finalize SSC's Ecosystem Conceptual Models

12 p.m.—1 p.m.

—Lunch Break

1 p.m.—3 p.m.

—Recommendation to Caribbean Fishery Management Council
—Other Business
—Adjourn

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on September 16, 2020, at 10 a.m. EST, and will end on September 17, 2020, at 3 p.m. EST. Other than the start time, interested parties should be aware that discussions may start earlier or later than indicated, at the discretion of the Chair. In addition, the meeting may be completed prior to the date established in this notice.

Special Accommodations

Simultaneous interpretation will be provided. To receive interpretation in Spanish you can dial into the meeting as follows:

US/Canada: call +1–888–947–3988, when system answers, enter 1*999996#. Para interpretación en inglés marcar:

US/Canada: call +1–888–947–3988, cuando el sistema conteste, entrar el siguiente número 2*999996#.

For any additional information on this public virtual meeting, please contact Dr. Graciela García-Moliner, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 403–8337.

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

Dated: August 27, 2020.

Rey Israel Marquez,

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

[FR Doc. 2020–19279 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA449]

North 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 North Pacific Fishery Management Council's (NPFMC) Trawl Electronic Monitoring (EM) Committee will meet via webconference.

DATES: The meeting will be held on Thursday, September 17, 2020, from 8:30 a.m. to 4:30 p.m., Alaska Time.

ADDRESSES: The meeting will be a webconference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/1643.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Anna Henry, Council staff; phone: (907) 271–2809 and email: *Anna.Henry@noaa.gov.* For technical support please contact administrative Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Thursday, September 17, 2020

The agenda will include discussion of: The NMFS Alaska Region Electronic Technologies Implementation Plan; EM cost metrics; 2020 Trawl EM program; planning for the 2021 Trawl EM program; scheduling and other issues. The Agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/1643* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/1643.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/1643.*

Special Accommodations

The meeting is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 903–3107 at least 7 working days prior to the meeting date.

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

Dated: August 27, 2020.

Rey Israel Marquez,

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

[FR Doc. 2020–19281 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA428]

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 Monitoring Committee will hold a public webinar meeting.

DATES: The meeting will be held on Wednesday September 16, 2020, from 2 p.m. to 4 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar, which can be accessed at: *http://mafmc.adobeconnect.com/msb-mc-sept2020/.* Meeting audio can be accessed by following the prompts which appear after logging into the webinar, or 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 Mackerel, Squid, and Butterfish Monitoring Committee will meet via webinar to discuss catch and landings limits and other management measures for Atlantic chub mackerel in 2021. The objectives of this meeting are for the Monitoring Committee to: 1) Review recent fishery performance and management measure recommendations from the Advisory Panel, the Scientific and Statistical Committee, and Council staff; 2) Review, and if appropriate, recommend changes to the previously implemented 2021 annual catch limit, annual catch target, total allowable landings limit, and other management measures. Meeting materials will be posted to *www.mafmc.org.*

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: August 27, 2020.

Rey Israel Marquez,

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

[FR Doc. 2020–19278 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Electric Boat Corporation of New York State Department of State Objection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of closure—administrative appeal decision record.

SUMMARY: This announcement provides notice that the decision record has

closed for an administrative appeal filed with the Department of Commerce by Electric Boat Corporation requesting that the Secretary of Commerce (Secretary) override an objection by the New York State Department of State to a consistency certification for a proposed project to dispose of dredged material in the Eastern Long Island Sound Dredged Material Disposal Site.

DATES: The decision record for Electric Boat Corporation's Federal consistency appeal of New York State Department of State's objection closed on August 31, 2020.

ADDRESSES: NOAA has provided access to publicly available materials and related documents comprising the appeal record on the following website: *https://www.regulations.gov/docket?D=NOAA-HQ-2020-0021.*

FOR FURTHER INFORMATION CONTACT: For questions about this Notice, contact Lauren Bregman, NOAA Office of the General Counsel, Oceans and Coasts Section, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, (301) 713–7389, *lauren.bregman@noaa.gov.*

SUPPLEMENTARY INFORMATION: On January 24, 2020, the NOAA Administrator, pursuant to authority delegated by the Secretary to decide Coastal Zone Management Act of 1972 (CZMA) federal consistency appeals, received a ''Notice of Appeal'' filed by Electric Boat Corporation (EBC or ''Appellant'') under the CZMA, 16 U.S.C. 1451 *et seq.,* and implementing regulations found at 15 CFR part 930, subpart H. The Notice of Appeal is taken from an objection by the New York State Department of State to Appellant's consistency certification for a proposed U.S. Army Corps of Engineers permit to dispose of dredged material in the Eastern Long Island Sound Dredged Material Disposal Site.

Under the CZMA, the NOAA Administrator may override New York State Department of State's objection on grounds that the project is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security. To make the determination that the proposed activity is ''consistent with the objectives or purposes of the CZMA,'' the Department of Commerce must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the national interest furthered by the proposed activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the applicable coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is ''necessary in the interest of national security,'' the NOAA Administrator must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122.

The NOAA Administrator must close the decision record in a federal consistency appeal 160 days after the Notice of Appeal is published in the **Federal Register**. 15 CFR 930.130(a)(1). The CZMA, though, authorizes the NOAA Administrator to stay the closing of the decision record for up to 60 days when the NOAA Administrator determines it is necessary to receive, on an expedited basis, any supplemental information specifically requested by the NOAA Administrator to complete a consistency review. 15 CFR 930.130(a)(2), (3). Consistent with the above schedule, the decision record for EBC's Federal consistency appeal of New York State Department of State's objection closed on August 31, 2020. No further information or briefs will be considered in deciding this appeal.

NOAA has provided access to publicly available materials and related documents comprising the appeal record on the following website: *https://www.regulations.gov/docket?D=NOAA-HQ-2020-0021.*

Adam Dilts,

Chief, Oceans and Coasts Section, NOAA Office of General Counsel.

[FR Doc. 2020–19240 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Program and National Estuarine Research Reserve; Public Meeting; Request for Comments

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold a public meeting and solicit written comments on the performance evaluation of the North Carolina Coastal Management Program and North Carolina National Estuarine Research Reserve.

DATES: NOAA will consider all written comments received by October 16, 2020. The virtual public meeting will be held on Wednesday October 7, 2020 at 12 p.m. EDT.

ADDRESSES: You may submit written comments on the coastal management program and national estuarine research reserve which NOAA intends to evaluate by emailing Ralph Cantral, Senior Advisor, NOAA Office for Coastal Management at *Ralph.Cantral@noaa.gov.* Timely comments received by the Office for Coastal Management are considered part of the public record and may be publicly accessible. Any personal identifying information (*e.g.,* name, address) submitted voluntarily by the sender may also be publicly accessible. NOAA will accept anonymous comments.

You may also provide public comments during the virtual public meeting which is being held Wednesday, October 7, 2020 at 12 p.m. EDT. To participate in the virtual public meeting, registration is required at least two hours in advance by Wednesday, October 7, 2020 at 10 a.m. EDT. Advance registration is available via the following website: *http://noaacsc.adobeconnect.com/ncpublicmeeting/event/event_info.html.*

You may participate online or by phone. If you would like to provide comment during the public meeting, please select ''yes'' during the online registration. The line-up of speakers will be based on your date and time of registration.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Senior Advisor, NOAA Office for Coastal Management by phone at (301) 233–2998 or email *Ralph.Cantral@noaa.gov.* Copies of the previous evaluation findings, the coastal management program's 2016–2020 Assessment and Strategy, and the Reserve's management plan and site profile may be viewed and downloaded on the internet at *http://coast.noaa.gov/czm/evaluations.* A copy of the evaluation notification letter and most recent progress reports may be obtained upon request by contacting Ralph Cantral.

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved state coastal programs and national estuarine research reserves.

The process includes one or more public meetings, consideration of written public comments, and consultations with interested Federal, state, and local agencies and members of the public. For the evaluation of the North Carolina Coastal Management Program NOAA will consider the extent to which the state has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. For the evaluation of the North Carolina National Estuarine Research Reserve, NOAA will consider the extent to which the state has met the national objectives, adhered to its management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the Coastal Zone Management Act. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Joelle Gore,

Acting Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–19211 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA440]

North 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 North Pacific Fishery Management Council (Council) Partial Coverage Fishery Monitoring Advisory Committee (PCFMAC) will meet via webconference on September 16, 2020.

DATES: The meeting will be held on Wednesday, September 16, 2020, from 8:30 a.m. to 4 p.m. Alaska Time.

ADDRESSES: The meeting will be a webconference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/1603.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Kate Haapala, Council staff; email: *kate.haapala@noaa.gov.* For technical support please contact administrative Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Wednesday, September 16, 2020

The September 2020 PCFMAC agenda will include: (a) Status update on the 2020 Annual Deployment Plan; (b) review of the draft 2021 Annual Deployment Plan; (c) update on fee revenues and future partial coverage funding; (d) public comment and (e) other business. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/1603* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/1603.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/1603.*

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

Dated: August 27, 2020.

Rey Israel Marquez,

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

[FR Doc. 2020–19280 Filed 8–31–20; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for Request to Accept/Decline, Transfer, or Revoke Transfer of a Segal Education Award

AGENCY: Corporation for National and Community Service (CNCS).

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, CNCS is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by November 2, 2020.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Attention Nahid Jarrett, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through *www.regulations.gov.*

Comments submitted in response to this notice may be made available to the public through *regulations.gov*. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Nahid Jarrett, 202–606–6753, or by email at *njarrett@cns.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Application Package for Request to Accept/Decline, Transfer, or Revoke Transfer of a Segal Education Award.

OMB Control Number: 3045–0136.

Type of Review: Renewal.

Respondents/Affected Public: AmeriCorps members with eligible education awards and qualified recipients.

Total Estimated Number of Annual Responses: 900.

Total Estimated Number of Annual Burden Hours: 67.

Abstract: AmeriCorps members may offer to transfer all or part of their qualified education awards to certain family members. Provision is made to accept the transfer or not, to rescind acceptance, or revoke the transfer. These processes are implemented electronically where possible, but paper forms are available if necessary. Currently, CNCS is soliciting comments

concerning its proposed renewal of the Award Transfer forms: Request to Transfer a Segal Education Award Amount, Accept/Decline Award Transfer Form, Request to Revoke Transfer of Education Award Form, and Rescind Acceptance of Award Transfer Form. These forms enable AmeriCorps members and recipients to meet the legal requirements of the award transfer process.

CNCS also seeks to continue using the currently-approved information collection until the revised information collection is approved by OMB. The currently-approved information collection is due to expire on November 30, 2020.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov*.

Dated: August 20, 2020.

Jerry Prentice,

Director, National Service Trust.

[FR Doc. 2020–19193 Filed 8–31–20; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following virtual Federal advisory committee meeting of the Advisory Committee on Arlington National Cemetery (ACANC), The Honor Subcommittee, and the Remember and Explore Subcommittee. These meetings are open to the public. For more information, please visit: *http://www.arlingtoncemetery.mil/About/Advisory-Committee-on-Arlington-National-Cemetery/ACANC-Meetings.*

DATES: The Remember and Explore Subcommittee will meet virtually on Monday, September 21, 2020 from 9:00 a.m. to 12:00 p.m., Eastern Standard Time. The Honor Subcommittee will meet on Monday, 21 September, 2020 from 2:00 p.m. to 4:00 p.m., Eastern Standard Time. The full Advisory Committee on Arlington National Cemetery (ACANC) will meet virtually on Tuesday, September 22, 2020 from 2:00 p.m. to 4:00 p.m., Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Davis; Alternate Designated Federal Officer for the Committee, in writing at Arlington National Cemetery, Arlington, VA 22211, or by email at *matthew.r.davis.civ@mail.mil,* or by phone at 1–877–907–8585.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3.150).

Purpose of the Meeting: The primary purpose of the Remember & Explore Subcommittee is to recommend methods to maintain the Tomb of the Unknown Soldier Monument, including the cracks in the large marble sarcophagus, the adjacent marble slabs, and the potential replacement marble stone for the sarcophagus already gifted to the Army; accomplish an independent assessment of requests to place commemorative monuments within ANC; and identify means to capture and convey ANC's history, and improve the quality of visitors' experiences now and for generations to come.

The primary purpose of the Honor Subcommittee is to accomplish an independent assessment of methods to address the long-term future of the Army national cemeteries, including how best to extend the active burials and what ANC should focus on once all available space is used.

The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the Committee's advice and recommendations.

Agenda: The Remember and Explore Subcommittee will receive briefings on the Tomb of the Unknown Soldier preservation work and the Centennial Commemoration plan; review the status of the education and interpretive program efforts by ANC; and review any outstanding Commemorative Works proposals.

The Honor Subcommittee will receive a briefing on the current burial demand and capacity challenges impacting the life of the cemetery.

The Committee will receive an update briefing on the education and interpretive programs; receive an information briefing on the Confederate Memorial; review a Commemorative Works proposal for the Apollo 1 monument and consideration of a recommendation for placement; receive a briefing on the current burial demand and capacity challenges impacting the life of the cemetery; and review reports from subcommittee meetings.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public.

Procedures for Attendance and Public Comment: Contact Mr. Matthew Davis at *matthew.r.davis.civ@mail.mil* to register to attend any of these virtual meetings. Public attendance will be via virtual attendance only. To attend any of these events, submit your full name, organization, email address, and phone number, and which meeting you would like to attend. Upon receipt of this information, a link will be sent to the email address provided which will allow virtual attendance to the event. Requests to attend the meetings must be received by 5:00 p.m. Eastern Standard Time, on Thursday, 17 September, 2020. (ANC will be unable to provide

technical assistance to any user experiencing technical difficulties.)

For additional information about public access procedures, contact Mr. Matthew Davis, the subcommittee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Subcommittees and/or the Committee in response to the stated agenda of the open meeting or in regard to the Committee's mission in general. Written comments or statements should be submitted to Mr. Matthew Davis, the Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the Committee. The Designated Federal Officer will review all timely submitted written comments or statements with the Committee Chairperson, and ensure the comments are provided to all members of the Committee before the meeting. Written comments or statements received after this date may not be provided to the Committee until its next meeting. Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow any member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during these meetings only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the Committee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The Designated Federal Officer will log each request, in the order received, and in consultation with the appropriate Chair determine whether the subject matter of each comment is relevant to the missions and/or the topics to be addressed in these public meeting. Members of the public who have requested to make a comment and whose comments have been deemed relevant under the process described above, will be invited to speak in the order in which their requests were received by the Designated Federal Officer. The appropriate Chair may allot a specific amount of time for comments.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2020–19205 Filed 8–31–20; 8:45 am]

BILLING CODE 5061–AP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2020–OS–0069]

Proposed Collection; Comment Request

AGENCY: National Defense University, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the National Defense University announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 2, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking 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, docket number and title 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: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to National Defense University, 300 5th Avenue SW Building 62, Washington, DC, ATTN: LTC Ann Summers, or call (202) 685–3323.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: National Defense University (NDU) Student Profile; OMB Control Number 0704–XXXX.

Needs and Uses: This information collection is required to complete the official student record, which is stored in the University Student Management System (USMS), a component of the NDU Enterprise Information System. Through this information collection, students provide profile information such as demographics, educational background, military service or professional background, and emergency contact information. The information is critical to university operations as it is used to fulfill mandatory reporting requirements and for the safety of our students. The information is collected from students electronically, via a web-based form that contains a combination of selected-response (radio buttons, drop-down menus) and open-response items. The National Defense University Student Profile (NSP) is completed by all students, and is administered using a Drupal-based survey platform provided by USA Learning.

The data are downloaded, processed, and transferred to the USMS by NDU's Office of Institutional Research. The end result is a set of complete student records for each academic year in the official repository for such record. The data are used for various institutional purposes such as mandatory reporting and notifying students of emergencies or closures.

Affected Public: Individuals and Households, Foreign Nationals.

Annual Burden Hours: 841.7.

Number of Respondents: 2525.

Responses per Respondent: 1.

Annual Responses: 2525.

Average Burden per Response: 20 Minutes.

Frequency: Annually.

Dated: August 27, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–19296 Filed 8–31–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2020–OS–0068]

Proposed Collection; Comment Request

AGENCY: National Defense University, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the National Defense University announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 2, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking 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, docket number and title 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: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to National Defense University, 300 5th Avenue SW Building 62, Washington, DC, ATTN: LTC Ann Summers, or call (202) 685–3323.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: College of International Security Affairs Out-Processing Information Form; OMB Control Number 0704–XXXX.

Needs and Uses: The information is needed for end-of-year event efforts (student-led symposium and graduation) as well as for the organization's alumni database. The collection is to ensure accurate student data is in our records upon departure from the organization. The collection instrument verifies information such as correct title/rank, name spelling, country of origin, organization/branch of service, title of individual research paper, if the student wishes to be involved in the organization's alumni network (yes/no response), personal contact information (phone number and email address), and career information (prior to joining organization and future career path after graduating). It is also utilized for alumni outreach and engagement. The data is shared with the appropriate persons—Thesis Director for symposium, Registrar for graduation, and Director of Outreach for alumni data.

Affected Public: Individuals and Households, Foreign Nationals.

Annual Burden Hours: 6.7 hours.

Number of Respondents: 40.

Responses per Respondent: 1.

Annual Responses: 40.

Average Burden per Response: 10 minutes.

Frequency: Annually.

Dated: August 27, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–19295 Filed 8–31–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2019–OS–0055]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 1, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Installation Records (IRC); DD 3058; OMB Number 0704–0586.

Type of Request: New collection.

Number of Respondents: 14,000.

Responses per Respondent: 1.

Annual Responses: 14,000.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 2,333 hours.

Needs and Uses: The information collection requirement is necessary to obtain pertinent information that is a critical part of a criminal history background investigation and suitability determination of individuals working with children in DoD programs. The form will allow vetting of an individual's criminal history records and by establishing suitability and/or fitness determination to work with children.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title 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.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 27, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–19310 Filed 8–31–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2020–OS–0070]

Proposed Collection; Comment Request

AGENCY: National Defense University, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the National Defense University announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 2, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking 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, docket number and title 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: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to National Defense University, 300 5th Avenue SW, Building 62, Washington, DC 20319, ATTN: LTC Ann Summers, or call (202) 685–3323.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: NDU Foreign Delegation Visit Request; OMB Control Number 0704–XXXX.

Needs and Uses: Foreign delegation visits help to conduct analysis for regional and DoD academic accreditations, create reports for University leadership to aid in the development of effective curricula, and facilitate academic completion requirements. The foreign visit request form is primarily used to collect information on visiting delegations for protocol purposes and to ensure proper logistic support for the visiting delegation. The respondents in our collection are generally Foreign Nationals visiting the National Defense University to meet with NDU leadership. The collection instrument is a PDF document sent over email. Respondents access the PDF directly and return via email. Once the document is returned, the information is used to create a customized visit for the delegation and informs a read ahead document for NDU leadership. Information and electronic records are maintained in the NDU Enterprise Information System (NEIS), the NDU network. The NDU NEIS encompasses all hardware and software utilized to support the academic and business information hosted in university-owned systems.

Affected Public: Foreign Nationals, Individuals or Households.

Annual Burden Hours: 45.

Number of Respondents: 45.

Responses per Respondent: 1.

Annual Responses: 45.

Average Burden per Response: 1 hour.

Frequency: On Occasion.

Dated: August 27, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–19306 Filed 8–31–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Table Rock Lake Oversight Committee; Meeting Notice

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of revised date for open committee meeting, Table Rock Lake Oversight Committee Meeting 4.

SUMMARY: The Department of Defense (DoD) published a notice on July 6, 2020 that announced the third meeting of the Table Rock Lake Oversight Committee was to take place on July 16, 2020. In addition, Meeting 4 would also be rescheduled. DoD is publishing this notice to announce the revised schedule for Meeting 4 of the Federal advisory committee meetings of the Table Rock Lake Oversight Committee (TRLOC).

DATES: Meeting 4: Wednesday, September 23, 2020, 8 a.m. to 12 p.m. This meeting will be held virtually.

ADDRESSES: U.S. Army Corps of Engineers, Little Rock District, ATTN: Table Rock Lake Oversight Committee (Operations Division), P.O. Box 867 Little Rock, Arkansas 72203–0867.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Coburn, Designated Federal Officer (DFO) for the Committee, in writing at U.S. Army Corps of Engineers, Little Rock District, Operations Division, P.O. Box 867, Little Rock, Arkansas 72203–0867, or by email at *CESWL-TRLOC-DFO@usace.army.mil.*

SUPPLEMENTARY INFORMATION: These meetings are being held pursuant to the implementation of Section 1185(c) of the Water Resources Development Act of 2016 (130 Stat. 1680) and under the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 86 Stat. 770.), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3.150).

Purpose of the Meetings: The TRLOC is an independent Federal advisory committee established as directed by Section 1185(c) of the Water Resources Development Act of 2016 (130 Stat. 1680). The committee is advisory in nature only with duties to include providing information and

recommendations to the U.S. Army Corps of Engineers, Little Rock District Engineer on revisions to the Table Rock Lake Master Plan and Shoreline Management Plan. The TRLOC may also, at the discretion of the District Engineer, review any permit to be issued under the provisions of the existing master plan and shoreline management plan until any approved revisions are finalized and become part of the formal governing documents.

Proposed Agenda: AGENDA—Meeting 4

I. Call to Order, DFO and TRLOC Chairperson
II. Corps Presentation on Response to TRLOC Recommendations
III. Corps Presentation on final Table Rock Lake Master Plan and final Table Rock Lake Shoreline Management Plan
IV. TRLOC Termination Process and Procedures
V. Adjournment

Accessibility to the Meeting: This meeting will be held entirely virtually, and all public access and participation will be virtual in nature. The information needed to access the virtual meeting will be posted on the TRLOC website *https://go.usa.gov/xfzBH* September 16, one week prior to the meeting. The most up-to-date information and instructions about the virtual meeting will also be posted there. A court reporter will be in attendance to record the TRLOC meetings.

Pete G. Perez,

Director of Programs, Southwestern Division.

[FR Doc. 2020–19222 Filed 8–31–20; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0102]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Annual Performance Report for Titles III, V, and VII Grants

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement with change of a previously existing information collection.

DATES: Interested persons are invited to submit comments on or before October 1, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jason Cottell, 202–453–7530.

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: Annual Performance Report for Titles III, V, and VII Grants.

OMB Control Number: 1840–0766.

Type of Review: Reinstatement with change of a previously existing information collection.

Respondents/Affected Public: State, Local and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 1,180.

Total Estimated Number of Annual Burden Hours: 21,240.

Abstract: Titles III, V, and VII of the Higher Education Act of 1965, as amended (HEA), provide discretionary and formula grant programs that make competitive awards to eligible institutions of higher education and organizations (Title III, Part E) to assist these institutions with expanding their capacity to serve minority and low-income students. Grantees annually submit a performance report to demonstrate that substantial progress is being made towards meeting the objectives of their project.

Dated: August 26, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–19186 Filed 8–31–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0140]

Agency Information Collection Activities; Comment Request; Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) Final Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement with change of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before November 2, 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–0140. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those*

submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Ben Witthoefft, 202–453–7576.

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: Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) Final Performance Report.

OMB Control Number: 1840–0782.

Type of Review: A reinstatement without change of a previously approved information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 165.

Total Estimated Number of Annual Burden Hours: 7,425.

Abstract: The purpose of this information collection is to determine whether recipients of Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) have made substantial progress towards meeting the objectives of their respective projects, as outlined in their grant applications and/or subsequent work plans. In addition, the final report will enable the Department to evaluate each grant project's fiscal operations for the entire grant performance period, and compare total expenditures relative to federal funds awarded, and actual cost-share/matching relative to the total amount in the approved grant application. This report is a means for grantees to share the overall experience of their projects and document achievements and concerns, and describe effects of their projects on participants being served; project barriers and major accomplishments; and evidence of sustainability. The report will be GEAR UP's primary method to collect/analyze data on students' high school graduation and immediate college enrollment rates.

Dated: August 26, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–19175 Filed 8–31–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Secretary Of Energy Advisory Board

AGENCY: Office of the Secretary, Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act, and in accordance with Title 41 of the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Secretary of Energy Advisory Board (SEAB) will be renewed for a two-year period beginning on August 28, 2020.

FOR FURTHER INFORMATION CONTACT: Kurt Heckman, Director, Office of Secretarial Boards and Councils, (202) 586–1212, email: *seab@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

The Committee will provide advice and recommendations to the Secretary of Energy on a range of energy-related issues.

Additionally, the renewal of the SEAB has been determined to be essential to conduct business of the Department of Energy and to be the in the public interest in connection with the performance of duties imposed upon the Department of Energy, by law and agreement. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, adhering to the rules and regulations in implementation of that Act.

Signing Authority: This document of the Department of Energy was signed on August 26, 2020, by Rachael J. Beitler, Acting Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 27, 2020.

Treena V. Garrett,

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

[FR Doc. 2020–19235 Filed 8–31–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 11–128–LNG]

Dominion Energy Cove Point LNG, LP; Application To Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on August 24, 2020, by Dominion Energy Cove Point LNG, LP (DECP). DECP seeks to amend the export term set forth in its current authorization to export liquefied natural gas (LNG) to non-free trade agreement countries, DOE/FE Order No. 3331–A, to a term ending on December 31, 2050. DECP filed the Application under section 3 of the Natural Gas Act (NGA) and DOE's policy statement entitled, ''Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050'' (Policy Statement). Protests, motions to intervene, notices of intervention, and written comments on

the requested term extension are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, September 16, 2020.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34) Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7893; (202) 586–2627, *benjamin.nussdorf@hq.doe.gov* or *amy.sweeney@hq.doe.gov*

Cassandra Bernstein or Edward Toyozaki, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793; (202) 586–0126, *cassandra.bernstein@hq.doe.gov* or *edward.toyozaki@hq.doe.gov*

SUPPLEMENTARY INFORMATION: On May 7, 2015, in Order No. 3331–A, DOE/FE authorized DECP (then named Dominion Cove Point LNG, LP) to export domestically produced LNG in a volume equivalent to 281 billion cubic feet per year of natural gas, pursuant to NGA section 3(a), 15 U.S.C. 717b(a).[1] DECP is authorized to export this LNG by vessel from the Cove Point LNG Terminal in Calvert County, Maryland, to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries) for a 20-year term. In the Application,[2] DECP asks DOE to extend its current export term to a term ending on December 31, 2050, as provided in the Policy Statement.[3] Additional details can be found in the Application, posted on the DOE/FE website at: *https://fossil.energy.gov/ng_regulation/applications-2011-dominioncovepointlnglp11-128-lng.*

DOE/FE Evaluation

In the Policy Statement, DOE adopted a term through December 31, 2050 (inclusive of any make-up period), as the standard export term for long-term non-FTA authorizations.[4] As the basis for its decision, DOE considered its obligations under NGA section 3(a), the public comments supporting and opposing the proposed Policy Statement, and a wide range of information bearing on the public interest.[5] DOE explained that, upon receipt of an application under the Policy Statement, it would conduct a public interest analysis of the application under NGA section 3(a). DOE further stated that ''the public interest analysis will be limited to the application for the term extension—meaning an intervenor or protestor may challenge the requested extension but not the existing non-FTA order.'' [6]

Accordingly, in reviewing DECP's Application, DOE/FE will consider any issues required by law or policy under NGA section 3(a), as informed by the Policy Statement. To the extent appropriate, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[7] DOE's response to public comments received on that Study,[8] and the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014); [9]
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014); [10] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update,* 84 FR 49278 (Sept. 19, 2019), and DOE/FE's response to public comments received on that study.[11]

Parties that may oppose the Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable, addressing the Application. Interested parties will be provided 15 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention. The public previously was given an opportunity to intervene in, protest, and comment on DECP's long-term non-FTA application. Therefore, DOE will not consider comments or protests that do not bear directly on the requested term extension.

Any person wishing to become a party to the proceeding must file a motion to

[1] *Dominion Energy Cove Point LNG, LP,* DOE/FE Order No. 3331–A, FE Docket No. 11–128–LNG, Final Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Cove Point LNG Terminal in Calvert County, Maryland, to Non-Free Trade Agreement Nations (May 7, 2015), *reh'g denied,* DOE/FE Order No. 3331–B (Apr. 18, 2016), *amended* DOE/FE Order No. 3331–C (Aug. 4, 2017) (amending authorization to reflect corporate name change to DECP). *See generally* Dominion Energy Cove Point LNG, LP, FE Docket No. 11–128–LNG.

[2] Dominion Energy Cove Point LNG, LP, Application to Amend Export Term for Existing Long-Term Authorizations Through December 31, 2050, FE Docket Nos. 11–115–LNG and 11–128–LNG (Aug. 24, 2020). DECP's request regarding its FTA authorization is not subject to this Notice. *See* 15 U.S.C. 717b(c).

[3] U.S. Dep't of Energy, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050; Notice of Final Policy Statement and Response to Comments, 85 FR 52237 (Aug. 25, 2020) [hereinafter Policy Statement].

[4] *See id.,* 85 FR 52247.

[5] *See id.,* 85 FR 52247.

[6] *See id.,* 85 FR 52247.

[7] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), *available at: https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.*

[8] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

[9] The Addendum and related documents are available at: *http://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[10] The 2014 Life Cycle Greenhouse Gas Report is available at: *http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

[11] U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments, 85 FR 72 (Jan. 2, 2020). The 2019 Update and related documents are available at: *https://fossil.energy.gov/app/docketindex/docket/index/21.*

intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 11–128–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 11–128–LNG. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on August 26, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy.

[FR Doc. 2020–19218 Filed 8–31–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 16–28–LNG]

Venture Global Plaquemines LNG, LLC; Application To Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization

AGENCY: Office of Fossil Energy, Energy (DOE).

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on August 12, 2020, by Venture Global Plaquemines LNG, LLC (Plaquemines LNG). Plaquemines LNG seeks to amend the export term set forth in its current authorization to export liquefied natural gas (LNG) to non-free trade agreement countries, DOE/FE Order No. 4446, to a term ending on December 31, 2050. Plaquemines LNG filed the Application under section 3 of the Natural Gas Act (NGA) and DOE's policy statement entitled, ''Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050'' (Policy Statement). Protests, motions to intervene, notices of intervention, and written comments on the requested term extension are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, September 16, 2020.

ADDRESSES:

Electronic Filing by email: *fergas@hq.doe.gov*

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375

Hand Delivery or Private Delivery Services (e.g. FedEx, UPS, etc.),: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7893; (202) 586–2627, *benjamin.nussdorf@hq.doe.gov* or *amy.sweeney@hq.doe.gov*

Cassandra Bernstein or Edward Toyozaki, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793; (202) 586–0126, *cassandra.bernstein@hq.doe.gov* or *edward.toyozaki@hq.doe.gov*

SUPPLEMENTARY INFORMATION: On October 16, 2019, in Order No. 4446, DOE/FE authorized Plaquemines LNG to export domestically produced LNG in a volume equivalent to 1,240 billion cubic feet per year of natural gas, pursuant to NGA section 3(a), 15 U.S.C. 717b(a).[1] Plaquemines LNG is authorized to export this LNG by vessel from the proposed Plaquemines LNG Project, to be located in Plaquemines Parish, Louisiana, to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries) for a 20-year term. In the Application,[2] Plaquemines LNG asks DOE to extend its current export term to a term ending on December 31, 2050, as provided in the Policy Statement.[3] Additional details can be found in the Application, posted on the DOE/FE website at: *https://www.energy.gov/fe/venture-global-plaquemines-lng-llc-fe-dkt-no-16-28-lng.*

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[1] *Venture Global Plaquemines LNG, LLC,* DOE/FE Order No. 4446, FE Docket No. 16–28–LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Oct. 16, 2019).

[2] Venture Global Plaquemines LNG, LLC, Application to Amend Export Term for Existing Long-Term Authorizations Through December 31, 2050, FE Docket No. 16–28–LNG (Aug. 12, 2020). Plaquemines LNG's request regarding its FTA authorization is not subject to this Notice. *See* 15 U.S.C. 717b(c).

[3] U.S. Dep't of Energy, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050; Notice of Final Policy Statement and Response to Comments, 85 FR 52237 (Aug. 25, 2020) [hereinafter Policy Statement].

DOE/FE Evaluation

In the Policy Statement, DOE adopted a term through December 31, 2050 (inclusive of any make-up period), as the standard export term for long-term non-FTA authorizations.[4] As the basis for its decision, DOE considered its obligations under NGA section 3(a), the public comments supporting and opposing the proposed Policy Statement, and a wide range of information bearing on the public interest.[5] DOE explained that, upon receipt of an application under the Policy Statement, it would conduct a public interest analysis of the application under NGA section 3(a). DOE further stated that ''the public interest analysis will be limited to the application for the term extension—meaning an intervenor or protestor may challenge the requested extension but not the existing non-FTA order.'' [6]

Accordingly, in reviewing Plaquemines LNG's Application, DOE/FE will consider any issues required by law or policy under NGA section 3(a), as informed by the Policy Statement. To the extent appropriate, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[7] DOE's response to public comments received on that Study,[8] and the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014); [9]
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014); [10] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update,* 84 FR 49278 (Sept. 19, 2019), and DOE/FE's response to public comments received on that study.[11]

Parties that may oppose the Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable, addressing the Application. Interested parties will be provided 15 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention. The public previously was given an opportunity to intervene in, protest, and comment on Plaquemines LNG's long-term non-FTA application. Therefore, DOE will not consider comments or protests that do not bear directly on the requested term extension.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 16–28–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 16–28–LNG. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on August 26, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement,Office of Fossil Energy.

[FR Doc. 2020–19216 Filed 8–31–20; 8:45 am]

BILLING CODE 6450–01–P

[4] *See id.,* 85 FR 52247.

[5] *See id.,* 85 FR 52247.

[6] *Id.,* 85 FR 52247.

[7] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), *available at: https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.*

[8] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

[9] The Addendum and related documents are available at: *http://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[10] The 2014 Life Cycle Greenhouse Gas Report is available at: *http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

[11] U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments, 85 FR 72 (Jan. 2, 2020). The 2019 Update and related documents are available at: *https://fossil.energy.gov/app/docketindex/docket/index/21.*

DEPARTMENT OF ENERGY

[FE Docket No. 15–190–LNG]

Rio Grande LNG, LLC; Application To Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on

August 20, 2020, by Rio Grande LNG, LLC (Rio Grande LNG). Rio Grande LNG seeks to amend the export term set forth in its current authorization to export liquefied natural gas (LNG) to non-free trade agreement countries, DOE/FE Order No. 4492, to a term ending on December 31, 2050. Rio Grande LNG filed the Application under section 3 of the Natural Gas Act (NGA) and DOE's policy statement entitled, ''Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050'' (Policy Statement). Protests, motions to intervene, notices of intervention, and written comments on the requested term extension are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, September 16, 2020.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov

Regular Mail: U.S. Department of Energy (FE–34) Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34) Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Amy Sweeney, U.S. Department of Energy (FE–34) Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7893; (202) 586–2627, *benjamin.nussdorf@hq.doe.gov* or *amy.sweeney@hq.doe.gov*

Cassandra Bernstein or Edward Toyozaki, U.S. Department of Energy (GC–76) Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793; (202) 586–0126, *cassandra.bernstein@hq.doe.gov* or *edward.toyozaki@hq.doe.gov*

SUPPLEMENTARY INFORMATION: On February 10, 2020, in Order No. 4492, DOE/FE authorized Rio Grande LNG to export domestically produced LNG in a volume equivalent to 1,318 billion cubic feet per year of natural gas, pursuant to NGA section 3(a), 15 U.S.C. 717b(a).[1] Rio Grande LNG is authorized to export this LNG by vessel from the proposed Rio Grande LNG Project, to be located in Cameron County, Texas, to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries) for a 20-year term. In the Application,[2] Rio Grande LNG asks DOE to extend its current export term to a term ending on December 31, 2050, as provided in the Policy Statement.[3] Additional details can be found in the Application, posted on the DOE/FE website at: *https://www.energy.gov/fe/downloads/rio-grande-lng-llc-dkt-no-15-190-lng.*

DOE/FE Evaluation

In the Policy Statement, DOE adopted a term through December 31, 2050 (inclusive of any make-up period), as the standard export term for long-term non-FTA authorizations.[4] As the basis for its decision, DOE considered its obligations under NGA section 3(a), the public comments supporting and opposing the proposed Policy Statement, and a wide range of information bearing on the public interest.[5] DOE explained that, upon receipt of an application under the Policy Statement, it would conduct a public interest analysis of the application under NGA section 3(a). DOE further stated that ''the public interest analysis will be limited to the application for the term extension—meaning an intervenor or protestor may challenge the requested extension but not the existing non-FTA order.'' [6]

Accordingly, in reviewing Rio Grande LNG's Application, DOE/FE will consider any issues required by law or policy under NGA section 3(a), as informed by the Policy Statement. To the extent appropriate, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[7] DOE's response to public comments received on that Study,[8] and the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014); [9]
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014); [10] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update,* 84 FR 49278 (Sept. 19, 2019), and DOE/FE's response to public comments received on that study.[11]

Parties that may oppose the Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable, addressing the Application. Interested parties will be provided 15 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention. The public previously was given an opportunity to intervene in, protest, and comment on Rio Grande LNG's long-term non-FTA application. Therefore,

[1] *Rio Grande LNG, LLC,* DOE/FE Order No. 4492, FE Docket No. 15–190–LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Feb. 10, 2020).

[2] Rio Grande LNG, LLC, Application to Amend Export Term for Existing Long-Term Authorization Through December 31, 2050, FE Docket No. 15–190–LNG (Aug. 20, 2020).

[3] U.S. Dep't. of Energy, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050; Notice of Final Policy Statement and Response to Comments, 85 FR 52237 (Aug. 25, 2020) [hereinafter Policy Statement].

[4] *See id.,* 85 FR 52247.

[5] *See id.,* 85 FR 52247.

[6] *Id.,* 85 FR 52247.

[7] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), *available at: https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.*

[8] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

[9] The Addendum and related documents are available at: *http://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[10] The 2014 Life Cycle Greenhouse Gas Report is available at: *http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

[11] U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments, 85 FR 72 (Jan. 2, 2020). The 2019 Update and related documents are available at: *https://fossil.energy.gov/app/docketindex/docket/index/21.*

DOE will not consider comments or protests that do not bear directly on the requested term extension.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 15–190–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 15–190–LNG.

Please Note: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on August 26, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy.

[FR Doc. 2020–19217 Filed 8–31–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 13–69–LNG, 14–88–LNG, 15–25–LNG]

Venture Global Calcasieu Pass, LLC; Application To Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on August 12, 2020, by Venture Global Calcasieu Pass, LLC (Calcasieu Pass). Calcasieu Pass seeks to amend the export term set forth in its current authorization to export liquefied natural gas (LNG) to non-free trade agreement countries, DOE/FE Order No. 4346, to a term ending on December 31, 2050. Calcasieu Pass filed the Application under section 3 of the Natural Gas Act (NGA) and DOE's policy statement entitled, ''Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050'' (Policy Statement). Protests, motions to intervene, notices of intervention, and written comments on the requested term extension are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, September 16, 2020.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7893; (202) 586–2627, *benjamin.nussdorf@hq.doe.gov* or *amy.sweeney@hq.doe.gov*

Cassandra Bernstein or Edward Toyozaki, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793; (202) 586–0126, *cassandra.bernstein@hq.doe.gov* or *edward.toyozaki@hq.doe.gov*

SUPPLEMENTARY INFORMATION: On March 5, 2019, in Order No. 4346, DOE/FE authorized Calcasieu Pass to export domestically produced LNG in a volume equivalent to 620 billion cubic feet per year of natural gas, pursuant to NGA section 3(a), 15 U.S.C. 717b(a).[1] Calcasieu Pass is authorized to export this LNG by vessel from the proposed Venture Global Calcasieu Pass Project, currently under construction and located in Cameron Parish, Louisiana, to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries) for a 20-year term. In the Application,[2] Calcasieu Pass asks DOE to extend its current export term to a term ending on December 31, 2050, as provided in the Policy Statement.[3] Additional details

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[1] *Venture Global Calcasieu Pass, LLC,* DOE/FE Order No. 4346, FE Docket Nos. 13–69–LNG, 14–88–LNG, and 15–25–LNG (Consolidated), Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (Mar. 5, 2019).

[2] Venture Global Calcasieu Pass, LLC, Application to Amend Export Term for Existing Long-Term Authorizations Through December 31, 2050, FE Docket Nos. 13–69–LNG, 14–88–LNG, and 15–25–LNG (Aug. 12, 2020). Calcasieu Pass's requests regarding its FTA authorizations are not subject to this Notice. *See* 15 U.S.C. 717b(c).

[3] U.S. Dep't of Energy, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050;

can be found in the Application, posted on the DOE/FE website at: *https://www.energy.gov/fe/downloads/venture-global-calcasieu-pass-llc-fe-dkt-no-15-25-lng.*

DOE/FE Evaluation

In the Policy Statement, DOE adopted a term through December 31, 2050 (inclusive of any make-up period), as the standard export term for long-term non-FTA authorizations.[4] As the basis for its decision, DOE considered its obligations under NGA section 3(a), the public comments supporting and opposing the proposed Policy Statement, and a wide range of information bearing on the public interest.[5] DOE explained that, upon receipt of an application under the Policy Statement, it would conduct a public interest analysis of the application under NGA section 3(a). DOE further stated that ''the public interest analysis will be limited to the application for the term extension—meaning an intervenor or protestor may challenge the requested extension but not the existing non-FTA order.'' [6]

Accordingly, in reviewing Calcasieu Pass's Application, DOE/FE will consider any issues required by law or policy under NGA section 3(a), as informed by the Policy Statement. To the extent appropriate, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[7] DOE's response to public comments received on that Study,[8] and the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014); [9]
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014); [10] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update,* 84 FR 49278 (Sept. 19, 2019), and DOE/FE's response to public comments received on that study.[11]

Parties that may oppose the Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable, addressing the Application. Interested parties will be provided 15 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention. The public previously was given an opportunity to intervene in, protest, and comment on Calcasieu Pass's long-term non-FTA application. Therefore, DOE will not consider comments or protests that do not bear directly on the requested term extension.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket Nos. 13–69–LNG, 14–88–LNG, and 15–25–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket Nos. 13–69–LNG, 14–88–LNG, and 15–25–LNG. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on August 26, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy.

[FR Doc. 2020–19215 Filed 8–31–20; 8:45 am]

BILLING CODE 6450–01–P

Notice of Final Policy Statement and Response to Comments, 85 FR 52237 (Aug. 25, 2020) [hereinafter Policy Statement].

[4] *See id.,* 85 FR 52247.

[5] *See id.,* 85 FR 52247.

[6] *Id.,* 85 FR 52247.

[7] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), *available at: https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.*

[8] U.S. Dep't. of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

[9] The Addendum and related documents are available at: *http://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[10] The 2014 Life Cycle Greenhouse Gas Report is available at: *http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

[11] U.S. Dep't. of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments, 85 FR 72 (Jan. 2, 2020). The 2019 Update and related documents are available at: *https://fossil.energy.gov/app/docketindex/docket/index/21.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2375–112]

Brookfield White Pine Hydro, LLC; Notice of Application for Amendment of License, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding:* Application non-capacity amendment of license.

b. *Project No.:* 2375–112.

c. *Date Filed:* August 13, 2020.

d. *Licensee:* Andro Hydro, LLC.

e. *Name of Project:* Riley-Jay-Livermore Hydroelectric Project.

f. *Location:* The project is located on the Androscoggin River in Oxford, Franklin, and Androscoggin counties, Maine. The proposed work is in the Towns of Jay and Livermore Falls.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Licensee Contact:* Mr. Michael Scarzello, Regulatory Director, Eagle Creek Renewable Energy, LLC, 116 N. State Street, PO Box 167, Neshkoro, WI 54960–0167, (973) 998–8400, or *michael.scarzello@eaglecreekre.com*.

i. *FERC Contact:* Christopher Chaney, (202) 502–6788 or *christopher.chaney@ferc.gov*.

j. Deadline for filing comments, interventions, and protests is September 25, 2020.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include docket number P–2375–112.

k. *Description of Proceeding:* The applicant proposes to bury a 4,000-foot section of the of the Livermore Development's existing 3.2-mile overhead transmission. The buried section would be within an existing, previously disturbed right-of-way over which it holds an easement to occupy and access for maintenance. The application includes revised Exhibit G drawings to meet the Commission's current requirements. The applicant is not proposing any changes to project operations, recreation facilities, or public access, and the proposal will not impact the project's generating or water control capabilities.

l. Filings may be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–2375–112) excluding the last three digits in the docket number field to access the documents. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .212 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: August 26, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–19254 Filed 8–31–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC20–162–000]

Alliance Pipeline L.P.; Notice of Filing

Take notice that on August 24, 2020, pursuant to 18 CFR part 201, Alliance Pipeline L.P. submitted a request for approval of accounting treatment for certain deferred tax balances.

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 or 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.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically 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://www.ferc.gov*) using the eLibrary link. Enter the docket number excluding the

last three digits in the docket number field to access the document. At this time, the Commission has suspended access to 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 p.m. Eastern Time on September 11, 2020.

Dated: August 26, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–19255 Filed 8–31–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–493–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Schedule for Environmental Review of the East 300 Upgrade Project

On June 30, 2020, Tennessee Gas Pipeline Company, L.L.C. (Tennessee) filed an application in Docket No. CP20–493–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities in Pennsylvania and New Jersey. The proposed project is known as the East 300 Upgrade Project (Project), and consists of modifying two existing compressor stations and constructing one new compressor station to create 115 million cubic feet per day of firm transportation capacity on Tennessee's existing 300 Line.

On July 15, 2020, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA February 8, 2021

90-day Federal Authorization Decision Deadline May 9, 2021

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

On its existing 300 Line, Tennessee proposes to construct: One 11,107 horsepower turbine and compressor building at its existing Compressor Station 321 in Susquehanna County, Pennsylvania; one 20,500 horsepower turbine and compressor building at its existing Compressor Station 325 in Sussex County, New Jersey; one new compressor station (''Compressor Station 327'') equipped with one 19,000 horsepower electric motor-driven compressor unit in the Township of West Milford in Passaic County, New Jersey; and associated auxiliary facilities and appurtenances.

Background

On August 13, 2020, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed East 300 Upgrade Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. The Commission received comments from Consolidated Edison Company of New York, Inc., the Township of West Milford, Food and Water Watch, and Sustainable West Milford. The primary issues raised by the commentors relate to: Water quality impacts on groundwater, streams, and the Monksville and Wanaque Reservoirs; air quality and noise; hydraulic fracturing impacts; climate change impacts from upstream, downstream, and indirect greenhouse gas emissions; safety; the need for clean energy alternatives; and general ''impact upon the residents of West Milford.'' 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 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.,* CP20–493), 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 26, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–19250 Filed 8–31–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–237–000.
Applicants: Riverstart Solar Park LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Riverstart Solar Park LLC.
Filed Date: 8/26/20.
Accession Number: 20200826–5030.
Comments Due: 5 p.m. ET 9/16/20.

Docket Numbers: EG20–238–000.
Applicants: Alta Oak Realty, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Alta Oak Realty, LLC.
Filed Date: 8/26/20.
Accession Number: 20200826–5109.
Comments Due: 5 p.m. ET 9/16/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–2059–004; ER10–3097–009.
Applicants: Puget Sound Energy, Inc., Bruce Power Inc.
Description: Amendment to July 1, 2019 Updated Market Power Analysis in the Northwest Region for Puget Sound Energy, Inc., et al.
Filed Date: 8/24/20.
Accession Number: 20200824–5250.

Comments Due: 5 p.m. ET 9/14/20

Docket Numbers: ER19–697–001.

Applicants: Cheyenne Light, Fuel and Power Company.

Description: Report Filing: Refund Report under EL19–41, ER19–697 to be effective N/A.

Filed Date: 8/26/20.

Accession Number: 20200826–5037.

Comments Due: 5 p.m. ET 9/16/20.

Docket Numbers: ER20–1616–001.

Applicants: Western Spirit Transmission LLC.

Description: Compliance filing: Facilities Use Agreement—Compliance Filing per 6/19/2020 Order to be effective 6/19/2020.

Filed Date: 8/26/20.

Accession Number: 20200826–5081.

Comments Due: 5 p.m. ET 9/16/20.

Docket Numbers: ER20–2148–001.

Applicants: Lexington Chenoa Wind Farm LLC.

Description: Tariff Amendment: Deficiency Filing Lexington Chenoa Reactive Rate Schedule to be effective 8/23/2020.

Filed Date: 8/26/20.

Accession Number: 20200826–5066.

Comments Due: 5 p.m. ET 9/16/20.

Docket Numbers: ER20–2249–000.

Applicants: Priogen Power LLC.

Description: Amendment to June 30, 2020 Priogen Power LLC tariff filing.

Filed Date: 8/24/20.

Accession Number: 20200824–5131.

Comments Due: 5 p.m. ET 9/3/20.

Docket Numbers: ER20–2741–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: PIA with Pattern and Tecolote to be effective 10/24/2020.

Filed Date: 8/25/20.

Accession Number: 20200825–5140.

Comments Due: 5 p.m. ET 9/15/20.

Docket Numbers: ER20–2742–000.

Applicants: Pennsylvania Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Penelec, JCPL, and MetEd submit Revised WASPs, SA Nos. 4221, 4222, and 4223 to be effective 10/25/2020.

Filed Date: 8/25/20.

Accession Number: 20200825–5141.

Comments Due: 5 p.m. ET 9/15/20.

Docket Numbers: ER20–2743–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3552R2 TEA and MEAN Meter Agent Agreement to be effective 8/1/2020.

Filed Date: 8/26/20.

Accession Number: 20200826–5003.

Comments Due: 5 p.m. ET 9/16/20.

Docket Numbers: ER20–2744–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2626 KCP&L, KCP&L GMO & Transource MO Novation Cancellation to be effective 8/26/2020.

Filed Date: 8/26/20.

Accession Number: 20200826–5004.

Comments Due: 5 p.m. ET 9/16/20.

Docket Numbers: ER20–2745–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–08–26_SA 2807 Entergy Arkansas-Entergy Arkansas 1st Rev GIA (J376) to be effective 8/12/2020.

Filed Date: 8/26/20.

Accession Number: 20200826–5029.

Comments Due: 5 p.m. ET 9/16/20.

Docket Numbers: ER20–2746–000.

Applicants: Riverstart Solar Park LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 10/26/2020.

Filed Date: 8/26/20.

Accession Number: 20200826–5099.

Comments Due: 5 p.m. ET 9/16/20.

Docket Numbers: ER20–2747–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: DSA Silverstrand Grid, LLC & Cancel Letter Agreement to be effective 10/26/2020.

Filed Date: 8/26/20.

Accession Number: 20200826–5043.

Comments Due: 5 p.m. ET 9/16/20.

Docket Numbers: ER20–2748–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3720 Thunderhead Wind Energy/Evergy KS CentralMeter Agent Ag to be effective 8/1/2020.

Filed Date: 8/26/20.

Accession Number: 20200826–5051.

Comments Due: 5 p.m. ET 9/16/20.

Docket Numbers: ER20–2749–000.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: § 205(d) Rate Filing: NYISO jointly filed a SGIA among NYISO, NMPC and Duke Energy, SA No. 2549 to be effective 8/20/2020.

Filed Date: 8/26/20.

Accession Number: 20200826–5088.

Comments Due: 5 p.m. ET 9/16/20.

Docket Numbers: ER20–2750–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: UAMPS TSOA Rev 5 to be effective 10/25/2020.

Filed Date: 8/26/20.

Accession Number: 20200826–5091.

Comments Due: 5 p.m. ET 9/16/20.

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 26, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–19248 Filed 8–31–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–1118–000.

Applicants: Boardwalk Storage Company, LLC.

Description: § 4(d) Rate Filing: Intermediate GMS Filing to be effective 9/25/2020.

Filed Date: 8/25/20.

Accession Number: 20200825–5064.

Comments Due: 5 p.m. ET 9/8/20.

Docket Numbers: RP20–1119–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: § 4(d) Rate Filing: TPC 2020–08–25 GT&C Section 3 Revisions to be effective 9/25/2020.

Filed Date: 8/25/20.

Accession Number: 20200825–5139.

Comments Due: 5 p.m. ET 9/8/20.

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 date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 26, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–19249 Filed 8–31–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–67–000]

Vistra Corp., Dynegy Marketing and Trade, LLC, NextEra Energy Resources, LLC, NRG Power Marketing LLC, LS Power Associates, L.P., FirstLight Power Inc., Cogentrix Energy Power Management, LLC v. Constellation Mystic Power, LLC, Exelon Generation Company, LLC, Exelon Corporation; Notice of Complaint

Take notice that on August 25, 2020, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e (2018), and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Vistra Corp. (formerly known as Vistra Energy Corp.), Dynegy Marketing and Trade, LLC, NextEra Energy Resources, LLC, NRG Power Marketing LLC, LS Power Associates, L.P., FirstLight Power Inc., and Cogentrix Energy Power Management, LLC (collectively, the New England Generators or Complainants) filed a formal complaint (Complaint) against Constellation Mystic Power, LLC, Exelon Generation Company, LLC and Exelon Corporation (collectively Respondents), asserting that Respondents are circumventing Commission precedent and therefore alleges that Respondents' actions are unjust and unreasonable, all as more fully explained in the complaint.

The New England Generators certify that copies of the complaint were served on the contacts for Mystic, Exelon Generation and Exelon Corp. as listed 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 Complainants.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov,* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on September 14, 2020.

Dated: August 26, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–19252 Filed 8–31–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–507–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed VR–22 to Shore Abandonment Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the VR–22 to Shore Abandonment Project (Project) involving construction and operation of facilities by Transcontinental Gas Pipe Line Company, LLC (Transco) in Vermilion Parish, Louisiana. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on September 25, 2020. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff

will consider all written comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on August 6, 2020, you will need to file those comments in Docket No. CP20–507–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

Transco provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on *eRegister.* You will be asked to select the type of filing you are making; a comment on a particular project is considered a Comment on a Filing; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP20–507–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Summary of the Proposed Project

Transco proposes to abandon approximately 12.6 miles of 24-inch-diameter natural gas transmission pipeline in Vermilion Parish, Louisiana, Louisiana State waters and Federal offshore waters. Of the 12.6 miles, approximately 9.9 miles would be abandoned in place, and the about 2.7 miles of pipeline would be abandoned by removal. Additionally, Transco would remove equipment associated with meter station 2278 and meter station 4640, located on the Vermilion Block 39 Platform and the VR–22 B Platform offshore, respectively. According to Transco, the facilities proposed to be abandoned have not been utilized since 2019 and it does not anticipate that any additional gas flow through these facilities will occur in the future.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Abandoning the proposed facilities would disturb about 46 acres of land and offshore waters. All temporarily disturbed lands would be restored and would be permitted to revert to their former uses.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation, wildlife, and fisheries;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary[2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[3] Agencies that would like to request cooperating agency status

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called eLibrary or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). *If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 2).*

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.,* CP20–507). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: August 26, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–19251 Filed 8–31–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 935–140; 2071–082; 2111–080; Project No. 2213–043]

PacifiCorp; Public Utility District No. 1 of Cowlitz County; Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-capacity License Amendment.

b. *Project Nos:* 935–140, 2071–082, 2111–080, and 2213–043.

c. *Date Filed:* July 2, 2020.

d. *Applicants:* PacifiCorp, and Public Utility District No. 1 of Cowlitz County (licensees).

e. *Name of Projects:* Merwin Hydroelectric Project, Yale Hydroelectric Project, Swift No. 1 Hydroelectric Project, and Swift No. 2 Hydroelectric Project.

f. *Location:* The project is located on the Lewis River in Clark, Cowlitz, and Skamania Counties, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contacts:* PacifiCorp, Mr. Todd Olson, 825 NE Multnomah Street, Suite 1800, Portland, OR 97232; phone (503) 813–6657, *todd.olson@pacificorp.com*; Public Utility District No. 1 of Cowlitz County, Washington, Ms. Amanda Froberg, 961 12th Ave., Longview, WA 98632; phone (360) 501–9374, *afroberg@cowlitzpud.org.*

i. *FERC Contact:* Erich Gaedeke (503) 552–2716 or *erich.gaedeke@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests: September 21, 2020.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include docket number P–935–140, P–2071–082, P–2111–080, and P–2213–043. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Request: The licensees must provide fish passage facilities for each project as per fishway prescriptions issued by the National Marine Fisheries Service and U.S. Fish and Wildlife Service (Services) under Section 18 of the Federal Power Act, which are incorporated into their licenses. The licenses include provisions that allow the licensees to present new information to the Services regarding whether the construction of the fish passage facilities is appropriate.

The licensees provided this information to the Services, who concurred and provided new fish passage determinations. As such, the licensees are requesting the following modifications: (1) Requiring PacifiCorp to implement an aquatic habitat restoration program in lieu of constructing fish passage facilities into and out of Merwin Reservoir; (2) delaying decisions regarding the appropriateness of constructing fish passage facilities into and out of the Yale Reservoir until 2031 and 2035; and (3) requiring PacifiCorp to construct the Yale Downstream, Yale Upstream, and Swift Upstream bull trout passage facilities. Additional areas potentially impacted by the proposed modifications include: the three Project reservoirs; the river reach below Merwin Dam; and river and creek reaches above Swift Reservoir. The licensees' applications provided additional detail on the proposed modifications and associated resource enhancement measures.

l. Locations of the Application: This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call (866) 208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Documents: Any filing must (1) bear in all capital letters the title COMMENTS; PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests, must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: August 26, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–19253 Filed 8–31–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA 01–2020–0054; FRL–10014–18–Region 1]

Proposed Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Administrative Settlement Agreement and Order on Consent: City of Somerville, Conway Park Site, Somerville, Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comments.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (''EPA''), has entered into a proposed settlement, embodied in an Administrative Settlement Agreement and Order on Consent (''Settlement Agreement''), with settling party City of Somerville, Massachusetts (''Somerville''), with respect to the Conway Park Site, located in Somerville, Middlesex County, Massachusetts (''Conway Park Site''). Under the settlement, Somerville will perform part of the removal action, in coordination with EPA, as set forth in the June 15, 2020 Action Memorandum for the Site. This notice applies to a compromise of up to $3 million in direct and indirect EPA costs associated with EPA's contribution to the removal action at the Site. The Settlement Agreement also resolves Somerville's liability for work performed and future response costs.

DATES: Comments must be submitted by October 1, 2020.

ADDRESSES: Comments should be addressed to Cynthia Lewis, Senior Enforcement Counsel, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100 (ORC 04–4), Boston, MA 02109–3912 (Telephone number: (617) 918–1889) and should reference the Conway Park Site, U.S. EPA Docket No: CERCLA 01–2020–0054.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from Stacy Greendlinger, Superfund and Emergency Management Division, U.S. Environmental Protection Agency, Region I, 5 Post Office Square, Suite 100 (02–2), Boston, MA 02109–3912, Telephone number: (617) 918–1403; email address: *greendlinger.stacy@epa.gov.*

SUPPLEMENTARY INFORMATION: Notice of this proposed Settlement Agreement is made in accordance with section 122(i) of CERCLA, 42 U.S.C. 9622(i). The Settlement Agreement is an administrative settlement agreement made in accordance with sections 104, 106(a), 107, and 122 of CERCLA, and includes a compromise of EPA response costs, under CERCLA sections 107(a) and the authority of the Attorney General of the United States to compromise and settle claims of the United States, with Somerville concerning the Conway Park Site. The Settlement Agreement includes a covenant not to sue pursuant to sections 106 (for the work) and 107(a) (for future response costs and EPA costs to perform the work up to the amount of $3 million) of CERCLA, 42 U.S.C. 9606 and 9607(a), relating to the Site, and protection from contribution actions or claims as provided by sections 113(f)(2) and 1229(h)(4) of CERCLA. Pursuant to the terms of the proposed settlement, EPA has reserved its right to recover any costs incurred to perform the removal action that are above the amount of $3 million, as well as EPA's past costs. The Settlement Agreement has been approved by the Environmental and Natural Resources Division of the United States Department of Justice.

For 30 days following the date of publication of this document, the Agency will receive written comments relating solely to the cost compromise component of the settlement under CERCLA section 107(a) (the compromise of up to $3 million in direct and indirect EPA costs associated with EPA's contribution to the implementation of a removal action at the Site). Section XIV (Payment of Response Costs) of the Settlement Agreement will become

effective when EPA notifies Somerville that the public comment period has closed and that such comments, if any, do not require that EPA modify or withdraw from consent to Section XIV (Payment of Response Costs) of this Agreement. The United States will consider all comments received and may seek to modify or withdraw consent from the cost compromise contained in the proposed settlement if comments received disclose facts or considerations which indicate that the cost compromise contained in the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Environmental Protection Agency—Region I, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

Bryan Olson,

Director, Superfund and Emergency Management Division.

[FR Doc. 2020–19197 Filed 8–31–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA20]

Guidelines for Appeals of Material Supervisory Determinations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice and request for comment.

SUMMARY: The Federal Deposit Insurance Corporation proposes to amend its Guidelines for Appeals of Material Supervisory Determinations (Guidelines) to establish an independent office that would generally replace the existing Supervision Appeals Review Committee (SARC) and to modify the procedures and timeframes for considering formal enforcement-related decisions through the supervisory appeals process.

DATES: Written comments must be received by the FDIC on or before October 20, 2020, for consideration.

ADDRESSES: Interested parties are invited to submit written comments, identified by RIN 3064–ZA20, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments.
- *Email: Comments@FDIC.gov.* Include ''RIN 3064–ZA20'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m. (EST).
- *Public Inspection:* All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Samuel B. Lutz, Counsel, Legal Division, (202) 898–3773, *salutz@fdic.gov;* James Watts, Counsel, Legal Division, (202) 898–6678, *jwatts@fdic.gov.*

SUPPLEMENTARY INFORMATION:

The Federal Deposit Insurance Corporation (FDIC) is publishing for comment proposed amendments to its Guidelines for Appeals of Material Supervisory Determinations (Guidelines). The FDIC is seeking comments regarding these amendments to the Guidelines in order to provide the public an opportunity to provide input and feedback, although notice and comment is not required.

The Guidelines describe the process by which insured depository institutions (IDIs) may appeal material supervisory determinations made by the FDIC. The current appeals process provides for two stages of review. First, an IDI requests review of a material supervisory determination by the appropriate Division Director from the Division of Risk Management Supervision (RMS), the Division of Depositor and Consumer Protection (DCP), or the Division of Complex Institution Supervision and Resolution (CISR). If the IDI is not satisfied with the Division Director's decision, it may proceed to the second stage of the process—an appeal of that decision to the FDIC's Supervision Appeals Review Committee (SARC), a standing committee of the FDIC's Board of Directors (Board).

The proposed amendments would replace the SARC with a newly established independent office that would exclusively consider supervisory appeals. In addition, the proposal would modify the procedures and timeframes related to considering formal enforcement-related decisions through the supervisory appeals process.

Background

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) required the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration) to establish an ''independent intra-agency appellate process'' to review material supervisory determinations.[1] The Riegle Act defines the term ''independent appellate process'' to mean ''a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review.''[2] In the appeals process, the FDIC is required to ensure that: (1) An IDI's appeal of a material supervisory determination is heard and decided expeditiously; and (2) appropriate safeguards exist for protecting appellants from retaliation by agency examiners.[3]

The Riegle Act defines material supervisory determinations to include determinations relating to: (1) Examination ratings; (2) the adequacy of loan loss reserve provisions; and (3) classifications on loans that are significant to an institution.[4] Specifically excluded from this definition are decisions to appoint a conservator or receiver for an IDI or to take prompt corrective action pursuant to Section 38 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1831o.[5] Finally, Section 309(g) of the Riegle Act expressly provides that the requirement to establish an appeals process shall not affect the authority of the Federal banking agencies to take enforcement or supervisory actions against an IDI.[6]

A. Structure of the Supervisory Appeals Review Committee

On March 21, 1995, the Board adopted the Guidelines to implement Section 309(a). The Board, at that time, established the SARC to consider and decide appeals of material supervisory determinations.[7] The SARC was initially comprised of five members: The FDIC's Vice Chairperson (as Chairperson of the SARC), the Director of the Division of Supervision (DOS) (the predecessor to RMS), the Director of the Division of Compliance and Consumer Affairs (DCA) (the predecessor to DCP), the FDIC Ombudsman, and the General Counsel.[8]

[1] 12 U.S.C. 4806(a).
[2] 12 U.S.C. 4806(f)(2).
[3] 12 U.S.C. 4806(b).
[4] 12 U.S.C. 4806(f)(1)(A).
[5] 12 U.S.C. 4806(f)(1)(B).
[6] 12 U.S.C. 4806(g).
[7] 60 FR 15923 (Mar. 28, 1995).
[8] 60 FR 15923, 15930. Committee members could also designate another person to serve on their behalf.

Consistent with the Riegle Act's mandate to create an intra-agency appeals process, membership in the SARC was limited to FDIC officials.[9] In order to ''establish[] a fair and credible review process,'' the SARC was comprised of senior officials at the FDIC, including the Directors of DOS and DCA, who were expected to ''bring to the Committee the necessary experience and judgment to make well-informed decisions concerning determinations under review.'' [10] The Guidelines were subsequently amended to add the Director of the Division of Insurance as a voting member of the SARC, and to provide formally that the Directors of DOS and DCA would not vote on cases brought before the SARC involving their respective divisions.[11]

In July 2004, the FDIC revised the Guidelines to change the structure and composition of the SARC to its current form. Specifically, the voting members of the SARC are now comprised of: One of the FDIC's three inside directors (who serves as the SARC Chairperson), and one deputy or special assistant to each of the other two inside directors.[12] The FDIC's General Counsel also serves as a non-voting member of the SARC. In the event of a vacancy, the Guidelines authorize the FDIC Chairperson to designate alternate member(s) to the SARC, so long as the alternate member was not directly or indirectly involved in making or affirming the material supervisory determination under review. These changes were intended to avoid the potential conflicts then faced by the Ombudsman and Division Directors,[13] and to ''further underscore the perception of the SARC as a fair and independent high-level body for review of material supervisory determinations within the FDIC.'' [14]

B. 2019 Listening Sessions on Supervisory Appeals and Dispute Resolution Process

In 2019, the FDIC decided to explore potential improvements to the supervisory appeals process. As part of this process, the FDIC's Office of the Ombudsman hosted a Webinar and in-person listening sessions in each FDIC Region regarding the agency's supervisory appeals and dispute resolution processes. The sessions offered bankers and other interested parties an opportunity to provide individual input and recommendations regarding the supervisory appeals process.[15] Participants were encouraged to comment on various topics, including perceived barriers to, or concerns about, resolving disagreements, timeframes and procedures for pursuing reviews and appeals, and information publicly available on appeals and examination disagreements.

Among other topics, session participants offered suggestions on the composition of the SARC. In particular, participants focused on the composition of the Committee and opportunities to further enhance the independence of the appeals process. Relatedly, participants emphasized the importance of ensuring that SARC members have the subject matter expertise needed to decide supervisory appeals. Participants offered a range of suggestions on this topic, including adding an individual who is not otherwise affiliated with the FDIC to the Committee, such as a retired banking attorney or a former Federal or State bank regulator. Certain challenges were also discussed with respect to adding an individual who is not affiliated with the FDIC, such as ensuring the confidentiality of information and the avoidance of conflicts of interest.

Questions related to the timeframes for appeals and the types of matters that may be appealed if the FDIC pursues a formal enforcement action were also raised at a number of the listening sessions. Through these discussions, it appears that the procedures that apply when the FDIC has provided notice of a written or proposed enforcement action may be a source of confusion to bankers.

Participants also raised concerns about bankers' fear of retaliation by FDIC examiners, notwithstanding existing provisions in the Guidelines prohibiting such retaliation. This concern was cited as a basis for causing bankers to be reluctant to fully engage with the FDIC on material areas of disagreement. FDIC policy currently prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution, and the FDIC continues to explore options to reaffirm its commitment to and ensure compliance with this policy. In addition, while not specifically related to the supervisory appeals process, participants provided a variety of comments and recommendations on the examination process. Participants also shared views regarding the publicly available information on SARC decisions and ideas for improving the transparency of SARC decisions, such as publishing aggregate data on the outcomes of supervisory appeals.

Amendments to the Guidelines

The FDIC's experience with the SARC, along with feedback obtained through the listening sessions, suggests that there may be opportunities to improve the FDIC's supervisory appeals process, particularly with respect to enhancing the independence of the SARC and the procedures and timeframes that apply to determinations in the context of formal enforcement-related decisions. Accordingly, through this Notice, the FDIC is seeking comment on amendments to the supervisory appeals process that would establish an independent office within the FDIC that would have as its only function the review and consideration of supervisory appeals. The FDIC is also proposing amendments to improve its procedures and timeline for the consideration of certain decisions related to formal enforcement actions through the supervisory appeals process.

Proposed Office of Supervisory Appeals

The FDIC proposes to replace the SARC with an independent, standalone office within the FDIC, which would be known as the Office of Supervisory Appeals (Office). The Office would report directly to the FDIC Chairperson's Office and would have delegated authority to independently consider and resolve intra-agency supervisory appeals. The Office would be fully independent of those FDIC Divisions with authority to issue material supervisory determinations (RMS, DCP, and CISR), while still operating within the FDIC.

1. Staffing of the Office

The FDIC proposes that the members of the Office responsible for deciding appeals have bank supervisory or examination experience (for example, such individuals may be retired bank examiners). Such reviewing officials would be employees of the FDIC and may serve on staggered terms. To promote the independence of the Office, the FDIC anticipates recruiting externally and employing reviewing officials on a part-time or intermittent, time-limited basis. It is possible that particular individuals would be selected from a pool of reviewing officials for an

[9] 60 FR 15923, 15924.

[10] 60 FR 15923, 15924.

[11] 69 FR 41479, 41480 (July 9, 2004).

[12] 69 FR 41479, 41480.

[13] 69 FR 41479, 41480–81. For example, the Ombudsman was excluded from the SARC in order to avoid any possible conflict between the Ombudsman's statutory role as a liaison between the agency and financial institutions on the one hand, and as a decision maker on the SARC on the other hand.

[14] 69 FR 41479, 41480.

[15] *See* FIL–52–2019 (Sep. 24, 2019), *https://www.fdic.gov/news/financial-institution-letters/2019/fil19052.pdf.*

appeal on a case-by-case basis. Members of the Office, as employees of the FDIC, would be cleared for potential conflicts of interest and would be subject to the FDIC's normal requirements for confidentiality. In creating this Office, the FDIC is not intending to create unnecessary layers of decision-making. The Office, as envisioned, would be devoted to executing the FDIC's supervisory appeals functions, which responsibilities would include considering and reviewing appeals and issuing decisions.

2. Appeals Process

IDIs would continue to be encouraged to make good-faith efforts to resolve disagreements with examiners and/or the appropriate Regional Office. If these efforts are not successful, IDIs would submit a request for review with the appropriate Division Director. Upon receiving a request for review, the Division Director would have the option of issuing a written decision or sending the appeal directly to the Office. For example, if an IDI appealed a second material supervisory determination based on similar facts and circumstances while its initial appeal is pending before the Office, the FDIC expects that the Division Director would refer the subsequent appeal to the Office. IDIs that disagree with a decision made by the Division Director could submit an appeal to the Office.

A three-member panel of the Office would consider appeals and would issue a written decision. The IDI and the Division Director would continue to be permitted to submit views on the appeal to the Office during this stage of Office's review process, and the Ombudsman also would be authorized to submit views to the review panel. The Legal Division would provide counsel to the Office.

Oral presentation would be permitted if a request is made by the institution or by FDIC staff. Under the existing Guidelines, the SARC has discretion whether or not to allow oral presentation, but requests for oral presentations are generally granted.

The reviewing panel would be an appellate body that would make independent supervisory determinations. The panel would review appeals for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced, consistent with the existing standard of review for the SARC. The scope of the panel's review would be limited to the facts and circumstances as they existed prior to, or at the time the material supervisory determination was made, even if later discovered, and no consideration would be given to any facts or circumstances that occur or corrective action taken after the determination was made. The Office's role would not be to set policy, which is the province of the Board and its designees. For that reason, the Office would not consider aspects of an appeal that seek to change or modify FDIC policy or rules. As part of its role in providing counsel to the Office, the Legal Division would also advise on existing FDIC policies and rules, and help ensure no decisions made by the Office changed or modified FDIC policies or rules. Additionally, if an institution has multiple appeals pending based upon similar facts and circumstances, those appeals could be consolidated for expediency.

Consistent with the existing Guidelines and the Riegle Act, decisions to appoint a conservator or receiver for an insured depository institution would not be considered material supervisory determinations. Under this proposal, the Guidelines would further clarify that decisions made in furtherance of the resolution or receivership process or planning (such as decisions made pursuant to parts 370, 371, and 381, and § 360.10 of the FDIC's rules and regulations) also would not be considered material supervisory determinations. Unlike the ''material supervisory determinations'' enumerated in the statute and the current Guidelines,[16] decisions made under the regulatory provisions identified above are not focused on monitoring for and addressing issues that may affect an institution's condition. Instead, these decisions involve actions related to assessing or promoting the resolvability of certain institutions, such as those facilitating the prompt payment of deposit insurance to a large number of depositors or the orderly resolution of an institution with a portfolio of qualified financial contracts.

The FDIC anticipates that these combined changes could provide several advantages over the existing supervisory appeals process and would address several of the recommendations presented during the Webinar and in-person listening sessions. In particular, the FDIC anticipates that:

- By creating a standalone office within the FDIC with authority to consider and resolve supervisory appeals, and by staffing that office with professionals serving term or other non-permanent appointments, the supervisory appeals process could operate more independently, and without perceived conflicts of interest, in the FDIC's organizational structure;
- Establishing the Office within the FDIC would continue to protect supervisory and confidential information, and avoid actual and perceived conflicts of interest, while still satisfying the FDIC's statutory requirement to have an intra-agency appeals process;
- Staffing the Office with professionals who have bank supervisory or examination experience would ensure that individuals deciding on appeals have relevant knowledge and expertise, and would facilitate a robust and responsive supervisory appeals process that will be consistent over time; and
- The proposed structure would be scalable in terms of staffing, so the Office may be in a position to adapt more quickly to cyclical workload variations, allowing the FDIC to handle varying numbers of appeals in shorter periods of time.

The FDIC anticipates that staffing and otherwise establishing the Office would require a period of time following the adoption of any revised Guidelines. During this time, supervisory appeals would continue to be heard by the SARC pursuant to the existing Guidelines.

Procedures and Timeframes for Formal Enforcement-Related Decisions

The FDIC also proposes to amend its procedures for considering formal enforcement-related decisions through the supervisory appeals process. Generally, the FDIC identifies the facts and circumstances that may give rise to a formal enforcement action during the examination process, and these facts and circumstances are described in a Report of Examination (ROE) that is transmitted to the IDI at the conclusion of the examination.

In July 2017, the FDIC revised its Guidelines to provide an opportunity for IDIs to appeal certain material supervisory determinations underlying formal enforcement actions through the supervisory appeals process.[17] Specifically, the revised Guidelines provide that if the FDIC does not commence a formal enforcement action within 120 days after giving written

[16] The Riegle Act defined ''material supervisory determinations'' to include determinations relating to examination ratings, the adequacy of loan loss reserve provisions, and loan classifications on loans that are significant to an institution. 12 U.S.C. 4806(f)(1)(A). Section D of the current Guidelines defines ''material supervisory determinations'' more broadly to include seventeen different types of supervisory determinations.

[17] 82 FR 34522, 34524 (July 25, 2017).

notice to an IDI of a recommended or proposed formal enforcement action, the IDI may appeal the facts and circumstances underlying the formal enforcement action to the SARC, unless the SARC Chairperson agrees to extend the 120-day period.[18]

While the 2017 amendments to the Guidelines may have been helpful in addressing some of the issues the FDIC encountered in administering the supervisory appeals process, further changes to the process may be beneficial. Consistent with feedback obtained through the 2019 listening sessions, the FDIC has observed some confusion as to when determinations underlying formal enforcement-related actions become appealable. In addition, a timeframe longer than 120 days may be necessary in order to fully review the facts and circumstances that lead to enforcement actions and ensure that such actions are not brought prematurely, and to allow sufficient time for an IDI to consider and execute a consent order.

The proposal clarifies that, for purposes of the supervisory appeals process, a formal enforcement-related action commences—and appeal rights become temporarily unavailable—when the FDIC initiates a formal investigation, issues a notice of charges (or notice of assessment, as applicable), provides the IDI with a draft consent order, or otherwise provides written notice to the IDI that the FDIC is reviewing the relevant facts and circumstances to determine whether a formal enforcement action is merited. This written notification may be provided in the transmittal letter that accompanies the ROE.

The proposal would further require that if the FDIC provides written notice that the FDIC is determining whether a formal enforcement action is merited, the FDIC must provide the IDI with a draft consent order within 120 days of the date on which notice was given. Such a draft consent order could include a standalone cease and desist order, an order to pay civil money penalties, or an order for restitution. If the FDIC failed to provide the IDI with a draft consent order within this 120-day period, the IDI's supervisory appeal rights would be made available.

Once the FDIC provides an IDI with a draft consent order, the parties would have an opportunity to negotiate the details of a potential settlement. The proposal would not impose a fixed time limit on such negotiations. At any time, if the IDI believes that further negotiations would not be productive and notifies the Division of this decision in writing, the Division would have 90 days from receiving the institution's rejection of the consent order to issue a notice of charges (or assessment) or to open an order of investigation, or the IDI's supervisory appeal rights would be made available. In either case, once the IDI's supervisory appeal rights are made available, the IDI would have 60 days to file an appeal, consistent with the standard timeline following a material supervisory determination. If the IDI agrees to the consent order, then the matter would be resolved and the need for an appeal would be obviated.

Request for Comment

Question 1: In contrast to the SARC, the Office would not provide representation for Board members in the review process. Should the FDIC Chairperson and/or other Board members have an opportunity to review decisions before issuance?

Question 2: The FDIC proposes that the members of the Office have bank supervisory or examination experience. Does this constitute the appropriate qualifications and experience?

Question 3: Are there additional steps the FDIC should take to promote independence of the Office?

Question 4: How many reviewing officials should be included on a panel? Is three an appropriate number? Are there situations where more or less panelists might be appropriate?

Question 5: Should the appellate process have any additional level(s) of review before or after the proposed three-member panel?

Question 6: Do the proposed timelines properly balance the goals of resolving appeals as expeditiously as possible and providing adequate time for preparation and review?

Question 7: Participants at the listening sessions commented on the type and extent of publicly available information on SARC decisions. What type of information would be helpful to publish about the appeals process or specific appeal decisions to promote transparency while still maintaining confidentiality?

Question 8: The FDIC expects the proposed changes to the procedures and timeframes applicable to formal enforcement-related decisions to be effective for the majority of enforcement actions. How should the FDIC handle those unusual cases for which the proposed timeframes are too restrictive? Should the parties expect to invoke the provision(s) allowing for an extension of the timeframes in these cases?

Proposed Amended Guidelines for Appeals of Material Supervisory Determinations

A. Introduction

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) (Riegle Act) required the Federal Deposit Insurance Corporation (FDIC) to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The Guidelines for Appeals of Material Supervisory Determinations (Guidelines) describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided. The procedures set forth in these Guidelines establish an appeals process for the review of material supervisory determinations by the Office of Supervisory Appeals (Office).

B. Reviewing Officials

The Office will be staffed with reviewing officials who have bank supervisory or examination experience. Reviewing officials will consider and decide appeals submitted to the Office. Each appeal will be reviewed and decided by a panel of three reviewing officials who have no conflicts of interest with respect to the appeal or the parties to the appeal.

C. Institutions Eligible To Appeal

The Guidelines apply to the insured depository institutions that the FDIC supervises (*i.e.,* insured State nonmember banks, insured branches of foreign banks, and state savings associations), and to other insured depository institutions with respect to which the FDIC makes material supervisory determinations.

D. Determinations Subject To Appeal

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these Guidelines.

(1) Material supervisory determinations include:

(a) CAMELS ratings under the Uniform Financial Institutions Rating System;

(b) IT ratings under the Uniform Interagency Rating System for Data Processing Operations;

(c) Trust ratings under the Uniform Interagency Trust Rating System;

(d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;

[18] 82 FR 34522, 34526.

(e) Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;

(f) Registered transfer agent examination ratings;

(g) Government securities dealer examination ratings;

(h) Municipal securities dealer examination ratings;

(i) Determinations relating to the adequacy of loan loss reserve provisions;

(j) Classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceeds 10 percent of an institution's total capital;

(k) Determinations relating to violations of a statute or regulation that may affect the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution;

(l) Truth in Lending Act (Regulation Z) restitution;

(m) Filings made pursuant to 12 CFR 303.11(f), for which a request for reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1829 (which are contained in 12 CFR 308, subparts D, L, and M, respectively), if the filing was originally denied by the Director, Deputy Director, or Associate Director of the Division of Depositor and Consumer Protection (DCP) or the Division of Risk Management Supervision (RMS);

(n) Decisions to initiate informal enforcement actions (such as memoranda of understanding);

(o) Determinations regarding the institution's level of compliance with a formal enforcement action; however, if the FDIC determines that the lack of compliance with an existing formal enforcement action requires an additional formal enforcement action, the proposed new enforcement action is not appealable;

(p) Matters requiring board attention; and

(q) Any other supervisory determination (unless otherwise not eligible for appeal) that may affect the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or that otherwise affects the nature and level of supervisory oversight accorded an institution.

(2) Material supervisory determinations do not include:

(a) Decisions to appoint a conservator or receiver for an insured depository institution, and other decisions made in furtherance of the resolution or receivership process, including but not limited to determinations pursuant to parts 370, 371, and 381, and § 360.10 of the FDIC's rules and regulations;

(b) Decisions to take prompt corrective action pursuant to section 38 of the FDI Act, 12 U.S.C. 1831o;

(c) Determinations for which other appeals procedures exist (such as determinations of deposit insurance assessment risk classifications and payment calculations); and

(d) Formal enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement action.

(3) A formal enforcement-related action or decision commences, and becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. 1820(c) (Order of Investigation), issues a notice of charges or a notice of assessment under 12 U.S.C. 1818 or other applicable laws (Notice of Charges), provides the institution with a draft consent order, or otherwise provides written notice to the institution that the FDIC is reviewing the facts and circumstances presented to determine if a formal enforcement action is merited under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General pursuant to the Equal Credit Opportunity Act (ECOA) or a notice to the Secretary of Housing and Urban Development (HUD) for violations of ECOA or the Fair Housing Act (FHA). Such notice may be provided in the transmittal letter accompanying a Report of Examination. For the purposes of these Guidelines, remarks in a Report of Examination do not constitute written notice that the FDIC is reviewing the facts and circumstances presented to determine if a proposed enforcement action is merited. Commencement of a formal enforcement-related action or decision will not suspend or otherwise affect a pending request for review or appeal that was submitted before the commencement of the formal enforcement-related action or decision.

(4) Additional Appeal Rights:

(a) In the case of any written notice from the FDIC to the institution that the FDIC is determining whether a formal enforcement action is merited, the FDIC must issue an Order of Investigation, issue a Notice of Charges, or provide the institution with a draft consent order within 120 days of such a notice, or appeal rights will be made available pursuant to these Guidelines. If the FDIC timely provides the institution with a draft consent order and the institution rejects the draft consent order in writing, the FDIC must issue an Order of Investigation or a Notice of Charges within 90 days from the date on which the institution rejects the draft consent order in writing or appeal rights will be made available pursuant to these Guidelines. The FDIC may extend these periods, with the approval of the Chairperson's Office, after the FDIC notifies the institution that the relevant Division Director is seeking formal authority to take an enforcement action.

(b) In the case of a referral to the Attorney General for violations of the ECOA, beginning on the date the referral is returned to the FDIC, the FDIC must proceed in accordance within paragraph (a), including within the specified timeframes, or appeal rights will be made available pursuant to these Guidelines.

(c) In the case of providing notice to HUD for violations of the ECOA or the FHA, beginning on the date the notice is provided, the FDIC must proceed in accordance within paragraph (a), including within the specified timeframes, or appeal rights will be made available pursuant to these Guidelines.

(d) Written notification will be provided to the institution within 10 days of a determination that appeal rights have been made available under this section.

(e) The relevant FDIC Division and the institution may mutually agree to extend the timeframes in paragraphs (a), (b), and (c) if the parties deem it appropriate.

E. Good-Faith Resolution

An institution should make a good-faith effort to resolve any dispute concerning a material supervisory determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office will promptly respond to any concerns raised by an institution regarding a material supervisory determination. Informal resolution of disputes with the on-site examiner and the appropriate Regional Office is encouraged, but seeking such a resolution is not a condition to filing a request for review with the appropriate Division, either DCP, RMS, or the Division of Complex Institution Supervision and Resolution (CISR), or to filing a subsequent appeal with the Office under these Guidelines.

F. Filing a Request for Review With the Appropriate Division

(1) An institution may file a request for review of a material supervisory determination with the Division that made the determination, either the Director, DCP, the Director, RMS, or the Director, CISR (Director or Division Director), 550 17th Street NW, Room F–4076, Washington, DC 20429, within 60 calendar days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. A request for review must be in writing and must include:

(a) A detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement, or other authority), how resolution of the dispute would materially affect the institution, and whether a good-faith effort was made to resolve the dispute with the on-site examiner and the Regional Office; and

(b) A statement that the institution's board of directors has considered the merits of the request and has authorized that it be filed.

(2) Within 45 calendar days of receiving a request for review described in paragraph (1), the Division Director will:

(a) Review the appeal for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced, and issue a written determination on the request for review, setting forth the grounds for that determination; or

(b) refer the request for review to the Office for consideration as an appeal under Section G and provide written notice to the institution that the request for review has been referred to the Office.

(3) No appeal to the Office will be allowed unless an institution has first filed a timely request for review with the appropriate Division Director.

(4) In any decision issued pursuant to paragraph (2)(a) of this section, the Director will inform the institution of the 30-day time period for filing with the Office and will provide the mailing address for any appeal the institution may wish to file.

(5) The Division Director may request guidance from the Office or the Legal Division as to procedural or other questions relating to any request for review.

G. Appeal to the Office

An institution that does not agree with the written determination rendered by the Division Director may appeal that determination to the Office within 30 calendar days from the date of that determination. Failure to file within the 30-day time limit may result in denial of the appeal by the Office.

1. Filing With the Office

An appeal to the Office will be considered filed if the written appeal is received by the FDIC within 30 calendar days from the date of the Division Director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. If the 30th day after the date of the Division Director's written determination is a Saturday, Sunday, or a Federal holiday, filing may be made on the next business day. The appeal should be sent to the address indicated on the Division Director's determination being appealed. Upon receiving the appeal, the Office will send an acknowledgment to the institution, and will send copies of the institution's appeal to the Office of the Ombudsman and the appropriate Division Director.

2. Contents of Appeal

The appeal should be labeled to indicate that it is an appeal to the Office and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the Division Director's determination being appealed. If oral presentation is sought, that request should be included in the appeal. Only matters submitted to the appropriate Division Director in a request for review may be appealed to the Office. Evidence not presented for review to the Division Director is generally not permitted; such evidence may be submitted to the Office only if approved by the reviewing panel and with a reasonable time for the Division Director to review and respond. The institution should set forth all of the reasons, legal and factual, why it disagrees with the Division Director's determination. Nothing in the Office administrative process shall create any discovery or other such rights.

3. Burden of Proof

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

4. Submissions From the Ombudsman and the Division Director

The Ombudsman and the Division Director each may submit views regarding the appeal to the Office within 30 calendar days of the date on which the appeal is received by the Office.

5. Oral Presentation

The Office will, if a request is made by the institution or by FDIC staff, allow an oral presentation. The Office may hear oral presentations in person, telephonically, or through other means agreed upon by the parties. If an oral presentation is held, the institution and FDIC staff will be allowed to present their positions on the issues raised in the appeal and to respond to any questions from the Office.

6. Consolidation, Dismissal, and Rejection

Appeals based upon similar facts and circumstances may be consolidated for expediency. An appeal may be dismissed by the Office if it is not timely filed, if the basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal. The Office will decline to consider an appeal if the institution's right to appeal is not yet available under Section D(4), above.

7. Scope of Review and Decision

The Office will be an appellate body and will make independent supervisory determinations. The Office will review the appeal for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. The Office's review will be limited to the facts and circumstances as they existed prior to, or at the time the material supervisory determination was made, even if later discovered, and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made. The Office will not consider any aspect of an appeal that seeks to change or modify existing FDIC rules or policy. The Office, with consultation from the Legal Division, will refer any appeals that raise policy matters of first impression to the Board for its consideration. The Office will notify the institution, in writing, of its decision concerning the disputed material supervisory determination(s) within 45 days from the date the Office meets to consider the appeal, which meeting will be held within 90 days from the date of the filing of the appeal or from the date that the Division Director refers the appeal to the Office.

H. Publication of Decisions

Decisions of the Office will be published as soon as practicable, and the published decisions will be redacted

to avoid disclosure of the name of the appealing institution and exempt information. In cases in which redaction is deemed insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published Office decisions may be cited as precedent in appeals to the Office. Annual reports on Division Directors' decisions with respect to institutions' requests for review of material supervisory determinations also will be published.

I. Appeal Guidelines Generally

Appeals to the Office will be governed by these Guidelines. The Office, with the concurrence of the Legal Division, will retain discretion to waive any provision of the Guidelines for good cause. Supplemental rules governing the Office's operations may be adopted.

J. Limitation on Agency Ombudsman

The subject matter of a material supervisory determination for which either an appeal to the Office has been filed, or a final Office decision issued, is not eligible for consideration by the Ombudsman. However, pursuant to Section (G)(4) of these Guidelines, the Ombudsman may submit views to the Office for its consideration in connection with any pending appeal.

K. Coordination With State Regulatory Authorities

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, DCP, the Director, RMS, or the Director, CISR, as appropriate, will promptly notify the appropriate State regulatory authority of the request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the Office, the Office will notify the institution and the State regulatory authority of its decision. Once the Office has issued its determination, any other issues that may remain between the institution and the State authority will be left to those parties to resolve.

L. Effect on Supervisory or Enforcement Actions

The use of the procedures set forth in these Guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress during the appeal or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

M. Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination that relates to, or could affect the approval of, the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

N. Prohibition on Examiner Retaliation

The FDIC has an experienced examination workforce and is proud of its professionalism and dedication. FDIC policy prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution. Such behavior against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action. Institutions that believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 3501 Fairfax Drive, Suite E–2022, Arlington, VA 22226, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the Ombudsman will work with the appropriate Division Director to resolve the allegation of retaliation.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on August 21, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

[FR Doc. 2020–19276 Filed 8–31–20; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS20–09]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: Due to the COVID–19 Pandemic, the meeting will be open to the public via live webcast only. Visit the agency's homepage (*www.asc.gov*) and access the provided registration link in the What's New box. You MUST register in advance to attend this Meeting.

Date: September 9, 2020.

Time: 10:00 a.m. ET.

Status: Open.

Reports

Chairman
Executive Director
Delegated State Compliance Reviews
Grants Director
Financial Manager
Notation Vote

Action and Discussion Items

Approval of Minutes
May 13, 2020 Open Session
July 29, 2020 Special Meeting
Notice of Funding Availability; development of training for State Appraiser and AMC Regulatory Programs
FY21 ASC Budget Proposal

How To Attend and Observe an ASC Meeting

Due to the COVID–19 Pandemic, the meeting will be open to the public via live webcast only. Visit the agency's homepage (*www.asc.gov*) and access the provided registration link in the What's New box. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC Meetings.

James R. Park,

Executive Director.

[FR Doc. 2020–19184 Filed 8–31–20; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company

Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank(s) 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 October 1, 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. *Citizens Bancorp Investment, Inc., Lafayette, Tennessee;* to merge with American Bancshares Corp., and thereby indirectly acquire American Bank and Trust of the Cumberlands, both of Livingston, Tennessee.

B. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Abilene Holdco, Inc., Abilene, Texas;* to become a bank holding company by acquiring BSA Bankshares, Inc., Abilene, Texas, and BSA Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire First State Bank, Abilene, Texas.

Board of Governors of the Federal Reserve System, August 27, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–19302 Filed 8–31–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank(s) 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 16, 2020.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Walkenbach Investments, LP (WILP); Walkenbach Management Company, LLC (WMC); the William Walkenbach Revocable Living Trust; the Claudia Walkenbach Revocable Living Trust; the Brad W. Walkenbach Revocable Living Trust; two minor trusts; the Corey G. Walkenbach Revocable Trust; William Walkenbach, as trustee of the William Walkenbach Revocable Living Trust, limited partner of WILP, and managing member of WMC; Claudia Walkenbach, as trustee of the Claudia Walkenbach Revocable Living Trust, limited partner of WILP, and managing member of WMC; Brad. W. Walkenbach, as trustee of the Brad W. Walkenbach Revocable Living Trust and two minor trusts, limited partner of WILP, and managing member of WMC; and Corey G. Walkenbach, as trustee of the Corey G. Walkenbach Revocable Trust, limited partner of WILP, and managing member of WMC, all of Hermann, Missouri;* to acquire voting shares of Rhineland Bancshares, Inc., and thereby indirectly acquire voting shares of Peoples Savings Bank of Rhineland, both of Rhineland, Missouri.

Board of Governors of the Federal Reserve System, August 27, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–19301 Filed 8–31–20; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-MV–2020–04; Docket No. 2020–0002; Sequence No. 31]

Public Availability of General Services Administration Fiscal Year 2017 and Fiscal Year 2018 Service Contract Inventories

AGENCY: Office of Governmentwide Policy; General Services Administration, (GSA).

ACTION: Notice.

SUMMARY: In accordance with The Fiscal Year (FY) 2010 Consolidated Appropriations Act, GSA is publishing this notice to advise the public of the availability of the FY 2017 and Fiscal Year 2018 Service Contract Inventories.

DATES: *Applicable:* September 1, 2020.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Service Contract Inventory should be directed to Mr. Jeffrey Pitts in the Office of Acquisition Policy at 202–501–0712 or *jeffrey.pitts@gsa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with section 743 of Division C of the FY 2010 Consolidated Appropriations Act (Pub. L. 111–117), GSA is publishing this notice to advise the public of the availability of the Fiscal Year 2017 and Fiscal Year 2018 Service Contract Inventories. These inventories are available at *https://www.acquisition.gov/service-contract-inventory.* The inventories provide information on governmentwide service contract actions over $25,000 that were made in FY 2017 and FY 2018. The service contract inventory information located on *acquisition.gov* can be filtered by agency and component to show how contracted resources are distributed throughout any agency.

The inventory has been developed in accordance with the guidance issued on December 19, 2011, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at: *https://obamawhitehouse.archives.gov/omb/*

procurement-service-contract-inventories. GSA has posted its FY 2016 and FY 2017 inventory analyses and its planned analyses of FY 2018 and FY 2019 actions at the following location: *http://www.gsa.gov/gsasci.*

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2020–19297 Filed 8–31–20; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–1064]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; State Petitions for Exemption From Preemption

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 October 1, 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 0910–0277. 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.

State Petitions for Exemption From Preemption—21 CFR 100.1(d)

OMB Control Number 0910–0277—Extension

Under section 403A(b) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 343–1(b)), States may petition FDA for exemption from Federal preemption of State food labeling and standard-of-identity requirements. Section 100.1(d) (21 CFR 100.1(d)) sets forth the information a State is required to submit in such a petition. The information required under § 100.1(d) enables FDA to determine whether the State food labeling or standard-of-identity requirement satisfies the criteria of section 403A(b) of the FD&C Act for granting exemption from Federal preemption.

Description of Respondents: The respondents to this collection of information are State and local governments who regulate food labeling and standards of identity.

In the **Federal Register** of May 22, 2020 (85 FR 31190), 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]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
100.1(d)	1	1	1	40	40

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for § 100.1(d) is minimal because petitions for exemption from preemption are seldom submitted by States. In the last 3 years, we have received one new petition for exemption from preemption; therefore, we estimate that one or fewer petitions will be submitted annually.

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 27, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–19256 Filed 8–31–20; 8:45 am]

BILLING CODE 4164–01–Ps

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0231]

Agency Information Collection Activities: Proposed Collection; Comment Request; Adverse Experience Reporting for Licensed Biological Products; and General Records

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 the proposed extension of the collection of information concerning requirements relating to FDA's Adverse Experience Reporting System (FAERS) for licensed biological products, and general records associated with the manufacture and distribution of biological products.

DATES: Submit either electronic or written comments on the collection of information by November 2, 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 November 2, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 2, 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–2011–N–0231 for ''Adverse Experience Reporting for Licensed Biological Products; and General Records.'' 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, 10A–45, 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.

Adverse Experience Reporting For Licensed Biological Products; and General Records—21 CFR Part 600

OMB Control Number 0910–0308—Extension

Under the Public Health Service Act (42 U.S.C. 262), FDA may only approve a biologics license application for a biological product that is safe, pure, and potent. When a biological product is approved and enters the market, the product is introduced to a larger patient population in settings different from clinical trials. New information generated during the postmarketing period offers further insight into the benefits and risks of the product, and evaluation of this information is important to ensure its safe use. FDA issued the Adverse Experience Reporting (AER) requirements in part 600 (21 CFR part 600) to enable FDA to take actions necessary for the protection of the public health in response to reports of adverse experiences related to licensed biological products. The primary purpose of FDA's FAERS is to identify potentially serious safety problems with licensed biological products. Although premarket testing discloses a general safety profile of a biological product's comparatively

common adverse effects, the larger and more diverse patient populations exposed to the licensed biological product provides the opportunity to collect information on rare, latent, and long-term effects. In addition, production and/or distribution problems have contaminated biological products in the past. AER reports are obtained from a variety of sources, including manufacturers, patients, physicians, foreign regulatory agencies, and clinical investigators. Identification of new and unexpected safety issues through the analysis of the data in FAERS contributes directly to increased public health protection. For example, evaluation of these safety issues enables FDA to take focused regulatory action. Such action may include, but is not limited to, important changes to the product's labeling (such as adding a new warning), coordination with manufacturers to ensure adequate corrective action is taken, and removal of a biological product from the market when necessary.

Section 600.80(c)(1) requires licensed manufacturers or any person whose name appears on the label of a licensed biological product to report each adverse experience that is both serious and unexpected, whether foreign or domestic, as soon as possible but in no case later than 15 calendar days of initial receipt of the information by the licensed manufacturer. These reports are known as postmarketing 15-day Alert reports. This section also requires licensed manufacturers to submit any followup reports within 15 calendar days of receipt of new information or as requested by FDA, and if additional information is not obtainable, to maintain records of the unsuccessful steps taken to seek additional information. In addition, this section requires that a person who submits an adverse action report to the licensed manufacturer, rather than to FDA, maintain a record of this action. Section 600.80(e) requires licensed manufacturers to submit a 15-day Alert report for an adverse experience obtained from a postmarketing clinical study only if the licensed manufacturer concludes that there is a reasonable possibility that the product caused the adverse experience. Section 600.80(c)(2) requires licensed manufacturers to report each adverse experience not reported in a postmarketing 15-day Alert report at quarterly intervals, for 3 years from the date of issuance of the biologics license, and then at annual intervals. The majority of these periodic reports are submitted annually, since a large percentage of currently licensed biological products have been licensed longer than 3 years. Section 600.80(k) requires licensed manufacturers to maintain for a period of 10 years records of all adverse experiences known to the licensed manufacturer, including raw data and any correspondence relating to the adverse experiences. Section 600.81 requires licensed manufacturers to submit, at an interval of every 6 months, information about the quantity of the product distributed under the biologics license, including the quantity distributed to distributors. These distribution reports provide FDA with important information about products distributed under biologics licenses, including the quantity, certain lot numbers, labeled date of expiration, the fill lot numbers for the total number of dosage units of each strength or potency distributed (*e.g.,* 50,000 per 10-milliliter vials), and date of release. FDA may require the licensed manufacturer to submit distribution reports under this section at times other than every 6 months. Under § 600.82(a), an applicant of a biological product or blood and blood component must notify FDA of a permanent discontinuance of manufacture or an interruption in manufacturing or disruption in supply, as applicable. Under §§ 600.80(h)(2) and 600.81(b)(2), a licensed manufacturer may request a temporary waiver for the requirements under §§ 600.80(h)(1) and 600.80(b)(1), respectively. Requests for waivers must be submitted in accordance with § 600.90. Under § 600.90, a licensed manufacturer may submit a waiver request for any requirements that apply to the licensed manufacturer under §§ 600.80 and 600.81. A waiver request submitted under § 600.90 must include supporting documentation.

Manufacturers of biological products for human use must keep records of each step in the manufacture and distribution of a product, including any recalls. These recordkeeping requirements serve preventative and remedial purposes by establishing accountability and traceability in the manufacture and distribution of products. These requirements also enable FDA to perform meaningful inspections. Section 600.12 requires, among other things, that records be made concurrently with the performance of each step in the manufacture and distribution of products. These records must be retained for no less than 5 years after the records of manufacture have been completed or 6 months after the latest expiration date for the individual product, whichever represents a later date. In addition, under § 600.12, manufacturers must maintain records relating to the sterilization of equipment and supplies, animal necropsy records, and records in cases of divided manufacturing responsibility with respect to a product. Under § 600.12(b)(2), manufacturers are also required to maintain complete records pertaining to the recall from distribution of any product. Furthermore, § 610.18(b) (21 CFR 610.18(b)) requires, in part, that the results of all periodic tests for verification of cultures and determination of freedom from extraneous organisms be recorded and retained. The recordkeeping requirements for 21 CFR 610.12(g), 610.13(a)(2), 610.18(d), 680.2(f) and 680.3(f) are approved under OMB control number 0910–0139.

Respondents to this collection of information include manufacturers of biological products (including blood and blood components) and any person whose name appears on the label of a licensed biological product. In table 1, the number of respondents is based on the estimated number of manufacturers that are subject to those regulations or that submitted the required information to the Center for Biologics Evaluation and Research and Center for Drugs Evaluation and Research, FDA, in fiscal year (FY) 2019. Based on information obtained from the FDA's database system, there were 103 manufacturers of biological products. This number excludes those manufacturers who produce Whole Blood, components of Whole Blood, or in-vitro diagnostic licensed products, because of the exemption under § 600.80(m). The total annual responses are based on the number of submissions received by FDA in FY 2019. There were an estimated 169,334 15-day Alert reports, 184,265 periodic reports, and 789 lot distribution reports submitted to FDA. The number of 15-day Alert reports for postmarketing studies under § 600.80(e) is included in the total number of 15-day Alert reports. FDA received 63 requests from 40 manufacturers for waivers under § 600.90 (including §§ 600.80(h)(2) and 600.81(b)(2)), of which 61 were granted. The hours per response are based on FDA experience. The burden hours required to complete the MedWatch Form (Form FDA 3500A) for § 600.80(c)(1), (e), and (f) are reported under OMB control number 0910–0291.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
600.80(c)(1), 600.80(d), 600.80(e); postmarketing 15-day Alert Reports	103	1,644.02	169,334	1	169,334
600.82; notification of discontinuance or interruption in manufacturing	21	1.67	35	2	70
600.80(c)(2) periodic adverse experience reports	103	1,788.98	184,265	28	5,159,420
600.81; distribution reports	117	6.744	789	1	789
600.80(h)(2), 600.81(b)(2), 600.90; waiver requests	40	1.575	63	1	63
Total					5,329,676

[1] There are no capital costs or operating and maintenance costs associated with the information collection.

In table 2 the number of respondents is based on the number of manufacturers subject to those regulations. Based on information obtained from FDA's database system, there were 212 licensed manufacturers of biological products in FY 2019. However, the number of recordkeepers listed for § 600.12(a) through (e), excluding (b)(2), is estimated to be 109. This number excludes manufacturers of blood and blood components because their burden hours for recordkeeping have been reported under § 606.160 in OMB control number 0910–0116. The total annual records is based on the annual average of lots released in FY 2019 (6,670), number of recalls made (735), and total number of adverse experience reports received (305,951) in FY 2019. The hours per record are based on FDA experience.

FDA estimates the burden of this recordkeeping as follows:

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper (in hours)	Total hours
600.12 [2]; maintenance of Records	109	61.19	6,670	32	213,440
600.12(b)(2); recall records	212	3,467	735	24	17,640
600.80(c)(1) & 600.80(k); AER records	103	3,433	353,599	1	353,599
Total					584,679

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The recordkeeping requirements in § 610.18(b) are included in the estimate for § 600.12.

The burden for this information collection has changed since the last OMB approval. The reporting and recordkeeping burden has increased mostly due to an increase in the number of AER reports submitted to FDA and the associated recordkeeping with these reports.

Dated: August 26, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–19239 Filed 8–31–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2019–E–1918; FDA–2019–E–1934; and FDA–2019–E–1942]

Determination of Regulatory Review Period for Purposes of Patent Extension; LUMOXITI

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

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for LUMOXITI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents 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 November 2, 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 March 1, 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 November 2, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 2, 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 Nos. FDA–2019–E–1918; FDA–2019–E–1934; and FDA–2019–E–1942 For ''Determination of Regulatory Review Period for Purposes of Patent Extension; LUMOXITI.'' 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 LUMOXITI (moxetumomab pasudotox-tdfk). LUMOXITI is indicated for the treatment of adult patients with relapsed or refractory hairy cell leukemia who received at least two prior systemic therapies, including treatment with a purine nucleoside analog. Subsequent to this approval, the USPTO received patent term restoration applications for LUMOXITI (U.S. Patent Nos. 8,809,502; 9,580,461; and 10,072,083) from the U.S. Department of Health and Human Services, 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 LUMOXITI 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 LUMOXITI is 4,320 days. Of this time, 4,092 days occurred during the testing phase of the regulatory review period, while 228 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: November 17, 2006. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on November 17, 2006.

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):* January 29, 2018. FDA has verified the applicant's claim that the biologics license application (BLA) for LUMOXITI (BLA 761104) was initially submitted on January 29, 2018.

3. *The date the application was approved:* September 13, 2018. FDA has verified the applicant's claim that BLA 761104 was approved on September 13, 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 applications for patent extension, this applicant seeks 159 days, 163 days, and 2 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 26, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–19214 Filed 8–31–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[OMB No. 0906–0053—Extension]

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Coronavirus 2019 Data Report

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

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 November 2, 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: Coronavirus 2019 Data Report OMB No. 0915-0906–0053—Extension.

Abstract: This information collection request was previously approved by the Office of Management and Budget (OMB) on June 11, 2020, as an emergency clearance (OMB No.: 0906–0053). HRSA is currently undergoing the standard Paperwork Reduction Act process for normal OMB approval.

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 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/ethnic minorities. Since 1990, the RWHAP has developed a comprehensive system of safety net 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.

FY 2020 Coronavirus Aid, Relief, and Economic Security Act

On March 27, 2020, the President signed into law the ''Coronavirus Aid, Relief, and Economic Security Act'' (CARES Act). The CARES Act appropriated $90 million to HRSA's RWHAP to prevent, prepare for, and respond to coronavirus disease 2019 (COVID–19). This funding supports 581 RWHAP recipients across the country, including city/county health departments, state health departments, health clinics, community-based organizations, and AIDS Education and Training Centers in their efforts to help prevent or minimize the impact of COVID–19 on RWHAP clients. The award provides RWHAP recipients the flexibility to meet evolving COVID–19 needs in their respective communities, including extending operational hours, increasing staffing hours, purchasing additional equipment, enhancing workforce training and capacity development, and providing critical services to people with HIV during this pandemic, such as home-delivered meals, emergency housing, and transportation.

HRSA identified a new data collection need to support HRSA's requirement to monitor and report quarterly to the Secretary of HHS the COVID–19 activities conducted with the CARES Act funding. The COVID–19 Data Report module will provide monthly reporting on the types of services provided and number of people served for the treatment or prevention of COVID–19 among RWHAP clients (and immediate household members in limited circumstances). This module will be required for all providers (regardless of whether they are recipients or subrecipients) who receive CARES Act RWHAP funding.

Need and Proposed Use of the Information: HRSA proposes that service providers who receive CARES Act RWHAP funding report aggregate information on the number of clients and immediate household members tested for COVID–19, the number of clients newly diagnosed (or presumed

positive) with COVID–19, the cumulative number of clients with COVID–19, the number of clients who received services in each RWHAP service category (identified in Policy Clarification Notice 16–02 Ryan White HIV/AIDS Program Services: Eligible Individuals and Allowable Uses of Funds), and the types of services provided using telehealth technology in the COVID–19 Data Report. The information obtained in this module will assist HRSA in understanding how CARES Act RWHAP funding is being used to support RWHAP clients and immediate household members and ensure that HRSA is compliant with federal reporting requirements.

Likely Respondents: All RWHAP providers (regardless of whether they are recipients or subrecipients) who receive CARES Act RWHAP funding.

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

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
COVID–19 Data Report	2045	12	24,540	2	49,080
	2045		24,540		49,080

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. 2020–19247 Filed 8–31–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice; correction.

SUMMARY: The original **Federal Register** Notice announcing the September 2020 Advisory Commission on Childhood Vaccines (ACCV) meeting indicated that this meeting would be held on September 3–4, 2020. This meeting is not being conducted over 2 days, and instead will only take place only on September 4, 2020.

The ACCV will hold a public meeting on September 4, 2020, at 10:00 a.m. ET. The meeting will be held via Adobe Connect and telephone conference. This will not be an in-person meeting. The public can join the meeting by:

1. (Audio Portion) Calling the conference phone number 888–790–1734 and providing the following information:

Leader Name: Ms. Tamara Overby
Passcode: 4177683

2. (Visual Portion) Connecting to the ACCV Adobe Connect Meeting using the following URL: *https://hrsa.connectsolutions.com/accv/.* Participants should call and connect 15 minutes prior to the meeting in order for logistics to be set up. If you have never attended an Adobe Connect meeting, please test your connection using the following URL: *https://hrsa.connectsolutions.com/common/help/en/support/meeting_test.htm* and get a quick overview by following URL: *http://www.adobe.com/go/connectpro_overview.*

Information about the ACCV and the agenda for this public meeting can be obtained by accessing the following website: *https://www.hrsa.gov/advisory-committees/vaccines/index.html.*

FOR FURTHER INFORMATION CONTACT: Annie Herzog, Program Analyst, Division of Injury Compensation Programs (DICP), HRSA, in one of three ways: (1) Send a request to the following address: Annie Herzog, Program Analyst, DICP, HRSA, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857; (2) call (301) 443–6593; or (3) send an email to *ACCV@hrsa.gov.* Meeting times could change. For the latest information regarding the meeting, including start time, please check the ACCV website: *http://www.hrsa.gov/advisorycommittees/childhoodvaccines/index.html.*

This meeting will only take place on September 4, 2020, and is not being conducted over 2 days (September 3–4, 2020) as stated in a previous **Federal Register** Notice.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–19257 Filed 8–31–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Exploring the Roles of Biomolecular

Condensates (BMCs) in HIV replication, latency, or pathogenesis in the context of substance use disorders (R21/R33 Clinical Trial Not Allowed).

Date: September 22, 2020.

Time: 10:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 3 White Flint North, 9th Floor, 301 North Stonestreet Avenue, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Trinh T. Tran, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 3WFN 9th Floor, MSC 6021, 301 North Stonestreet Avenue, Bethesda, MD 20892, (301) 827–5843, *trinh.tran@nih.gov*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Multi-Site Studies for System-Level Implementation of Substance Use Prevention and Treatment Services (R01 and R34).

Date: September 25, 2020.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 3 White Flint North, 9th Floor, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yvonne Owens Ferguson, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 3WFN 9th Floor, MSC 6021, 301 North Stonestreet Avenue, Bethesda, MD 20892, (301) 402–7371, *yvonne.ferguson@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Exploiting Genome or Epigenome Editing to Functionally Validate Genes or Variants Involved in Substance Use Disorders (R21/R33 Clinical Trial Not Allowed).

Date: October 15, 2020.

Time: 1:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 3 White Flint North, 9th Floor, 301 North Stonestreet Avenue, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 3WFN 9th Floor, MSC 6021, 301 North Stonestreet Avenue, Bethesda, MD 20892, (301) 827–4471, *ramadanir@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: August 26, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–19220 Filed 8–31–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV–2) and Coronavirus Disease 2019 (COVID–19) (R21, R01 Clinical Trials Not Allowed).

Date: September 25, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E72A, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E72A, Rockville, MD 20892, 240–669–5023, *fdesilva@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 26, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–19219 Filed 8–31–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Sensorimotor Integration Study Section.

Date: October 1, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioengineering Sciences and Technologies: AREA/REAP Review.

Date: October 2, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 27, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–19316 Filed 8–31–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

FOR FURTHER INFORMATION CONTACT: Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs for oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs for oral fluid testing.

HHS-Certified Laboratories Certified To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens: At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Certified To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Certified To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438, (Formerly: STERLING Reference Laboratories)

Desert Tox, LLC, 5425 E Bell Rd, Suite 125, Scottsdale, AZ 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295, MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840, Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anastasia Marie Donovan,

Policy Analyst.

[FR Doc. 2020–19209 Filed 8–31–20; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6227–N–01]

Announcement of Funding Awards

AGENCY: Office of the Chief Financial Officer.

ACTION: Notice.

SUMMARY: In accordance with the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in competitions for funding under the Notices of Funding Availability (NOFAs) for the following program: Fiscal Year (FY) 2017 HUD Community Compass Technical Assistance and Capacity Building Program, FY2018 HUD Community Compass Technical Assistance and Capacity Building Program, FY2018 Rural Capacity Building for Community Development and Affordable Housing Grants, FY2019 Section 4 Capacity Building for Community Development and Affordable Housing Grants (Section 4), FY2019 Self-Help Homeownership Opportunity Program (SHOP), FY2019 Veterans Housing Rehabilitation and Modification Pilot Program, and FY2018/2019 Indian Housing Block Grant (IHBG) Program—Competitive Grants.

FOR FURTHER INFORMATION CONTACT: Office of the Chief Financial Officer, Grants Management and Oversight Division at *AskGMO@hud.gov or the contact person listed in each appendix.*

SUPPLEMENTARY INFORMATION:

HUD posted its FY 2017 HUD Community Compass Technical Assistance and Capacity Building Program on *grants.gov* on August 14, 2017, (FR–6100–N–06). The competition closed on September 28, 2017. HUD rated and selected for funding based on selection criteria contained in the NOFA. Initial awards were announced via the FR Notice published on May 17, 2018. Today's Notice announces ten (10) additional awards totaling $7,799,160. Three of the ten awards were amendments to the initial awards for technical assistance and capacity building support to grantees of HUD's Homeless Assistance Grant programs. The other seven (7) awards are new awards issued to applicants under the NOFA, to support the technical assistance needs of grantees of HUD's Disaster Recovery program. The Community Compass Technical Assistance and Capacity Building Program is designed to help HUD grantees and other customers navigate complex housing and community development challenges by equipping them with the knowledge, skills, tools, capacity, and systems to implement HUD programs and policies successfully and be more effective stewards of HUD funding.

HUD posted its FY 2018 HUD Community Compass Technical Assistance and Capacity Building Program on grants.gov on December 17, 2018, (FR–6200–N–06). The competition closed on March 14, 2019. HUD rated and selected for funding based on selection criteria contained in the NOFA. This competition awarded $155,840,288.34 to 26 recipients to provide technical assistance and capacity building services to grantees and other customers of HUD's Offices of Community Planning and Development (CPD), Public and Indian Housing (PIH), Housing, Policy Development and Research (PD&R), and Fair Housing and Equal Opportunity (FHEO). The awards also include SUPPORT Act, CARES Act, and Disaster Recovery funding for technical assistance to CPD grantees.

HUD posted its FY 2018 Rural Capacity Building for Community Development and Affordable Housing Grants competition on *grants.gov* on April 8, 2019, (FR–6300–N–08). The competition closed on June 11, 2019. HUD rated and selected for funding based on selection criteria contained in the NOFA. This competition awarded $5,000,000 to 3 recipients to enhance the capacity and ability of rural housing development organizations, Community Development Corporations (CDCs), Community Housing Development

Organizations (CHDOs), local governments, and Indian tribes (eligible beneficiaries) to carry out affordable housing and community development activities in rural areas for the benefit of low- and moderate-income families and persons. The Rural Capacity Building program achieves this by funding National Organizations with expertise in rural housing and rural community development who work directly to build the capacity of eligible beneficiaries. RCB program funds are limited to activities that strengthen the organizational infrastructure and management capabilities of eligible beneficiaries serving rural areas. Through these activities, eligible beneficiaries increase their capacity to carry out community development and affordable housing activities that benefit low-income or low- and moderate-income families and persons in rural areas.

HUD posted its FY 2019 Self-Help Homeownership Opportunity Program (SHOP) competition on *grants.gov* on July 9, 2019, (FR–6300–N–19). The competition closed on September 9, 2019. HUD rated and selected for funding based on selection criteria contained in the NOFA. This competition awarded $10,000,000 to four recipients to provide eligible national and regional non-profit organizations and consortia to purchase home sites, develop or improve the infrastructure needed to set the stage for sweat equity, and volunteer-based homeownership programs for low-income persons and families. SHOP funds must be used for eligible expenses to develop decent, safe and sanitary non-luxury housing for low-income persons and families who otherwise would not be able to afford to become homeowners.

HUD posted its FY 2019 Section 4 Capacity Building for Community Development and Affordable Housing Grants (Section 4) on *grants.gov* on January 9, 2020, (FR–6300–N–07). The competition closed on March 12, 2020. HUD rated and selected for funding based on selection criteria contained in the NOFA. This competition awarded $35,000,000 to 3 recipients to the capacity and ability of Community Development Corporations (CDCs) and Community Housing Development Organizations (CHDOs) to carry out affordable housing and community development activities that benefit low- and moderate-income families and persons. Funds may be used to provide training, education, support, and advice to enhance the technical and administrative capabilities of CDCs and CHDOS; and as financial assistance to CDCs and CHDOs to increase their capacity to carry out community development and affordable housing activities.

HUD posted its FY 2019 Veterans Housing Rehabilitation and Modification Pilot Program on *grants.gov* on April 19, 2019, (FR–6300–N–39). The competition closed on May 22, 2019. HUD rated and selected for funding based on selection criteria contained in the NOFA. This competition awarded $4,824,000 to five recipients to provide nationwide or statewide programs which primarily serve veterans and/or low-income individuals. Program funds must also be used to assist our nation's low-income veterans living with disabilities who need adaptive housing to help them regain or maintain their independence. In partnership with the U.S. Department of Veterans Affairs, HUD is addressing these challenges by awarding competitive grants to organizations that primarily serve veterans and low-income people.

HUD posted its FY2018/2019 Indian Housing Block Grant (IHBG) Program—Competitive Grants on *grants.gov* on May 7, 2019, (FR–6300–N–48). The competition closed on August 8, 2019. HUD rated and selected for funding based on selection criteria contained in the NOFA. This competition awarded $205,986,618 to 54 eligible Indian tribes and Tribally Designated Housing Entities (TDHEs) for projects that spur new construction and rehabilitation of affordable housing units in Indian Country. The FY 2018/2019 IHBG Competitive NOFA also encouraged other affordable housing projects under Title I of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C.4101 *et seq.*), including necessary infrastructure projects and other eligible affordable housing activities.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545(a)(4)(C)), the Department is publishing the awardees and the amounts of the awards in Appendices A thru G of this document.

Dorthera Yorkshire,

Director, Grants Management and Oversight.

Appendix A

FY2017 HUD Community Compass Technical Assistance and Capacity Building Program

Contact: Stephanie V. Stone, (202) 402–7418.

Legal name	Address line 1	City	State	Zip 5	Estimated funding total amount	Amendment amount	Disaster total award
Abt Associates Inc	55 Wheeler Street	Cambridge	MA: Massachusetts.	02138	$12,000,000.00	$99,580.00	$600,000.00
Cloudburst Consulting Group, Inc.	8400 Corporate Drive, Suite 550.	Landover	MD: Maryland.	20785	15,000,000.00	0.00	850,000.00
Corporate F.A.C.T.S	51248 Plymouth Valley Drive.	Plymouth	MI: Michigan	48170	20,000,000.00	0.00	1,000,000.00
Enterprise Community Partners, Inc.	70 Corporate Center, 11000 Broken Land Parkway.	Columbia	MD: Maryland.	21044	10,000,000.00	0.00	800,000.00
HomeBase/The Center for Common Concerns.	870 Market Street, Suite 1228.	San Francisco.	CA: California.	94102	15,000,000.00	1,500,000.00	
ICF Incorporated, LLC	9300 Lee Highway	Fairfax	VA: Virginia	22031	20,000,000.00	99,580.00	1,200,000.00
National Association for Latino Community Asset Builders.	5404 Wurzbach Rd	San Antonio	TX: Texas	78238	5,000,000.00	0.00	600,000.00
TDA Consulting, Inc	17 Caleb Circle	San Antonio	TX: Texas	78258	20,000,000.00	0.00	1,050,000.00
						1,699,160.00	6,100,000.00
Total							7,799,160.00

Appendix B

FY2018 HUD Community Compass Technical Assistance and Capacity Building Program

Contact: Stephanie V. Stone, (202) 402–7418.

Legal name	Address line 1	City	Zip code	Total 2018/2019 award	FY 2019 disaster TA awards	Total supplemental awards	Total awards
Collaborative Solutions, Inc.	P.O. Box 130159	Birmingham	35213	$1,840,000	$0.00	$750,000	$2,590,000
HomeBase/The Center for Common Concerns.	870 Market Street	San Francisco.	94102	4,570,500	0.00	1,000,000	5,570,500
ICF Incorporated, LLC	9300 Lee Highway	Fairfax	22031	32,570,905.34	1,750,000	5,500,000	39,520,905.34
National Fair Housing Alliance.	1331 Pennsylvania Ave. NW, Suite 650.	Washington	20004	250,000	0.00	0.00	250,000
ECONOMETRICA, INC	7475 Wisconsin Avenue	Bethesda	20814	3,491,910	0.00	0.00	3,491,910
FirstPic, Inc	2614 Chapel Lake Drive	Gambrills	21054	7,458,000	0.00	0.00	7,458,000
Abt Associates Inc	6130 Executive Blvd	Rockville	20852	16,812,595	0.00	3,000,000	19,812,595
Corporation for Supportive Housing.	61 Broadway	New York	10006	7,441,500	0.00	4,000,000	11,441,500
Corporate FACTS	51248 Plymouth Valley Dr.	Plymouth	48170	1,525,000	250,000	1,000,000	2,775,000
The Partnership Center, Ltd.	2134 Alpine Pl	Cincinnati	45206	1,021,400	0.00	250,000	1,271,400
University of Illinois-Chicago (formerly John Marshall Law School).	315 South Plymouth Court.	Chicago	60604	1,500,000	0.00	0.00	1,500,000
National American Indian Housing Council.	122 C Street NW, Suite 350.	Washington	20001	4,500,000	0.00	0.00	4,500,000
Technical Assistance Collaborative, Inc.	31 Saint James Avenue	Boston	02116	5,689,400	0.00	2,400,000	8,089,400
Association of Alaska Housing Authorities.	4300 Boniface Parkway	Anchorage	99504	1,650,000	0.00	0.00	1,650,000
Cloudburst Consulting Group, Inc.	8400 Corporate Drive, Suite 550.	Landover	20785	12,149,100	1,000,000	5,900,000	19,049,100
CVR Associates, Inc	2309 S MacDill Avenue	Tampa	33629	2,350,000	0.00	0.00	2,350,000
Enterprise Community Partners, Inc.	70 Corporate Center	Columbia	21044	6,543,119	0.00	500,000	7,043,119
Local Initiatives Support Corporation.	501 7th Avenue	New York City.	10018	1,210,000	0.00	500,000	1,710,000
Innovative Emergency Management, Inc.	2801 Slater Road	Morrisville	27560	1,100,000	0.00	0.00	1,100,000
TDA Consulting, Inc	17 Caleb Circle	San Antonio	78258	4,043,368	1,000,000	1,000,000	6,043,368
BCT Partners, LLC	105 Lock Street, Suite 311.	Newark	07103	1,000,000	0.00	0.00	1,000,000
American Institutes for Research.	1000 Thomas Jefferson Street NW.	Washington	20007	1,153,491	0.00	0.00	1,153,491
Federal Practice Group LLC.	2100 Crystal Drive, Suite 675.	Arlington	22202	250,000	0.00	0.00	250,000
Du & Associates, Inc	7501 Wisconsin Avenue	Bethesda	20814	1,300,000	0.00	0.00	1,300,000
National Association for Latino Community Asset Builders.	5404 Wurzbach Rd	San Antonio	78238	1,015,000	0.00	500,000	1,515,000
Capital Access, Inc	325 Chestnut Street	Philadelphia	19106	1,605,000	1,000,000	500,000	3,105,000
				124,040,288.34	5,000,000	26,800,000	155,840,288.34

Appendix C

FY2018 Rural Capacity Building for Community Development and Affordable Housing Grants (RCB)

Contact: Diane Schmutzler, (202) 402–4385.

Recipient	Address	City	State	Zip code	Amount
Housing Assistance Council	1025 Vermont Ave NW Ste 606	Washington	DC	20005–3516	$1,892,473
Minnesota Housing Partnership	2446 University Ave West Suite 140	St. Paul	MN	55114–1740	1,706,093
National Association for Latino Community Asset Builders.	5404 Wurzbach Rd	San Antonio	TX	78238–2428	1,401,434
Total					5,000,000

Appendix D

FY2019 Section 4 Capacity Building for Community Development and Affordable Housing Grants (Section 4)

Contact: Anupama Abhyankar (Pam), (202) 402–3981.

Recipient	Address	City	State	Zip code	Amount
Enterprise Community Partners, Inc	11000 Broken Land Pkwy, Suite 700	Columbia	MD	21044–3535	$14,314,931
Local Initiatives Support Corporation	28 Liberty Street, Floor 34	New York	NY	10005	14,314,931
Habitat for Humanity International	322 W. Lamar	Americus	GA	31709	6,370,138
Total					35,000,000

Appendix E

FY2019 Self-Help Homeownership Opportunity Program (SHOP)

Contact: Jackie L. Williams, Ph.D., (202) 708–2290.

Organization	Address	City	County	Zip code	Amount
Habitat for Humanity International	322 West Lamar Street	Americus	GA	31709–3423	$5,421,011
Tierra del Sol Housing Corporation	P.O. Box 2626	Anthony	NM	88021–9346	2,150,107
Community Frameworks	907 West Riverside Avenue	Spokane	WA	98337–1902	1,121,868
Housing Assistance Council	1025 Vermont Avenue NW, Suite 606	Washington	DC	20005–3516	1,307,014
					10,000,000

Appendix F

FY2019 Veterans Housing Rehabilitation and Modification Pilot Program

Contact: Jackie L. Williams, Ph.D., (202) 708–2290.

Organization	Address	City	County	Zip code	Amount
Habitat for Humanity International, Inc	322 West Lamar Street	Americus	GA	31709–3423	$1,000,000
St. Bernard Project	2645 Toulouse Street	New Orleans	LA	70110–5045	1,000,000
New Mexico Affordable Housing Charitable Trust.	344 4th St. SW	Albuquerque	NM	87102–3206	1,000,000
Volunteers of America Texas, Inc	300 E. Midway	Euless	TX	76039–3711	1,000,000
Housing Assistance Council	1025 Vermont Avenue NW, Suite 606	Washington	DC	20005–3516	824,020
Total					4,824,020

Appendix G

FY2019 Indian Housing Block Grant (IHBG) Program—Competitive Grants

Contact: Hilary Atkin, Director of Grants Management Office of Native American Programs (202) 402–3427.

Recipient	Address	City	State	Zip code	Amount
Akwesasne Housing Authority	378 State Route 37	Hogansburg	NY	13655	$4,787,173
Aleut Community of St. Paul Tribal Government	P.O. Box 86	St. Paul Island	AK	99660	2,481,226
Aleutian Housing Authority	520 E 32nd Avenue	Anchorage	AK	99503	2,530,496
All Mission Indian Housing Authority	27368 Via Industria	Temecula	CA	92590	5,000,000
Bay Mills Indian Community	12140 W. Lakeshore Drive	Brimley	MI	49715	1,823,713
Bear River Band of the Rohnerville Rancheria	266 Keisner Road	Loleta	CA	95551	1,474,673
Chippewa Cree	96 Clinic Road	Box Elder	MT	59521	4,945,214
Chitimacha Tribe of Louisiana	P.O. Box 661	Charenton	LA	70523	3,860,725
Choctaw Housing Authority	13660 Highway 16 West	Choctaw	MS	39350	5,000,000
Colville Indian Housing Authority	42 Convalescent Center Blvd	Nespelem	WA	99155	5,000,000
Cook Inlet Housing Authority	3510 Spenard Road	Anchorage	AK	99503	5,000,000
Copper River Basin	P.O. Box 89	Copper River	AK	99588–0089	5,000,000
Coquille Indian Housing Authority	2678 Mexeye Loop	Coos Bay	OR	97420	1,274,985

Recipient	Address	City	State	Zip code	Amount
Cow Creek Band of Umpqua Tribe of Indians	2371 NE Stephens Street	Roseburg	OR	97470	3,775,933
Dry Creek Rancheria Band of Pomo Indians	P.O. Box 607	Geyserville	CA	95441	4,998,446
Eastern Shoshone Housing Authority	P.O. Box 538	Fort Washakie	WY	82514	4,200,000
Enterprise Rancheria Indian Housing Authority	2133 Monte Vista	Oroville	CA	95966	4,953,094
Fort Peck Housing Authority	P.O. Box 667	Poplar	MN	59255	5,000,000
Gwichyaa Zhee Tribal Government	P.O. Box 126	Fort Yukon	AK	99740	1,520,000
Iipay Nation of Santa Ysabel	100 School House Canyon Road	Santa Ysabel	CA	92070	4,624,017
Jicarilla Apache Housing Authority	42 Hawks Drive	Dulce	NM	87528	5,000,000
Kalispel Indian Community of the Kalispel Reservation.	1981 N. Leclerc Rd	Cusick	WA	99119	1,000,000
Lower Sioux Indian Housing Authority	39527 Reservation Highway 1	Morton	MN	56270	1,597,125
Mescalero Apache Tribe Housing Department	P.O. Box 710	Zuni	NM	87327	4,000,000
Modoc Tribe of Oklahoma	22 N. Eight Tribes Trail	Miami	OK	74354	3,000,000
Muckleshoot Indian Tribe dba Muckleshoot Housing Authority.	38037 158th Ave. SE	Auburn	WA	98092	5,000,000
Nambe Pueblo Housing Entity	11 W. Gutierrez	Santa Fe	NM	87506	3,025,760
North Fork Rancheria Indian Housing Authority	57907 Old Mill Site Court	North Fork	CA	93643	5,000,000
North Pacific Rim Housing Authority	8300 King Street	Anchorage	AK	99518	4,393,836
Northern Arapaho Housing Authority	501 Ethete Road	Ethete	WY	82520	4,975,366
Northern Ponca Housing Authority	1501 Michigan Avenue	Norfolk	NE	68701	5,000,000
Ohkay Owingeh Housing Authority	P.O. Box 1059	Ohkay Owingeh	NM	87566	5,000,000
Ramona Band of Cahuilla	56310 Hwy 371	Anza	CA	92539	2,540,000
Red Cliff Chippewa Housing Authority	37645 New Housing Road	Bayfield	WI	54814	4,845,656
Red Lake Reservation Housing Authority	24338 Hwy 1 East	Red Lake	MN	56671	2,250,000
Saginaw Chippewa Indian Tribe of Michigan	7070 East Broadway	Mount Pleasant	MI	48858	3,967,260
Salish & Kootenai Housing Authority	P.O. Box 38	Pablo	MT	59855	3,912,500
San Felipe Pueblo Housing Authority	P.O. Box 4222	San Felipe	NM	87001	5,000,000
Santo Domingo Tribal Housing Authority	26 Highway 22 W	Santo Domingo Pueblo.	NM	85702	4,515,723
Sault Tribe Housing Authority	154 Parkside Drive	Kincheloe	MI	49788	5,000,000
Southern Ute Indian Housing Authority	760 Shoshone Avenue	Ignacio	CO	81137	1,122,000
Swinomish Housing Authority	17547 1st Street, P.O. Box 677	La Conner	WA	98257	1,375,708
Tamaya Housing, Inc	37B Day School Road	Santa Ana Pueblo	NM	87004	4,824,139
The Chickasaw Nation	520 E. Arlington, Box 1548	Ada	OK	74821	5,000,000
Thlopthlocco Tribal Town	P.O. Box 188	Okemah	OK	74859	2,818,428
Tohono O'odham Ki_Ki Housing Assocation	P.O. Box 790	Sells	AZ	85634	5,000,000
Tolowa Dee-ni' Nation	140 Rowdy Creek Road	Smith River	CA	95567	5,000,000
Torres Martinez Desert Cahuilla	66–725 Martinez Road	Thermal	CA	92274	3,700,000
White Mountain Apache Housing Authority	P.O. Box 1270	Whiteriver	AZ	85941	5,000,000
Winnemucca Indian Colony	595 Humboldt Street	Reno	NV	89509	825,093
Wyandotte Nation	64700 East Highway 60	Wyandotte	OK	74370	1,385,745
Yakama Nation Housing Authority	P.O. Box 156	Wapato	WA	98951	5,000,000
Ysleta del Sur Pueblo	119 S. Old Pueblo Road	El Paso	TX	79907	3,662,584
Zuni Housing Authority	15540 Highway 101 North	Klamath	CA	95548	5,000,000
Total					205,986,618

[FR Doc. 2020–19282 Filed 8–31–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–30774; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before August 15, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by September 16, 2020.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before August 15, 2020. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State or Tribal Historic Preservation Officers:

IOWA

Polk County

Argonne Building, 1723 Grand Ave. (1723–1733 Grand Ave., plus 515 18th St.), Des Moines, SG100005608

MISSISSIPPI

Hinds County

Admiral Benbow Inn, 905 North State St., Jackson, SG100005613

Rankin County

Piney Woods Country Life School Historic District, 5009 US 49 South, Piney Woods, SG100005616

MONTANA

Park County

Billy Miles & Bros. Grain Elevator, Jct. of East Park St. (US 89 Bus.) and North G St., Livingston, SG100005604

SOUTH CAROLINA

Charleston County

Host of America Motel, 3245 Rivers Ave., North Charleston, SG100005609

Richland County

Stone Manufacturing Company, 3452 North Main St., Columbia, SG100005610

Veterans Administration Regional Office, 1801 Assembly St., Columbia, SG100005611

Williamsburg County

Epps-McGill Farmhouse, 679 Eastland Ave., Kingstree vicinity, SG100005612

TEXAS

Red River County

Bogata Historic District, Main St., roughly between Mount Pleasant Rd. and 2nd St., Bogata, SG100005602

Tarrant County

Riverside Baptist Church, 3111 Race St., Fort Worth, SG100005603

Wheeler County

Route 66 in Wheeler County, Texas, (Route 66 in Texas MPS), South side frontage road of I 40 between Gray Co. (TX) and Beckham Co. (OK), Shamrock vicinity, MP100005601

VERMONT

Windsor County

Woodstock Village Historic District (Boundary Increase), Roughly along the Ottauquechee R., Woodstock, BC100005615

A request to move has been received for the following resource:

CONNECTICUT

New Haven County

Pinto, William, House, 275 Orange St., New Haven, MV85002316

Additional documentation has been received for the following resources:

ARKANSAS

Pulaski County

Lake Nixon (Additional Documentation), 18500 Cooper Orbit Rd., Little Rock, AD100001013

VERMONT

Windsor County

Woodstock Village Historic District (Additional Documentation), Along the Ottauquechee R., Woodstock, AD73000274

Authority: Section 60.13 of 36 CFR part 60

Dated: August 18, 2020.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2020–19221 Filed 8–31–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04651000, 20XR0680A1, RX003150012000000]

Hydroelectric Power Development at Taylor Park Dam, Uncompahgre Project, Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to accept proposals, select lessee, and contract for hydroelectric power development at Taylor Park Dam.

SUMMARY: Current Federal policy allows non-Federal development of electrical power resource potential on Federal water resource projects. The Bureau of Reclamation (Reclamation) will consider proposals for non-Federal development of hydroelectric power at Taylor Park Dam, a feature of the Uncompahgre Project, located in Colorado. Reclamation is considering such hydroelectric power development under a Lease of Power Privilege (LOPP). No Federal funds will be available for such hydroelectric power development.

DATES: A written proposal and seven copies must be submitted on or before 4:00 p.m. (MDT) January 29, 2021. A proposal will be considered timely only if it is received in the office of the Area Manager on or before 4:00 p.m. on the designated date. Interested entities are cautioned that delayed delivery to this office due to failures or misunderstandings of the entity and/or of mail, overnight, or courier services will not excuse lateness and, accordingly, are advised to provide sufficient time for delivery. Late proposals will not be considered.

ADDRESSES: Send written proposals to Mr. Ed Warner, Area Manager, Western Colorado Area Office, Bureau of Reclamation; 445 West Gunnison Avenue, Suite 221, Grand Junction, Colorado 81501–5711; telephone 970–248–0600.

FOR FURTHER INFORMATION CONTACT: Technical data, including past water release patterns, may be obtained by contacting Mr. Ryan Christianson, Water Management Group Chief, Western Colorado Area Office, Bureau of Reclamation, 445 West Gunnison Avenue, Suite 221, Grand Junction, Colorado 81501; telephone 970–248–0652; email *rchristianson@usbr.gov.* Reclamation will be available to meet with interested entities only upon written request to the Water Management Group Chief at the previously provided address. Reclamation will provide an opportunity for a site visit. In addition, Reclamation reserves the right to schedule a single meeting and/or visit to address the questions of all entities that have submitted questions or requested site visits. Information related to the operation and maintenance (O&M) of Taylor Park Dam may be obtained by contacting Mr. Steve Anderson, Uncompahgre Valley Water Users Association; 601 North Park Avenue, Montrose, Colorado 81401; telephone 970–249–3813; email *sanderson@uvwua.com.*

SUPPLEMENTARY INFORMATION: The Uncompahgre Project is a Federal Reclamation project. This Notice presents background information, proposal content guidelines, and information concerning selection of a non-Federal entity to develop hydroelectric power at Taylor Park Dam, and power purchasing and/or marketing considerations. Interested parties will not need to file an application with the Federal Energy Regulatory Commission (FERC). To be considered for selection, the applicant's proposed LOPP project must not impair the efficiency of Reclamation project power or water deliveries, impact the structural integrity of the project, jeopardize public safety, or negatively affect any other Reclamation project purposes.

Taylor Park Dam is located near the town of Gunnison in west-central Colorado on the Taylor River in the Colorado River Basin. The Uncompahgre Project (initially authorized as the Gunnison Project) was authorized by the Secretary of the Interior on March 14, 1903, under the Reclamation Project Act of 1902 (32 Stat. 388) and approved by the President on January 5, 1911, pursuant to the act of June 25, 1910 (36 Stat. 835). The construction of Taylor Park Dam was approved by the President on November 6, 1935, pursuant to section 4 of the act

of June 25, 1910 (36 Stat. 836), and subsection B of section 4 of the act of December 5, 1924 (43 Stat. 702). The Uncompahgre Valley Project Act of 1938 (52 Stat. 941) authorizes the Secretary of the Interior to contract for the sale or development of surplus power on the Uncompahgre Project. The Uncompahgre Valley Water Users Association (UVWUA) under its contracts with the United States, has certain operation, maintenance, and replacement responsibilities and obligations concerning Taylor Park Dam.

Reclamation is considering hydroelectric power development at Taylor Park Dam under an LOPP. An LOPP is a contractual right given to a non-Federal entity to use a Reclamation facility for electric power generation consistent with Reclamation project purposes. LOPPs have terms not to exceed 40 years. The general authority for LOPPs under Reclamation law includes, among others, the Town Sites and Power Development Act of 1906 (43 U.S.C. Sec. 522), and the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) (1939 Act).

Reclamation will be the lead Federal agency for ensuring compliance with the National Environmental Policy Act of 1969 (NEPA) of any LOPP considered in response to this Notice. Reclamation will also lead necessary consultation with American Indian Tribal Governments and compliance with the National Historic Preservation Act of 1966 (NHPA), Endangered Species Act of 1973 (ESA), and other related environmental regulations for all elements of the proposed project.

LOPPs may be issued only when Reclamation has determined that NEPA and any other regulatory compliance requirements are completed. Any LOPP at Taylor Park Dam must accommodate existing contractual and environmental commitments related to operation and maintenance (O&M) of such existing facilities. The lessee (*i.e.,* successful proposing entity) will be required to enter into a contract with Reclamation. This contract will (1) address requirements related to coordination of O&M with Uncompahgre Project stakeholders (including Upper Gunnison Water Conservancy District (UGWCD) stakeholders), and (2) stipulate that the LOPP lessee will be responsible for any increase in O&M costs that are attributable to the hydroelectric power development.

All costs incurred by the United States related to development and O&M under an LOPP, including NEPA and other environmental regulatory compliance, engineering reviews, and development of the LOPP, would be the expense of the lessee. In addition, the lessee would be required to make annual payments to the United States for the use of a Federal facility at a rate of 2–3 mills per kilowatt-hour of gross generation, allowing the United States to benefit proportionally.

Under the LOPP, provisions will be included for the mill rate to increase each year commensurate with inflation based on the average of the previous 5 years of the Gross Domestic Product (GDP) Price Deflator. If the 5-year GDP Price Deflator average shows no change or deflation, the LOPP rate will remain the same as the previous year's rate. The rate of increase of the 5-year GDP Price Deflator average will be capped at 5 percent. Such annual payments to the United States would be deposited as a credit to the Uncompahgre Project until an eligible reimbursable project expense is incurred against which the credit can be applied.

Proposal Content Guidelines

Interested parties should submit proposals explaining in as precise detail as is practicable how the hydropower potential would be developed. Minimum factors by which a proposal will be scored and criteria evaluated include the following:

(1) Anticipated contractual arrangements with UVWUA for the Uncompahgre Project feature(s) that are proposed for utilization in the hydropower development under consideration. Define how the hydropower development would operate in harmony with the multiple purposes of the Uncompahgre Project and existing applicable contracts related to O&M of Uncompahgre Project feature(s) being considered for modification.

(2) Information regarding whether the applicant qualifies as a preference entity. If the proposal is made by a group of entities or by a subdivision of an entity, then the application must explain whether and why the applicant or applicants qualify as preference entities. The term ''preference entity,'' as applied to a LOPP, means an entity qualifying for preference under Section 9c of the 1939 Act as a municipality, public corporation or agency, or cooperative or other nonprofit organization financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936, as amended.

(3) Information relevant to the qualifications of the proposing entity to plan and implement such a project, including but not limited to: Type of organization; length of time in business; experience in funding, design, and construction of similar projects; industry rating(s) that indicate financial soundness and/or technical and managerial capability; experience of key management personnel; history of any reorganizations or mergers with other companies; and any other information that demonstrates the interested entity's organizational, technical, and financial ability to perform all aspects of the work. Proposals will include a discussion of past experience in developing, operating, and maintaining similar facilities and provide references as appropriate.

(4) Geographical locations and descriptions of principal structures and other important features of the proposed development including roads and transmission lines. Proposals must estimate and describe installed capacity and the capacity of the power facilities under dry, average, and wet hydrological conditions. Proposals must also describe the daily, weekly, monthly, and annual pattern of expected generation under average, wet, and dry hydrological conditions; the ability of generation to provide ancillary services such as regulation, spinning reserves, and voltampere reactive support; and information on the reliability of the generation, potential maintenance outage schedule, and duration. If capacity and energy can be delivered to another location, either by the proposing entity or by potential third party transmission agents, the proposal must specify where that capacity and energy can be delivered. The proposal must describe the concepts and contractual arrangements (including the involved parties) related to transmission interconnection, power sales, and the proposed approach to third party transmission if required.

(5) Existing title arrangements or a description of the ability to acquire title to or the right to occupy and use lands necessary for the proposed LOPP project, including such additional lands as may be required during construction.

(6) A description of studies necessary to adequately define impacts of the proposed LOPP project on the Uncompahgre Project, historic properties (if such are present), and the environment. The proposal must describe any significant environmental issues associated with the proposed LOPP project and the proposing entity's approach for gathering relevant data and resolving such issues to protect and enhance the quality of the environment. The proposal will explain any proposed use of the LOPP project for conservation and utilization of the available water resources in the public interest.

(7) Plans for assuming liability for damage to the operational and structural integrity of the Uncompahgre Project caused by construction, operation, and/or maintenance of the hydropower development.

(8) Identify the organizational structure planned for the long-term O&M of any proposed hydropower development.

(9) A management plan, including schedules of these activities as applicable, to accomplish activities such as planning; NEPA, NHPA, and ESA compliance; necessary studies; LOPP project development; design, construction, safety plan, and facility testing; and the start of hydropower production.

(10) An estimate of development costs. These costs will include all investment costs such as the cost of studies to determine feasibility; NEPA, NHPA, and ESA compliance; other statutory compliance; design; construction; financing as well as the amortized annual cost of the investment; annual O&M expense for the hydropower development; lease payments to the United States; expenses associated with the Reclamation project; and anticipated return on investment. If there are additional transmission expenses associated with the development of the LOPP project, these expenses must also be included. The proposal must identify proposed methods of financing the LOPP project. The proposal must include an economic analysis that compares the present worth of all benefits and costs of the hydropower development.

Selection of Lessee

Reclamation will evaluate proposals received in response to this published Notice. Reclamation may request additional information from individual proposing entities and/or all proposing entities after proposals are submitted, but prior to making a selection of a lessee.

Reclamation will give more favorable consideration to proposals that (1) responsibly develop hydropower; (2) avoid, reduce, or minimize environmental impacts; (3) clearly demonstrate that the offeror is qualified to develop the hydropower facility and provide for long-term O&M; and (4) best share the economic benefits of the hydropower development among parties (including the United States) to the LOPP. A proposal will be deemed unacceptable if it is inconsistent with Uncompahgre Project purposes or interferes with UGWCD's ability to use their water allocation in Taylor Park Reservoir, as determined by Reclamation.

Reclamation will give preference to those entities that qualify as preference entities, as defined under Proposal Content Guidelines, item (b) of this Notice, provided that they are well qualified to develop and provide for long-term O&M of the hydropower facility. If one applicant is a preference entity and the other is not, and the preference entity's proposed plans are not as well qualified as the non-preference entity's plans, Reclamation will inform the preference entity of the specific reasons why its plans are not as well qualified and afford up to 30 calendar days for the preference entity to render its plans at least as well qualified as the other plans. All other applicants will be informed of this action. If the plans of the preference entity are rendered at least as well qualified within the time allowed, Reclamation will favor the preference entity. If the preference entity's plans are not rendered at least as well qualified within the time allowed, Reclamation will favor the other applicant.

Notice and Time Period To Enter Into LOPP

Reclamation will notify, in writing, all entities submitting proposals of Reclamation's decision regarding selection of the potential lessee. The selected potential lessee will be provided a maximum of 24 months from the date of selection to sign the preliminary lease, complete the requirements set forth in the preliminary lease, and to sign the LOPP. The lessee will have a maximum of 1 year from the date of the execution of the LOPP to complete final designs, specifications, etc., and an additional 1 year to begin construction. A maximum of 4 years is allowed, from the date of the preliminary lease to the beginning of construction. Maximum timeframes for construction will be determined by the Regional Director, Upper Colorado Basin—Interior Region 7. The above timeframes will only be extended for just cause resulting from actions and/or circumstances that are beyond the control of Reclamation or the lessee. Just cause and timeframe adjustments will be determined solely by the Regional Director, Upper Colorado Basin—Interior Region 7.

Wayne G. Pullan,

Deputy Regional Director, Upper Colorado Basin—Interior Region 7, Bureau of Reclamation.

[FR Doc. 2020–19261 Filed 8–31–20; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1132 and 1134 (Second Review)]

Polyethylene Terephthalate Film, Sheet, and Strip from China and the United Arab Emirates; Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty orders on polyethylene terephthalate film, sheet, and strip from China and the United Arab Emirates would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on January 2, 2020 (85 FR 114) and determined on April 6, 2020 that it would conduct expedited reviews (85 FR 42916, July 15, 2020).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on August 26, 2020. The views of the Commission are contained in USITC Publication 5110 (August 2020), entitled *Polyethylene Terephthalate Film, Sheet, and Strip from China and the United Arab Emirates: Investigation Nos. 731–TA–1132 and 1134 (Second Review).*

By order of the Commission.

Issued: August 26, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–19194 Filed 8–31–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–464 and 731–TA–1160 (Second Review)]

Prestressed Concrete Steel Wire Strand From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on prestressed concrete steel wire strand from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted September 1, 2020. To be assured of consideration, the deadline for responses is October 1, 2020. Comments on the adequacy of responses may be filed with the Commission by November 16, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 29, 2010, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of prestressed concrete steel wire strand from China (75 FR 37382). On July 7, 2010, Commerce issued a countervailing duty order on imports of prestressed concrete steel wire strand from China (75 FR 38977). Following the first five-year reviews by Commerce and the Commission, effective October 13, 2015, Commerce issued a continuation of the antidumping and countervailing duty orders on imports of prestressed concrete steel wire strand from China (80 FR 61372). The Commission is now conducting second reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, Subparts A and B, and 19 CFR part 207, Subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and its expedited first five-year review determinations, the Commission defined a single *Domestic Like Product* as prestressed concrete steel wire strand coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its expedited first five-year review determinations, the Commission defined the *Domestic Industry* to include all domestic producers of prestressed concrete steel wire strand.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the

programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 1, 2020. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is November 16, 2020. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117–0016/USITC No. 20–5–470, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2014.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2019, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales,

internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2014, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 21, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–18775 Filed 8–31–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–523 and 731–TA–1259 (Review)]

Boltless Steel Shelving Units Prepackaged for Sale From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on boltless steel shelving units prepackaged for sale from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted September 1, 2020. To be assured of consideration, the deadline for responses is October 1, 2020. Comments on the adequacy of responses may be filed with the Commission by November 16, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 21, 2015, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of boltless steel shelving units prepackaged for sale from China (80 FR 63741 and 63745). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* that is coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all U.S. producers of the *Domestic Like Product.*

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is October 21, 2015.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 1, 2020. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is November 16, 2020. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117–0016/USITC No. 20–5–469, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments

regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2019, except as noted (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to

operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 21, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–18774 Filed 8–31–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–688P]

Proposed Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2021

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: The Drug Enforcement Administration (DEA) proposes to establish the 2021 aggregate production quotas for controlled substances in schedules I and II of the Controlled Substances Act (CSA) and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

DATES: Interested persons may file written comments on this notice in accordance with 21 CFR 1303.11(c) and 1315.11(d). Electronic comments must be submitted, and written comments must be postmarked, on or before October 1, 2020. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Based on comments received in response to this notice, the Administrator may hold a public hearing on one or more issues raised. In the event the Administrator decides in his sole discretion to hold such a hearing, the Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments or objections, or after a hearing, if one is held, the Administrator will publish in the **Federal Register** a final order establishing the 2021 aggregate production quotas for schedule I and II controlled substances, and an assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–688P'' on all correspondence, including any attachments. DEA encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted, and there is no need to resubmit the same comment. Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu* of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

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

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential

business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified and located as directed above will generally be made available in redacted form. If a comment contains so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document is available at *http://www.regulations.gov* for easy reference.

Legal Authority

Section 306 of the CSA (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II, and for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. The Attorney General has delegated this function to the Administrator of the DEA pursuant to 28 CFR 0.100.

Analysis for Proposed 2021 Aggregate Production Quotas and Assessment of Annual Needs

The proposed 2021 aggregate production quotas and assessment of annual needs represent those quantities of schedule I and II controlled substances, and the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, to be manufactured in the United States (U.S.) in 2021 to provide for the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements, and the establishment and maintenance of reserve stocks. These quotas include imports of ephedrine, pseudoephedrine, and phenylpropanolamine, but do not include imports of controlled substances for use in industrial processes.

Aggregate Production Quotas

In determining the proposed 2021 aggregate production quotas, the Acting Administrator has taken into account the criteria of 21 U.S.C. 826(a) and 21 CFR 1303.11.[1] The DEA proposes the aggregate production quotas for 2021 by considering the following seven factors:

(1) Total net disposal of the class by all manufacturers during the current and 2 preceding years;

(2) Trends in the national rate of net disposal of the class;

(3) Total actual (or estimated) inventories of the class and of all substances manufactured from the class, and trends in inventory accumulation;

(4) Projected demand for such class as indicated by procurement quotas requested pursuant to § 1303.12;

(5) The extent of any diversion of the controlled substance in the class;

(6) Relevant information obtained from the Department of Health and Human Services (HHS), including from the Food and Drug Administration (FDA), the Centers for Disease Control and Prevention (CDC), and the Centers for Medicare and Medicaid Services (CMS), and relevant information obtained from the states; and

(7) Other factors affecting medical, scientific, research, and industrial needs in the United States and lawful export requirements, as the Administrator finds relevant, including changes in the currently accepted medical use in treatment with the class or the substances which are manufactured from it, the economic and physical availability of raw materials for use in manufacturing and for inventory purposes, yield and stability problems, potential disruptions to production (including possible labor strikes), and recent unforeseen emergencies such as floods and fires.

Assessment of Annual Needs

In similar fashion, in determining the proposed 2021 assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, the Acting Administrator has taken into account the criteria of 21 U.S.C. 826(a) and 21 CFR 1315.11 and considered the five following factors:

(1) Total net disposal of the chemical by all manufacturers and importers during the current and 2 preceding years;

(2) Trends in the national rate of net disposal of each chemical;

(3) Total actual (or estimated) inventories of the chemical and of all substances manufactured from the chemical, and trends in inventory accumulation;

(4) Projected demand for each chemical as indicated by procurement and import quotas requested pursuant to § 1315.32; and

(5) Other factors affecting medical, scientific, research, and industrial needs in the United States, lawful export requirements, and the establishment and maintenance of reserve stocks, as the Administrator finds relevant, including changes in the currently accepted medical use in treatment with the chemicals or the substances which are manufactured from them, the economic and physical availability of raw materials for use in manufacturing and for inventory purposes, yield and stability problems, potential disruptions to production (including possible labor strikes), and recent unforeseen emergencies such as floods and fires. 21 CFR 1315.11(b).

As may be noted, the five assessment of annual needs factors considered are similar, but not identical, to five of the seven factors considered in determining the aggregate production quotas. In determining the proposed 2021 assessment of annual needs, DEA used the calculation methodology previously described in the 2010 and 2011 assessment of annual needs (74 FR 60294, Nov. 20, 2009, and 75 FR 79407, Dec. 20, 2010, respectively).

Information From the Food and Drug Administration

In accordance with part 1303 of Title 21, of the CFR, 21 U.S.C. 826, and 42 U.S.C. 242, HHS continues to provide DEA with estimates of the quantities of select schedule I and II controlled substances and three list I chemicals that will be required to meet the legitimate medical domestic needs of the United States for a given calendar year. The FDA is responsible for providing these estimates and predictions of legitimate medical needs to DEA. FDA provides DEA with its predicted estimates of medical usage for selected controlled substances based on information available to them at a specific point in time to meet statutory requirements. FDA's predicted levels of medical need for the United States was expected to decline on average 36.52 percent for calendar year 2021. These declines were expected to occur across a variety of schedule II opioids including fentanyl, hydrocodone, hydromorphone, codeine, and morphine. However, FDA's predicted level of medical need for the United States was calculated by FDA at the beginning of the Coronavirus Disease 2019 (COVID–19) pandemic and, therefore, did not take into account changes in usage that are necessary to treat patients who require schedule II controlled substances. DEA has considered both the potential for diversion as well as the anticipated increase in demand for opioids used to treat patients with COVID–19 in the

[1] Two additional aggregate production quotas factors were added when DEA published the Final Rule ''Controlled Substances Quotas'' in the **Federal Register**, 83 FR 32784, on July 16, 2018.

table of proposed 2021 aggregate production quotas listed below as is required pursuant to 21 CFR 1303.11(b)(7).

With regard to certain schedule II stimulants (amphetamine, methylphenidate, and lisdexamfetamine) that are widely used to treat patients with attention deficit hyperactivity disorder (ADHD), FDA predicted a 0.5 percent decline in domestic medical use. DEA noted that although usage is not forecasted to have a significant increase in demand, FDA raised concerns over receiving a large volume of drug shortage notifications from patients for these medications as well as multiple recalls for out-of-specification lots of specific ADHD medications. DEA did consider FDA's concerns when calculating the aggregate production quota for these substances. While FDA's predicted estimate of usage remains stable, DEA has observed increases in the number of quota applications for product development efforts as well as exports for medical use for these controlled substances, and has proposed increases in these APQs to meet these demands. However, DEA is closely monitoring trends in licit stimulant use as DEA has grown increasingly concerned over the misuse of prescription stimulants among young adults and the demand for methamphetamine here in the U.S.

For the factors listed in 21 CFR 1303.11(b)(3) and (4), DEA registered manufacturers of controlled substances in schedules I and II provided the information by submitting their individual data to several DEA database systems used for reporting inventory, distribution, manufacturing, and estimated quota requirements to meet sales forecasts for each class of controlled substance as required by regulations. *See* 21 CFR 1303.12, 1303.22, and part 1304. Factor 1303.11(b)(5) requires DEA to consider the extent of diversion of controlled substances. The estimates of diversion as required by the SUPPORT Act are discussed later in the document. Diversion is defined as all distribution, dispensing, or other use of controlled substances for other than a legitimate medical purpose. In order to consider the extent of diversion, Federal, state, and local law enforcement seizures and registrant reports of diversion of controlled substances from 2019 were extracted from several DEA supported databases. The databases used include:

- Theft Loss Report database comprised of DEA registrant reported entries documenting diversion consisting of employee theft, break-ins, armed robberies, and material lost in transit;
- Statistical Management Analysis & Reporting Tools System (SMARTS) database comprised of laboratory drug submissions from seizure data and drug purchases made by DEA task force groups, tactical diversion squads, enforcement groups, and High Intensity Drug Trafficking Area (HIDTA) task force groups;
- System to Retrieve Information on Drug Evidence (STRIDE) database comprised of material seized by numerous law enforcement groups across the country including the Federal Bureau of Investigation (FBI) field offices; DEA field offices; U.S. Immigration and Customs Enforcement (ICE) offices; Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) offices; and metropolitan police departments.

The data was categorized by basic drug class and the amount of active pharmaceutical ingredient (API) in the dosage form was delineated with an appropriate metric for use in proposing aggregate production quota values (*i.e.,* weight). Because of the factor required by 21 CFR 1303.11(b)(6), DEA formally solicited HHS components CDC and CMS, in February 2020, requesting information including rates of overdose deaths and abuse and overall public health impact related to schedule II controlled substances, including the covered controlled substances. In April 2020, DEA formally solicited the states regarding information that would be helpful to DEA in estimating the amount of diversion, including PDMP data for the covered controlled substances. This information is considered pursuant to the SUPPORT Act discussed below. The Acting Administrator considered the effects of the COVID–19 pandemic pursuant to 21 CFR 1303.11(b)(7) as discussed under Information from the FDA section.

Estimates of Diversion Pursuant to the Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment for Patients and Communities Act

The Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act of 2018 (SUPPORT Act), Public Law 115–271, mandates that DEA, in consultation with HHS, determine reliable rates of overdose deaths, abuse, and overall public health impact as factors for the purpose of estimating diversion for each of the following five covered controlled substances: Fentanyl, hydrocodone, hydromorphone, oxycodone, and oxymorphone. The SUPPORT Act further mandates that DEA ''make appropriate quota reductions, as determined by the [Administrator], from the quota the [Administrator] would have otherwise established had such diversion not been considered.'' [2] 21 U.S.C. 826(i)(1).

In accordance with this mandate, DEA requested information from several reliable sources. In February 2020, DEA met with representatives from FDA, CDC, and CMS to discuss sharing relevant data that each agency maintains. For example, the CDC maintains information regarding unintentional overdose deaths and CMS maintains data regarding prescriptions for controlled substances filled under the Medicare Part D program. Following that meeting, DEA requested information on overdose deaths, overprescribing, and the public health impact of these categories from each of these federal partners.

Overdose Death Data Provided by the Centers for Disease Control and Prevention

In May 2020, the CDC provided DEA with data from their National Vital Statistics System Mortality files for 2015 through 2017, which provided numerical, crude, and age-adjusted rates of drug overdose deaths involving the covered controlled substances aggregated by public health regions of the United States. The CDC noted that if the death involved more than one controlled substance, the death was counted in all involved substances. Further, CDC informed DEA that calendar year 2018 data would not be available until the fall of 2020. The number of overdose deaths in which the covered controlled substance was identified, as provided by the CDC, is provided in Table 1 below. With respect to fentanyl, the data includes the covered controlled substance fentanyl and all known fentanyl analogues, which are not covered controlled substances under the SUPPORT Act.

[2] On October 23, 2019, DEA published a proposal to amend its quota regulations. 84 FR 56712. When finalized, the regulations will implement the amendments to the CSA made by the SUPPORT Act. However, the statutory requirements stated above became effective upon enactment of the SUPPORT Act, and DEA is therefore obligated to adhere to them in issuing these adjusted aggregate production quotas.

TABLE 1: OVERDOSE DEATHS OF COVERED CONTROLLED SUBSTANCES, 2015–2017

	2015	2016	2017	Trend (percent change from 2015 to 2017)
Fentanyl and its Analogues	8,251	18,335	27,299	231
Hydrocodone	3,051	3,199	3,072	1
Hydromorphone	793	743	786	−1
Oxycodone	5,792	6,199	6,053	5
Oxymorphone	1,006	1,077	900	−11

Fentanyl and its analogues are the substances that continue to be the opioids involved in the vast majority of overdose deaths in the United States, increasing by 231 percent from 2015 through 2017.[3] However, based on the data presented to DEA by the CDC, which did not differentiate between licit fentanyl and illicit fentanyl and its analogues, as well as analyzed seizure data from law enforcement activities, DEA believes that the vast majority of deaths involving fentanyl were not from products that were lawfully manufactured and distributed pursuant to the CSA but were from unlawfully manufactured and distributed fentanyl and fentanyl related substances. The information from the CDC also demonstrates a relatively stable number of overdose deaths involving oxycodone, hydrocodone, and hydromorphone. Overdose deaths involving oxymorphone show an 11 percent decline during this period. Whereas DEA is required to consider rates in overdose deaths pursuant to changes made by the SUPPORT Act, DEA has concluded that this data on overdose deaths for 2015 through 2017 cannot be reliably utilized to estimate the amount of diversion for the five covered controlled substances for the quota setting year (2021). However, this information continues to serve as an important reminder of the persistent role that controlled prescription opioids play in our Nation's opioid epidemic.

Data From the Centers for Medicare and Medicaid Services

In further consultation with HHS, DEA was advised that the Centers for Medicare and Medicaid Services (CMS) may have information related to diversion, such as reliable rates of overprescribing (doctor shopping and being prescribed significantly more medicine than is medically necessary). DEA was informed by CMS that CMS had reviewed their internal databases and does not have the ability to systematically distinguish between appropriate and inappropriate prescriptions without investigations. While CMS was unable to generate a report, DEA will attempt to solicit the raw data from CMS to determine overprescribing rates based on CDC prescription guidance for schedule II substances and DEA's own parameters for doctor shopping.

Information From States' Attorneys General

DEA also obtains information from the states to be considered in setting the aggregate production quotas. As such, DEA sent a letter to each state attorney general soliciting information that would be helpful in estimating the amount of diversion for the five covered controlled substances identified in the SUPPORT Act. In that letter, DEA indicated that it was specifically interested in obtaining information from each state's Prescription Drug Monitoring Program (PDMP) or any analysis of prescription data that would assist DEA in estimating diversion of covered controlled substances and setting appropriate quotas in compliance with the SUPPORT Act. DEA requested the data be provided to the agency by June 1, 2020, in order to provide the agency with adequate time to analyze the data and determine a methodology for inclusion in diversion estimates to be considered in proposing APQ values for the 2021 calendar year. Twenty states and U.S. territories acknowledged receipt of DEA's correspondence and nine of those states provided DEA with de-identified aggregated PDMP data. The list of states and territories responding to DEA's request for data is listed in Table 2.

TABLE 2—STATES/TERRITORIES THAT RESPONDED TO DEA'S DATA REQUEST

State/territory	Acknowledged letter	Submitted PDMP data
1. Connecticut	X	
2. Delaware	X	
3. District of Columbia	X	
4. Florida	X	X
5. Guam	X	X
6. Illinois	X	
7. Louisiana	X	X
8. Maine	X	
9. Massachusetts	X	
10. Michigan	X	
11. Missouri	X	
12. Montana	X	
13. New Hampshire	X	
14. Ohio	X	X

[3] According to the CDC, there were an estimated 47,506 unintentional overdose deaths involving a natural, semi-synthetic or synthetic opioid in 2017. More than half (57 percent) involved fentanyl and substances chemically similar to fentanyl. At the time of this publication, the CDC has released unintentional overdose statistics for 2018 and provisional estimates for 2019; however, deaths involving each of the five covered substances are not available for those years. Information about CDC's current mortality data may be found at: *https://www.cdc.gov/drugoverdose/data/index.html.*

TABLE 2—STATES/TERRITORIES THAT RESPONDED TO DEA'S DATA REQUEST—Continued

State/territory	Acknowledged letter	Submitted PDMP data
15. Oklahoma	X	X
16. Oregon	X	
17. South Dakota	X	X
18. Texas	X	X
19. West Virginia	X	X
20. Wyoming	X	X

The data that DEA received varied in its form and content and was ultimately determined to be inapplicable at the national level.

Data from PDMPs can be evaluated to identify common diversion schemes such as ''doctor shopping,'' a scheme in which a patient obtains controlled substances from multiple treatment providers without the providers knowing of the other prescriptions. In addition, information from PDMPs can assist in identifying ''red flags'' that could be evidence of diversion and misuse of covered controlled substances, such as: Over-prescribing; patients traveling long distances or across state lines to have prescriptions filled; early refills; and dangerous drug combinations such as the ''holy trinity,'' a cocktail of drugs consisting of an opioid, a benzodiazepine, and a commonly prescribed muscle relaxant such as carisoprodol, which when misused in combination, can be lethal. DEA has determined that analysis of raw data from state PDMPs on these five covered substances is essential for DEA to effectively estimate diversion of the covered controlled substances pursuant to the SUPPORT Act. DEA is currently exploring additional means to obtain PDMP data so that it may fulfill this statutory obligation while protecting the privacy of patients who obtain such prescriptions.

DEA Law Enforcement Data

DEA extracted data from its Drug Theft and Loss, Statistical Management Analysis & Reporting Tools System (SMARTS) and System to Retrieve Information on Drug Evidence (STRIDE) databases, and aggregated the quantity of active pharmaceutical ingredient (API) of each covered controlled substance by metric weight where the data was available. From the databases, DEA gathered data involving employee theft, break-ins, armed robberies, and material lost in transit. DEA also used seizure data by law enforcement nationwide. This data was categorized by basic drug class and the amount of API in the dosage form was delineated with an appropriate metric for use in proposing the adjusted aggregate production quota values. DEA calculated the estimated amount of diversion by multiplying the strength of the API listed for each finished dosage form by the total amount of units reported to estimate the metric weight in kilograms of the controlled substance being diverted. The estimate of diversion for each of the covered controlled substances is reported below:

TABLE 3—ESTIMATE OF DIVERSION FOR COVERED CONTROLLED SUBSTANCES.

Diversion Estimates for 2019 (kg)	
Fentanyl	0.090
Hydrocodone	30.294
Hydromorphone	1.424
Oxycodone	60.959
Oxymorphone	1.311

In accordance with the SUPPORT Act, after estimating the amount of diversion for the foregoing five controlled substances, DEA made adjustments to the individual aggregate production quotas for each covered controlled substance by the corresponding quantities listed in the table.

In determining the proposed 2021 assessment of annual needs, the DEA used the calculation methodology previously described in the 2010 and 2011 assessment of annual needs (74 FR 60294, Nov. 20, 2009, and 75 FR 79407, Dec. 20, 2010, respectively).

The Acting Administrator, therefore, proposes to establish the 2021 aggregate production quotas for certain schedule I and II controlled substances and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in grams of anhydrous acid or base, as follows:

Basic class	Proposed 2021 quotas (g)
Schedule I	
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine	20
1-(1-Phenylcyclohexyl)pyrrolidine	15
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	10
1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201)	30
1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)	30
1-Benzylpiperazine	25
1-Methyl-4-phenyl-4-propionoxypiperidine	10
1-[1-(2-Thienyl)cyclohexyl]piperidine	15
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E)	30
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)	30
2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine (2C-N)	30
2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P)	30
2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)	100
2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36)	30
2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)	30
2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82)	25
2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)	30
2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5)	30
2,5-Dimethoxy-4-ethylamphetamine (DOET)	25
2,5-Dimethoxy-4-(n)-propylthiophenethylamine	25
2,5-Dimethoxyamphetamine (DMA)	25
2-(4-Ethylthio-2,5-dimethoxyphenyl)ethanamine (2C-T-2)	30

Basic class	Proposed 2021 quotas (g)
2-(4-(Isopropylthio)-2,5-dimethoxyphenyl)ethanamine (2C-T-4)	30
3,4,5-Trimethoxyamphetamine	30
3,4-Methylenedioxyamphetamine (MDA)	55
3,4-Methylenedioxymethamphetamine (MDMA)	50
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	40
3,4-Methylenedioxy-N-methylcathinone (methylone)	40
3,4-Methylenedioxypyrovalerone (MDPV)	35
3-Fluoro-N-methylcathinone (3-FMC)	25
3-Methylfentanyl	30
3-Methylthiofentanyl	30
4-Bromo-2,5-dimethoxyamphetamine (DOB)	30
4-Bromo-2,5-dimethoxyphenethylamine (2-CB)	25
4-Chloro-alpha-pyrrolidinovalerophenone (4-chloro-alpha-PVP)	25
1-(4-Cyanobutyl)-N-(2-phenylpropan-2-yl)-1 H-indazole-3-carboximide (4CN-Cumyl-Butinaca)	25
4-Fluoroisobutyryl fentanyl	30
4-Fluoro-N-methylcathinone (4-FMC; Flephedrone)	25
4-Methyl-N-ethylcathinone (4-MEC)	25
4-Methoxyamphetamine	150
4-Methyl-2,5-dimethoxyamphetamine (DOM)	25
4-Methylaminorex	25
4-Methyl-N-methylcathinone (mephedrone)	45
4-Methyl-alpha-ethylaminopentiophenone (4-MEAP)	25
4-Methyl-alpha-pyrrolidinohexiophenone (MPHP)	25
4-Methyl-alpha-pyrrolidinopropiophenone (4-MePPP)	25
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol	50
5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol (cannabicyclohexanol or CP-47,497 C8-homolog)	40
5F-CUMYL-PINACA	25
5F-EDMB-PINACA	25
5F-MDMB-PICA	25
5F-AB-PINACA; N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide	25
5F-CUMYL-P7AICA; (1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboximide)	25
5F-ADB; 5F-MDMB-PINACA (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	30
5F-AMB (methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate)	30
5F-APINACA; 5F-AKB48 (*N*-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	30
5-Fluoro-PB-22; 5F-PB-22	20
5-Fluoro-UR144, XLR11 ([1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropy-l)methanone	25
5-Methoxy-3,4-methylenedioxyamphetamine	25
5-Methoxy-N,N-diisopropyltryptamine	25
5-Methoxy-N,N-dimethyltryptamine	25
AB-CHMINACA	30
AB-FUBINACA	50
AB-PINACA	30
ADB-FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	30
Acetorphine	25
Acetyl Fentanyl	100
Acetyl-alpha-methylfentanyl	30
Acetyldihydrocodeine	30
Acetylmethadol	25
Acryl Fentanyl	25
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	50
AH-7921	30
All other tetrahydrocannabinol	1,000
Allylprodine	25
Alphacetylmethadol	25
Alpha-Ethyltryptamine	25
Alphameprodine	25
Alphamethadol	25
Alphaprodine	25
Alpha-Methylfentanyl	30
Alpha-Methylthiofentanyl	30
Alpha-Methyltryptamine (AMT)	25
Alpha-Pyrrolidinobutiophenone (α-PBP)	25
Alpha-Pyrrolidinoheptaphenone (PV8)	25
Alpha-Pyrrolidinohexanophenone (α-PHP)	25
Alpha-Pyrrolidinopentiophenone (α-PVP)	25
Aminorex	25
Anileridine	20
APINACA, AKB48 (*N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide)	25
Benzethidine	25
Benzylmorphine	30
Betacetylmethadol	25
Beta-Hydroxy-3-methylfentanyl	30
Beta-Hydroxyfentanyl	30
Beta-Hydroxythiofentanyl	30
Betameprodine	25
Betamethadol	4
Betaprodine	25
Bufotenine	15
Butylone	25
Butyryl fentanyl	30
Cathinone	40
Clonitazene	25
Codeine methylbromide	30
Codeine-N-oxide	192
Cyclopentyl Fentanyl	30
Cyclopropyl Fentanyl	20
Cyprenorphine	25
Delta 9-THC	384,460
Desomorphine	25
Dextromoramide	25
Diampromide	20
Diethylthiambutene	20
Diethyltryptamine	25
Difenoxin	9,200
Dihydromorphine	753,500
Dimenoxadol	25
Dimepheptanol	25
Dimethylthiambutene	20
Dimethyltryptamine	50
Dioxaphetyl butyrate	25
Dipipanone	25
Drotebanol	25
Ethylmethylthiambutene	25
Etorphine	30
Etoxeridine	25
Fenethylline	30
Fentanyl related substances	600
FUB-144	25
FUB-AKB48	25
FUB-AMB, MMB-Fubinaca, AMB-Fubinaca	25
Furanyl fentanyl	30
Furethidine	25
Gamma Hydroxybutyric Acid	25,417,000
Heroin	45
Hydromorphinol	40
Hydroxypethidine	25
Ibogaine	30
Isobutyryl Fentanyl	25
JWH-018 and AM678 (1-Pentyl-3-(1-naphthoyl)indole)	35
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole)	45
JWH-073 (1-Butyl-3-(1-naphthoyl)indole)	45
JWH-081 (1-Pentyl-3-(1-(4-methoxynaphthoyl)indole)	30
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole)	30
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	35
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole)	30
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole)	30
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole)	30
Ketobemidone	30

Basic class	Proposed 2021 quotas (g)
Levomoramide	25
Levophenacylmorphan	25
Lysergic acid diethylamide (LSD)	40
MAB-CHMINACA; ADB-CHMINACA (*N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide)	30
MDMB-CHMICA; MMB-CHMINACA(methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate)	30
MDMB-FUBINACA (methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	30
MMB-CHMICA (AMB-CHMICA); Methyl-2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate	25
Marihuana	1,500,000
Marihuana extract	200,000
Mecloqualone	30
Mescaline	25
Methaqualone	60
Methcathinone	25
Methoxyacetyl fentanyl	30
Methyldesorphine	5
Methyldihydromorphine	25
Morpheridine	25
Morphine methylbromide	5
Morphine methylsulfonate	5
Morphine-N-oxide	150
MT-45	30
Myrophine	25
NM2201; Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate	25
N,N-Dimethylamphetamine	25
Naphyrone	25
N-Ethyl-1-phenylcyclohexylamine	25
N-Ethyl-3-piperidyl benzilate	10
N-Ethylamphetamine	24
N-Ethylhexedrone	25
N-Ethylpentylone, ephylone	30
N-Hydroxy-3,4-methylenedioxyamphetamine	24
N-Methyl-3-Piperidyl Benzilate	30
Nicocodeine	25
Nicomorphine	25
Noracymethadol	25
Norlevorphanol	55
Normethadone	25
Normorphine	40
Norpipanone	25
Ocfentanil	25
Ortho-fluorofentanyl, 2-fluorofentanyl	30
Para-chloroisobutyryl fentanyl	30
Para-fluorofentanyl	25
Para-fluorobutyryl fentanyl	25
Para-methoxybutyryl fentanyl	30
Parahexyl	5
PB-22; QUPIC	20
Pentedrone	25
Pentylone	25
Phenadoxone	25
Phenampromide	25
Phenomorphan	25
Phenoperidine	25
Pholcodine	5
Piritramide	25
Proheptazine	25
Properidine	25
Propiram	25
Psilocybin	30
Psilocyn	50
Racemoramide	25
SR-18 and RCS-8 (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole)	45
SR-19 and RCS-4 (1-Pentyl-3-[(4-methoxy)-benzoyl]indole)	30
Tetrahydrofuranyl fentanyl	15
Thebacon	25
Thiafentanil	25
Thiofentanyl	25
THJ-2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)	30
Tilidine	25
Trimeperidine	25
UR-144 (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	25
U-47700	30
Valeryl fentanyl	25
Schedule II	
1-Phenylcyclohexylamine	15
1-Piperidinocyclohexanecarbonitrile	25
4-Anilino-N-phenethyl-4-piperidine (ANPP)	666,249
Alfentanil	3,260
Alphaprodine	25
Amobarbital	20,100
Bezitramide	25
Carfentanil	20
Cocaine	68,576
Codeine (for conversion)	1,612,500
Codeine (for sale)	27,616,684
D-amphetamine (for sale)	21,200,000
D-amphetamine (for conversion)	14,137,578
D-methamphetamine (for conversion)	485,02
D-methamphetamine (for sale)	25,491
D,L-amphetamine	21,200,000
D,L-methamphetamine	50
Dextropropoxyphene	35
Dihydrocodeine	156,713
Dihydroetorphine	25
Diphenoxylate (for conversion)	14,100
Diphenoxylate (for sale)	770,800
Ecgonine	68,576
Ethylmorphine	30
Etorphine hydrochloride	32
Fentanyl	666,249
Glutethimide	25
Hydrocodone (for conversion)	1,250
Hydrocodone (for sale)	30,821,224
Hydromorphone	2,827,940
Isomethadone	30
L-amphetamine	30
L-methamphetamine	587,229
Levo-alphacetylmethadol (LAAM)	25
Levomethorphan	30
Levorphanol	26,495
Lisdexamfetamine	21,000,000
Meperidine	856,695
Meperidine Intermediate-A	30
Meperidine Intermediate-B	30
Meperidine Intermediate-C	30
Metazocine	15
Methadone (for sale)	25,619,700
Methadone Intermediate	27,673,600
Methylphenidate	57,438,334
Metopon	25
Moramide-intermediate	25
Morphine (for conversion)	3,376,696
Morphine (for sale)	27,784,062
Nabilone	62,000
Norfentanyl	25
Noroxymorphone (for conversion)	22,044,741
Noroxymorphone (for sale)	376,000
Opium (powder)	250,000
Opium (tincture)	530,837
Oripavine	33,010,750
Oxycodone (for conversion)	620,887
Oxycodone (for sale)	57,110,032
Oxymorphone (for conversion)	28,204,371
Oxymorphone (for sale)	563,174
Pentobarbital	25,850,000
Phenazocine	25
Phencyclidine	35
Phenmetrazine	25
Phenylacetone	40
Piminodine	25
Racemethorphan	5
Racemorphan	5
Remifentanil	3,000
Secobarbital	172,100
Sufentanil	4,000
Tapentadol	13,447,541
Thebaine	57,137,944
List I Chemicals	
Ephedrine (for conversion)	100
Ephedrine (for sale)	4,136,000
Phenylpropanolamine (for conversion)	14,878,320
Phenylpropanolamine (for sale)	16,690,000
Pseudoephedrine (for conversion)	1,000
Pseudoephedrine (for sale)	174,246,000

The Acting Administrator further proposes that aggregate production quotas for all other schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero.

Adjustments to the Aggregate Production Quotas During the COVID–19 Public Health Emergency

The establishment (and adjustment) of the aggregate production quotas for schedule I and II substances is a critical component of DEA's response to the threat posed by the ongoing COVID–19

public health emergency declared by the Secretary of Health and Human Services (HHS) on January 31, 2020, effective January 27, 2020, and as has been renewed in accordance with section 319(a)(2) of the Public Health Service Act (PHS Act) (42 U.S.C. 247d(a)(2)). On April 10, 2020, DEA increased the 2020 aggregate production quotas for certain schedule II controlled substances and list I chemicals after concluding that this action was necessary to ensure that there would be no supply disruptions for these substances for ventilated patients with this infectious disease.[4] Despite this public health emergency, DEA remains focused on the challenges presented by opioid addiction and its effect on the health and wellbeing of the millions of Americans and their families who have become dependent upon or addicted to them. The potential for addiction and misuse exists in every community and remains a pressing health issue with significant social and economic implications.

These proposed 2021 quotas reflect the quantity that DEA believes is necessary to meet the estimated medical, scientific, research, and industrial needs of the United States, to include any increase in demand for certain controlled substances used to treat patients with COVID–19. DEA remains committed to conducting continuous surveillance on the supply of schedule II controlled substances and list I chemicals necessary to treat patients with COVID–19, and, pursuant to his authority, the Acting Administrator will move swiftly and decisively to increase any 2021 aggregate production quota that he determines is necessary to address an unforeseen increase in demand, should that occur.

In accordance with 21 CFR 1303.13 and 1315.13, upon consideration of the relevant factors, the Acting Administrator may adjust the 2021 aggregate production quotas and assessment of annual needs as needed.

Conclusion

After consideration of any comments or objections, or after a hearing, if one is held, the Acting Administrator will issue and publish in the **Federal Register** a final order establishing the 2021 aggregate production quotas for controlled substances in schedule I and II and establishing an assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, 21 CFR 1303.11(c) and 1315.11(f).

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–19285 Filed 8–31–20; 8:45 am]

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[4] 85 FR 20302 (April 10, 2020).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–508A2]

Proposed Adjustments to the Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2020

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: The Drug Enforcement Administration proposes to adjust the 2020 aggregate production quotas for several controlled substances in schedules I and II of the Controlled Substances Act and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

DATES: Interested persons may file written comments on this notice in accordance with 21 CFR 1303.13(c) and 1315.13(d). Electronic comments must be submitted, and written comments must be postmarked, on or before October 1, 2020. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Based on comments received in response to this notice, the Administrator may hold a public hearing on one or more issues raised. In the event the Administrator decides in his sole discretion to hold such a hearing, the Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments or objections, or after a hearing, if one is held, the Administrator will publish in the **Federal Register** a final order establishing the 2020 adjusted aggregate production quotas for schedule I and II controlled substances, and an adjusted assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–508A2'' on all correspondence, including any attachments. DEA encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu* of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

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:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want made publicly available in the first paragraph of your

comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified and located as directed above will generally be made available in redacted form. If a comment contains so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document is available at *http://www.regulations.gov* for easy reference.

Legal Authority and Background

Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for each basic class of controlled substances listed in schedules I and II and for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. The Attorney General has delegated this function to the Administrator of the DEA pursuant to 28 CFR 0.100.

DEA established the 2020 aggregate production quotas for substances in schedules I and II and the assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine on December 2, 2019 (84 FR 66014). That order stipulated that, in accordance with 21 CFR 1303.13 and 1315.13, all aggregate production quotas and assessments of annual need are subject to adjustment. DEA issued a notice and final order on April 10, 2020, to adjust the 2020 aggregate production quota for certain schedule II controlled substances and the assessment of annual needs for ephedrine and pseudoephedrine (85 FR 20302) in response to the coronavirus disease 2019 public health emergency.

Analysis for Proposed Adjusted 2020 Aggregate Production Quotas and Assessment of Annual Needs

DEA proposes to adjust the established 2020 aggregate production quotas and assessment of annual needs for certain schedule I and II controlled substances, and the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, to be manufactured in the United States in 2020 to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

Factors for Determining the Proposed Adjustments

In determining the proposed adjustment, the Acting Administrator has taken into account the criteria in accordance with 21 CFR 1303.13 (adjustment of aggregate production quotas for controlled substances) and 21 CFR 1315.13 (adjustment of the assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine). The Acting Administrator is authorized to increase or reduce the aggregate production quota at any time. 21 CFR 1303.13(a) and 1315.13(a). DEA regulations state that there are five factors that shall be considered in determining to adjust the aggregate production quota and the assessment of annual needs. 21 CFR 1303.13(b) and 1315.13(b).

DEA determined whether to propose an adjustment of the aggregate production quotas and assessment of annual needs for 2020 by considering: (1) Changes in the demand for that class or chemical, changes in the national rate of net disposal of the class or chemical, changes in the national rate of net disposal of the class or chemical by registrants holding individual manufacturing quotas for that class or chemical or import quotas for that chemical, and changes in the extent of any diversion in the class of controlled substance; (2) whether any increased demand for that class or chemical, the national and/or individual rates of net disposal of that class or chemical are temporary, short term, or long term; (3) whether any increased demand for that class or chemical can be met through existing inventories, increased individual manufacturing quotas, or increased importation, without increasing the aggregate production quota or assessment of annual needs, taking into account production delays and the probability that other individual manufacturing quotas may be suspended pursuant to Sections 1303.24(b) and 1315.24(b); (4) whether any decreased demand for that class or chemical will result in excessive inventory accumulation by all persons registered to handle that class or chemical (including manufacturers, distributors, practitioners, importers, and exporters), notwithstanding the possibility that individual manufacturing quotas may be suspended pursuant to Sections 1303.24(b) and 1315.24(b) or abandoned pursuant to Sections 1303.27 and 1315.27; and (5) other factors affecting medical, and reserve stocks, scientific, research, and industrial needs in the United States, lawful export requirements, and other factors affecting importation needs of listed chemicals in the United States as the Acting Administrator finds relevant, including changes in the currently accepted medical use in treatment with the class or chemical or the substances which are manufactured from it, the economic and physical availability of raw materials for use in manufacturing and for inventory purposes, yield and stability problems, potential disruptions to production (including possible labor strikes), and recent unforeseen emergencies such as floods and fires. 21 CFR 1303.13(b) and 1315(b). These quotas do not include imports of controlled substances for use in industrial processes.

DEA considered the change in the extent of diversion of all controlled substances in proposing adjustments to the aggregate production quotas as required by 21 CFR 1303.13(b)(1). Through these considerations, it has been determined that any calculated changes from the previously determined initial calculations are slight and statistically indistinguishable from the quantities originally calculated for the extent of diversion that were applied to the initial aggregate production quota valuations.

DEA also considered updated information obtained from 2019 year-end inventories, 2019 disposition data submitted by quota applicants, estimates of the medical needs of the United States, product development, and other information made available to DEA after the initial aggregate production quotas and assessment of annual needs had been established. Other factors the Acting Administrator considered in calculating the aggregate production quotas, but not the assessment of annual needs, include product development requirements of both bulk and finished dosage form

manufacturers, and other pertinent information. In determining the proposed adjusted 2020 assessment of annual needs, DEA used the calculation methodology previously described in the 2010 and 2011 assessment of annual needs (74 FR 60294, Nov. 20, 2009, and 75 FR 79407, Dec. 20, 2010, respectively).

Considerations Based Upon the Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment for Patients and Communities Act

Pursuant to 21 U.S.C. 826(a)(1), ''production quotas shall be established in terms of quantities of each basic class of controlled substance and not in terms of individual pharmaceutical dosage forms prepared from or containing such a controlled substance.'' However, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act of 2018 (SUPPORT Act), Pub. L. 115–271, provides an exception to that general rule by now giving DEA the authority to establish quotas in terms of pharmaceutical dosage forms if the agency determines that doing so will assist in avoiding the overproduction, shortages, or diversion of a controlled substance.

DEA has stated before that while there is the authority to set aggregate production quotas in terms of pharmaceutical dosage form, DEA will not be using that authority at this time. Furthermore, when DEA does utilize the authority, it will be doing so at the individual dosage-form manufacturing level, as that is where it is most appropriate to do so. As such, there are no adjustments to set any controlled substances in terms of pharmaceutical dosage forms.

Under the SUPPORT Act, when setting the aggregate production quota, DEA must estimate the amount of diversion of any substance that is considered a ''covered controlled substance,'' as defined by the SUPPORT Act. 21 U.S.C. 826(i)(1)(A). The covered controlled substances are fentanyl, oxycodone, hydrocodone, oxymorphone, and hydromorphone. The SUPPORT Act also requires DEA to ''make appropriate quota reductions, as determined by the [Administrator],[1] from the quota the [Administrator] would have otherwise established had such diversion not been considered.'' 21 U.S.C. 826(i)(1)(C). When estimating diversion, the ''[Administrator] (i) shall consider information the [Administrator], in consultation with the Secretary of Health and Human Services, determines reliable on rates of overdose deaths and abuse and overall public health impact related to the covered controlled substance in the United States; and (ii) may take into consideration whatever other sources of information the [Administrator] determines reliable.''[2] *Id.*

DEA consulted with the U.S. Department of Health and Human Services (HHS) and DEA was advised that the Centers for Disease Control and Prevention (CDC) may have data that can provide reliable rates of overdose deaths. CDC provided DEA with data from their National Vital Statistics System–Mortality files. CDC determined that the current available data, calendar year 2016, regarding rates of overdose deaths and public health impact does not reflect each controlled substance individually (*i.e.,* as a basic class and the quantity ingested), but groups them together functionally (opioid or psychostimulant), without regard to illicit or licit manufacturing. Without specificity to basic class and whether the substance was lawfully manufactured, DEA is unable to determine the basic class that led to the overdose from this information. DEA cannot determine from the data if the patient overdosed on an illicit opioid or a U.S. Food and Drug Administration-approved opioid product. Nor can DEA determine if the overdose was a result of accidental or intentional ingestion. As such, the number of overdose deaths resulting from fentanyl, oxycodone, hydrocodone, hydromorphone, and oxymorphone diverted from legitimate sources is unknown. The overdose deaths provided by CDC in its current form cannot be reliably utilized to estimate the amount of diversion for the five covered controlled substances in 2020.

In further consultation with HHS, DEA was advised that the Centers for Medicare and Medicaid Services (CMS) may have reliable rates of overprescribing. DEA was informed by CMS that CMS had reviewed their internal databases and does not have the ability to systematically distinguish between appropriate and inappropriate prescriptions without investigations.

To update the estimates of diversion, DEA used data from the Drug Theft and Loss Report, Statistical Management Analysis & Reporting Tools System, and System to Retrieve Information on Drug Evidence databases to aggregate the active pharmaceutical ingredient (API) of each covered controlled substance by metric weight. From the databases, DEA gathered data involving employee theft, break-ins, armed robberies, and material lost in transit. DEA also used seizure data obtained from submitted reports by law enforcement agencies nationwide. This data was categorized by basic drug class and the amount of API in the dosage form was delineated with an appropriate metric for use in proposing the adjusted aggregate production quota values. Using the data, DEA calculated the estimates for the amount of diversion by multiplying the strength of the API listed for each finished dosage form by the total amount of units reported to estimate the metric weight in kilograms of the controlled substance being diverted. In DEA's previous adjustment for 2020, the diversion estimates were listed for fentanyl, hydromorphone, and oxymorphone, as those were the only covered controlled substances being adjusted. (April 10, 2020, 85 FR 20302.) Below, DEA has updated the chart to include estimations of diversion for each of the other covered controlled substances that will have proposed adjustments from what was established.

Diversion Estimates for 2019 (kg)	
Fentanyl	0.090
Hydrocodone	30.294
Hydromorphone	1.424
Oxycodone	60.959
Oxymorphone	1.311

Proposed Adjustments for the 2020 Aggregate Production Quotas and Assessment of Annual Needs

The Acting Administrator, therefore, proposes to adjust the 2020 aggregate production quotas for certain schedule I and II controlled substances and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in grams of anhydrous acid or base, as follows:

[1] All functions vested in the Attorney General by the CSA have been delegated to the Administrator of DEA. 28 CFR 0.100(b).

[2] DEA intends to finalize amendments to the Agency's regulations that will implement the amendments to the CSA made by the SUPPORT Act. Although these amendments to the regulations have not yet been issued, the statutory requirements stated above became effective upon enactment of the SUPPORT Act, and DEA is therefore obligated to adhere to them in issuing these adjusted aggregate production quotas.

Basic class	Established 2020 quotas (g)	Proposed revised 2020 quotas (g)
Temporarily Scheduled		
Etoxeridine	N/A	25
FUB-AMB, MMB-FUBINACA, AMB-FUBINACA	N/A	25
Norfentanyl	N/A	25
Schedule I		
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine	20	no change
1-(1-Phenylcyclohexyl)pyrrolidine	15	no change
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	10	no change
1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201)	30	no change
1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)	30	no change
1-Benzylpiperazine	25	no change
1-Methyl-4-phenyl-4-propionoxypiperidine	10	no change
1-[1-(2-Thienyl)cyclohexyl]piperidine	15	no change
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E)	30	no change
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)	30	no change
2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N)	30	no change
2-(2,5-Dimethoxy-4-n-propylphenyl)ethanamine (2C-P)	30	no change
2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)	100	no change
2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36).	30	no change
2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)	30	no change
2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82).	25	no change
2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)	30	no change
2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5)	30	no change
2,5-Dimethoxy-4-ethylamphetamine (DOET)	25	no change
2,5-Dimethoxy-4-n-propylthiophenethylamine	25	no change
2,5-Dimethoxyamphetamine (DMA)	25	no change
2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2)	30	no change
2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)	30	no change
3,4,5-Trimethoxyamphetamine	30	no change
3,4-Methylenedioxyamphetamine (MDA)	55	no change
3,4-Methylenedioxymethamphetamine (MDMA)	50	no change
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	40	no change
3,4-Methylenedioxy-N-methylcathinone (methylone)	40	no change
3,4-Methylenedioxypyrovalerone (MDPV)	35	no change
3-Fluoro-N-methylcathinone (3-FMC)	25	no change
3-Methylfentanyl	30	no change
3-Methylthiofentanyl	30	no change
4-Bromo-2,5-dimethoxyamphetamine (DOB)	30	no change
4-Bromo-2,5-dimethoxyphenethylamine (2-CB)	25	no change
4-Chloro-alpha-pyrrolidinovalerophenone (4-chloro-alpha-PVP)	25	no change
4CN-Cumyl-Butinaca, 1-(4-Cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboximide	25	no change
4-Fluoroisobutyryl fentanyl	30	no change
4-Fluoro-N-methylcathinone (4-FMC; Flephedrone)	25	no change
4-Methyl-N-ethylcathinone (4-MEC)	25	no change
4-Methoxyamphetamine	150	no change
4-Methyl-2,5-dimethoxyamphetamine (DOM)	25	no change
4-Methylaminorex	25	no change
4-Methyl-N-methylcathinone (mephedrone)	45	no change
4-Methyl-alpha-ethylaminopentiophenone (4-MEAP)	25	no change
4-Methyl-alpha-pyrrolidinohexiophenone (MPHP)	25	no change
4-Methyl-alpha-pyrrolidinopropiophenone (4-MePPP)	25	no change
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol	50	no change
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog)	40	no change
5F-CUMYL-PINACA	25	no change
5F-EDMB-PINACA	25	no change
5F-MDMB-PICA	25	no change
5F-AB-PINACA; N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide	25	no change
5F-CUMYL-P7AICA; (1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboximide)	25	no change
5F-ADB; 5F-MDMB-PINACA (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	30	no change
5F-AMB (methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate)	30	no change
5F-APINACA; 5F-AKB48 (*N*-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	30	no change
5-Fluoro-PB-22; 5F-PB-22	20	no change
5-Fluoro-UR144, XLR11 ([1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	25	no change
5-Methoxy-3,4-methylenedioxyamphetamine	25	no change
5-Methoxy-N,N-diisopropyltryptamine	25	no change
5-Methoxy-N,N-dimethyltryptamine	25	no change

Basic class	Established 2020 quotas (g)	Proposed revised 2020 quotas (g)
AB-CHMINACA	30	no change
AB-FUBINACA	50	no change
AB-PINACA	30	no change
ADB-FUBINACA (*N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	30	no change
Acetorphine	25	no change
Acetyl Fentanyl	100	no change
Acetyl-alpha-methylfentanyl	30	no change
Acetyldihydrocodeine	30	no change
Acetylmethadol	25	no change
Acryl Fentanyl	25	no change
ADB-PINACA (*N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	50	no change
AH-7921	30	no change
Allylprodine	25	no change
Alphacetylmethadol	2	25
Alpha-Ethyltryptamine	25	no change
Alphameprodine	2	25
Alphamethadol	2	25
Alphaprodine	25	no change
Alpha-Methylfentanyl	30	no change
Alpha-Methylthiofentanyl	30	no change
Alpha-Methyltryptamine (AMT)	25	no change
Alpha-Pyrrolidinobutiophenone (α-PBP)	25	no change
Alpha-Pyrrolidinoheptaphenone (PV8)	25	no change
Alpha-Pyrrolidinohexanophenone (α-PHP)	25	no change
Alpha-Pyrrolidinopentiophenone (α-PVP)	25	no change
Aminorex	25	no change
Anileridine	20	no change
APINACA, AKB48 (*N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide)	25	no change
Benzethidine	25	no change
Benzylmorphine	30	no change
Betacetylmethadol	2	25
Beta-Hydroxy-3-methylfentanyl	30	no change
Beta-Hydroxyfentanyl	30	no change
Beta-Hydroxythiofentanyl	30	no change
Betameprodine	25	no change
Betamethadol	4	no change
Betaprodine	25	no change
Bufotenine	15	no change
Butylone	25	no change
Butyryl fentanyl	30	no change
Cathinone	40	no change
Clonitazene	25	no change
Codeine methylbromide	30	no change
Codeine-N-oxide	192	no change
Cyclopentyl Fentanyl	30	no change
Cyclopropyl Fentanyl	20	no change
Cyprenorphine	25	no change
Desomorphine	25	no change
Dextromoramide	25	no change
Diapromide	20	no change
Diethylthiambutene	20	no change
Diethyltryptamine	25	no change
Difenoxin	9,200	no change
Dihydromorphine	753,500	no change
Dimenoxadol	25	no change
Dimepheptanol	25	no change
Dimethylthiambutene	20	no change
Dimethyltryptamine	50	no change
Dioxyaphetyl butyrate	25	no change
Dipipanone	5	25
Drotebanol	25	no change
Ethylmethylthiambutene	25	no change
Etorphine	30	no change
Fenethylline	30	no change
Fentanyl related substances	40	600
FUB-144	25	no change
FUB-AKB48	25	no change
Furanyl fentanyl	30	no change
Furethidine	25	no change
Gamma-Hydroxybutyric Acid	25,417,000	29,417,000
Heroin	45	no change

Basic class	Established 2020 quotas (g)	Proposed revised 2020 quotas (g)
Hydromorphinol	40	no change
Hydroxypethidine	25	no change
Ibogaine	30	no change
Isobutyryl Fentanyl	25	no change
JWH-018 and AM678 (1-Pentyl-3-(1-naphthoyl)indole)	35	no change
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole)	45	no change
JWH-073 (1-Butyl-3-(1-naphthoyl)indole)	45	no change
JWH-081 (1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole)	30	no change
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole)	30	no change
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	35	no change
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole)	30	no change
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole)	30	no change
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole)	30	no change
Ketobemidone	30	no change
Levomoramide	25	no change
Levophenacylmorphan	25	no change
Lysergic acid diethylamide (LSD)	40	no change
MAB-CHMINACA; ADB-CHMINACA (*N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide).	30	no change
MDMB-CHMICA; MMB-CHMINACA(methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate).	30	no change
MDMB-FUBINACA (methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	30	no change
MMB-CHMICA-(AMB-CHMICA); Methyl-2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate	25	no change
Marihuana	3,200,000	no change
Mecloqualone	30	no change
Mescaline	25	no change
Methaqualone	60	no change
Methcathinone	25	no change
Methyoxyacetyl fentanyl	30	no change
Methyldesorphine	5	no change
Methyldihydromorphine	25	no change
Morpheridine	25	no change
Morphine methylbromide	5	no change
Morphine methylsulfonate	5	no change
Morphine-N-oxide	150	no change
MT-45	30	no change
Myrophine	25	no change
NM2201; Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate	25	no change
N,N-Dimethylamphetamine	25	no change
Naphyrone	25	no change
N-Ethyl-1-phenylcyclohexylamine	5	25
N-Ethyl-3-piperidyl benzilate	10	no change
N-Ethylamphetamine	24	no change
N-Ethylhexedrone	25	no change
N-Ethylpentylone, ephylone	30	no change
N-Hydroxy-3,4-methylenedioxyamphetamine	24	no change
N-Methyl-3-Piperidyl Benzilate	30	no change
Nicocodeine	25	no change
Nicomorphine	25	no change
Noracymethadol	25	no change
Norlevorphanol	55	no change
Normethadone	25	no change
Normorphine	40	no change
Norpipanone	25	no change
Ocfentanil	25	no change
Ortho-fluorofentanyl, 2-fluorofentanyl	30	no change
Para-chloroisobutyryl fentanyl	30	no change
Para-fluorofentanyl	25	no change
Para-fluorobutyryl fentanyl	25	no change
Para-methoxybutyryl fentanyl	30	no change
Parahexyl	5	no change
PB-22; QUPIC	20	no change
Pentedrone	25	no change
Pentylone	25	no change
Phenadoxone	25	no change
Phenampromide	25	no change
Phenomorphan	25	no change
Phenoperidine	25	no change
Pholcodine	5	no change
Piritramide	25	no change
Proheptazine	25	no change

Basic class	Established 2020 quotas (g)	Proposed revised 2020 quotas (g)
Properidine	25	no change
Propiram	25	no change
Psilocybin	30	no change
Psilocyn	50	no change
Racemoramide	25	no change
SR-18 and RCS-8 (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole)	45	no change
SR-19 and RCS-4 (1-Pentyl-3-[(4-methoxy)-benzoyl]indole)	30	no change
Tetrahydrocannabinols	384,460	no change
Tetrahydrofuranyl fentanyl	15	no change
Thebacon	25	no change
Thiafentanil	25	no change
Thiofentanyl	25	no change
THJ-2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)	30	no change
Tilidine	25	no change
Trimeperidine	25	no change
UR-144 (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	25	no change
U-47700	30	no change
Valeryl fentanyl	25	no change
Schedule II		
1-Phenylcyclohexylamine	15	no change
1-Piperidinocyclohexanecarbonitrile	25	no change
4-Anilino-N-phenethyl-4-piperidine (ANPP)	934,956	no change
Alfentanil	3,260	no change
Alphaprodine	2	25
Amobarbital	20,100	no change
Amphetamine (for conversion)	14,137,578	no change
Amphetamine (for sale)	47,000,000	42,400,000
Bezitramide	25	no change
Carfentanil	20	no change
Cocaine	82,127	73,090
Codeine (for conversion)	3,225,000	no change
Codeine (for sale)	35,341,292	no change
Dextropropoxyphene	35	no change
Dihydrocodeine	156,713	no change
Dihydroetorphine	2	25
Diphenoxylate (for conversion)	14,100	no change
Diphenoxylate (for sale)	770,800	no change
Ecgonine	88,134	78,439
Ethylmorphine	30	no change
Etorphine hydrochloride	32	no change
Fentanyl	934,956	no change
Glutethimide	25	no change
Hydrocodone (for conversion)	1,250	no change
Hydrocodone (for sale)	34,836,854	33,997,285
Hydromorphone	3,512,651	no change
Isomethadone	30	no change
Levo-alphacetylmethadol (LAAM)	5	25
Levomethorphan	30	no change
Levorphanol	38,000	31,730
Lisdexamfetamine	21,000,000	no change
Meperidine	1,463,873	1,119,862
Meperidine Intermediate-A	30	no change
Meperidine Intermediate-B	30	no change
Meperidine Intermediate-C	30	no change
Metazocine	15	no change
Methadone (for sale)	25,619,700	no change
Methadone Intermediate	27,673,600	no change
Methamphetamine	1,213,603	no change
[678,878 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 505,231 grams for methamphetamine mostly for conversion to a schedule III product; and 29,494 grams for methamphetamine (for sale)]		
Methylphenidate	57,438,334	no change
Metopon	25	no change
Moramide-intermediate	25	no change
Morphine (for conversion)	4,089,000	3,376,696
Morphine (for sale)	33,756,703	no change
Nabilone	62,000	no change
Noroxymorphone (for conversion)	22,044,741	no change
Noroxymorphone (for sale)	376,000	no change

Basic class	Established 2020 quotas (g)	Proposed revised 2020 quotas (g)
Opium (powder)	250,000	no change
Opium (tincture)	530,837	no change
Oripavine	33,010,750	no change
Oxycodone (for conversion)	914,010	725,998
Oxycodone (for sale)	67,593,983	65,667,554
Oxymorphone (for conversion)	28,204,371	no change
Oxymorphone (for sale)	829,051	658,515
Pentobarbital	25,850,000	no change
Phenazocine	25	no change
Phencyclidine	35	no change
Phenmetrazine	25	no change
Phenylacetone	40	no change
Piminodine	25	no change
Racemethorphan	5	no change
Racemorphan	5	no change
Remifentanil	3,000	no change
Secobarbital	172,100	no change
Sufentanil	4,000	no change
Tapentadol	13,447,541	no change
Thebaine	70,829,235	59,284,070
List I Chemicals		
Ephedrine (for conversion)	25	100
Ephedrine (for sale)	4,756,000	no change
Phenylpropanolamine (for conversion)	14,100,000	no change
Phenylpropanolamine (for sale)	7,990,000	16,590,000
Pseudoephedrine (for conversion)	1,000	no change
Pseudoephedrine (for sale)	200,382,900	no change

The Acting Administrator further proposes that aggregate production quotas for all other schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero. In accordance with 21 CFR 1303.13 and 21 CFR 1315.13, upon consideration of the relevant factors, the Acting Administrator may adjust the 2020 aggregate production quotas and assessment of annual needs as needed.

Conclusion

After consideration of any comments or objections, or after a hearing, if one is held, the Acting Administrator will issue and publish in the **Federal Register** a final order establishing any adjustment of 2020 aggregate production quota for each basic class of controlled substances in schedules I and II and the assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. 21 CFR 1303.13(c) and 1315.13(f).

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–19308 Filed 8–31–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On August 26, 2020, the Department of Justice lodged a proposed consent decree with the United States District Court for the Southern District of Mississippi in the lawsuit entitled *United States and State of Mississippi* v. *City of Hattiesburg, Mississippi,* Civil Action No. 2:20–cv–00158–KS–MTP.

The United States and the State of Mississippi filed this lawsuit under the Clean Water Act and the Mississippi Air and Water Pollution Control Law. The complaint seeks injunctive relief and civil penalties for violations in connection with the City's sanitary sewer system. The consent decree requires the defendant to perform injunctive relief including early action projects; management, operations, and maintenance programs; and rehabilitation of priority areas of the sewer. It also requires the City to pay a $165,600 civil penalty, which will be divided evenly between the United States and the State. In addition, the City has agreed to perform a supplemental environmental project valued at $220,800.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Mississippi* v. *City of Hattiesburg, Mississippi,* D.J. Ref. No. 90–5–1–1–10964. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $64.75 (25 cents per page

reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits, the cost is $14.75.

Lori Jonas,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–19230 Filed 8–31–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On August 26, 2020, the Department of Justice lodged a proposed Consent Decree with the District Court of the Southern District of New York in a lawsuit entitled *United States* v. *Cytec Industries, Inc., et ano.,* Civil Action No. 20–6916.

In this action the United States seeks, as provided under the Comprehensive Environmental Response, Compensation and Liability Act, recovery of response costs from two parties regarding the Port Refinery Superfund Site (''Site'') in the Village of Rye Brook, New York. The proposed Consent Decree resolves the United States' claims and requires Cytec Industries, Inc., and KeySpan Gas East Corporation d/b/a National Grid to pay, in aggregate, $142,653, in reimbursement of the United States' past response costs regarding the Site.

The publication of this notice opens the public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Cytec Industries, Inc., et ano.,* Civil Action No. 20–6916, D.J. Ref. 90–11–3–1142/3. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please email your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry S. Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–19266 Filed 8–31–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree under the National Marine Sanctuaries Act

On August 25, 2020, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District Florida in the lawsuit entitled *United States* v. *Key West Express, LLC.,* Civil Action No. 4:20–cv–10100–JLK.

The Consent Decree resolves claims brought against Key West Express, LLC. for recovery of damages under the National Marine Sanctuaries Act (''NMSA''), 16 U.S.C. § 1443(a)(1), arising from the December 27, 2016 incident when Defendant's catamaran ferry (named ''*Big Cat Express*'') ran aground and destroyed sanctuary resources in the Florida Keys National Marine Sanctuary. The proposed Consent Decree resolves the claim for $2,246,596.09.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Key West Express, LLC.,* D.J. Ref. No. 90–5–1–1–12188. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Lori Jonas,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–19270 Filed 8–31–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0005]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), 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 until October 1, 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 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/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Revision and extension of a currently approved collection.

2. *The Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals.

3. *The agency form number:* EOIR–27 (OMB #1125–0005).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Attorneys or representatives notifying the Board of Immigration Appeals (Board) that they are representing a party in proceedings before the Board.

Other: None.

Abstract: This information collection is necessary to allow an attorney or representative to notify the Board that he or she is representing a party before the Board.

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 36,299 respondents will complete each form within approximately 6 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* 3,630 annual burden 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 27, 2020.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–19228 Filed 8–31–20; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

National Survey of Youth in Custody, 2017–2018; Correction

AGENCY: Department of Justice.

ACTION: 60-Day notice; correction.

SUMMARY: The Bureau of Justice Statistics, Department of Justice, submitted a 60-day notice for publishing in the **Federal Register** on August 24, 2020 soliciting comments to an information collection request *National Survey of Youth in Custody, 2017–2018,* to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This notice was incorrectly submitted. This information collection request will be discontinued as no immediate data collection is planned.

DATES: August 27, 2020.

FOR FURTHER INFORMATION CONTACT: Amy Lauger, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *AskBJS@usdoj.gov;* telephone: 202–307–0765).

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of August 24, 2020 in FR Doc. 2020–18548, on page 52156, the information collection request is reflected as an extension.

Dated: August 27, 2020.

Melody Braswell,

Departmental Clearance Officer.

[FR Doc. 2020–18875 Filed 8–28–20; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Program for Idaho.

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit period eligibility under the EB program for Idaho.

The following change has occurred since the publication of the last notice regarding the State's EB status:

• Idaho's 13-week insured unemployment rate (IUR) for the week ending August 1, 2020, was 4.89 percent, falling below the 5.00 percent threshold necessary to remain ''on'' EB. Therefore, the EB period for Idaho will end on August 22, 2020. The state will remain in an ''off'' period for a minimum of 13 weeks.

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 ending an EB period, the State Workforce Agency will furnish a written notice to each individual who is currently filing claims for EB of the forthcoming termination of the EB period and its effect on the individual's right to EB (20 CFR 615.13(c)).

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. 2020–19293 Filed 8–31–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for California and Kentucky

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit period eligibility under the EB program for California and Kentucky.

The following changes have occurred since the publication of the last notice regarding the States' EB status:

It was determined that California and Kentucky State laws provide for the temporary adoption of the TUR trigger during periods of 100% Federal financing. Based on data released by the Bureau of Labor Statistics on May 22, 2020, the seasonally-adjusted total unemployment rates for both California and Kentucky exceeded 8.0 percent were greater than 110 percent in both the prior or second prior year, triggering both State's ''on'' to a high

unemployment periods (HUP) in EB. The HUP in California and Kentucky are retroactive to June 7, 2020, and the maximum potential entitlement for eligible claimants in the EB program has increased from up to 13 weeks of potential duration to up to 20 weeks of potential duration.

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. 2020–19291 Filed 8–31–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for South Carolina and Georgia

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit period eligibility under the EB program for South Carolina and Georgia.

The following changes have occurred since the publication of the last notice regarding the States' EB status:

Based on the data released by the Bureau of Labor Statistics on June 19, 2020, the seasonally-adjusted total unemployment rates for South Carolina and Georgia rose to meet the 8.0% threshold to trigger ''on'' to a high unemployment period in EB. The payable period for these states under the high unemployment period begins July 5, 2020, and eligibility for claimants has been extended from up to 13 weeks of potential duration to up to 20 weeks of potential duration in the EB program.

The trigger notice covering state eligibility for the EB program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.as.*

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202) 693–2991 (this is not a toll-free number) or by email: *Stengle.Thomas@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–19292 Filed 8–31–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2020–0001]

STP Nuclear Operating Company; Application for Permanent Variance and Interim Order; Grant of Interim Order; Request for Comments

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of STP Nuclear Operating Company (STP Nuclear) for a permanent variance and interim order from the provision of OSHA standards that regulate the ensuring of isolation of permit-required confined spaces and presents the agency's preliminary finding to grant the permanent variance. OSHA also announces the grant of an interim order in this notice. OSHA invites the public to submit comments on the variance application to assist the agency in determining whether to grant the applicant a permanent variance based on the conditions specified in this notice of the application.

DATES: Submit comments, information, documents in response to this notice, and requests for a hearing on or before October 1, 2020. The interim order described in this notice became effective on September 1, 2020, and shall remain in effect until it is modified or revoked, whichever occurs first.

ADDRESSES: Submit comments by any of the following methods:

Electronically: You may submit comments and attachments electronically at: *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2020–0001, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Please note: While OSHA's Docket Office is continuing to accept and process submissions by regular mail, due to the COVID–19 pandemic, the Docket Office

is closed to the public and not able to receive submissions to the docket by hand, express mail, messenger and courier service.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2020–0001). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *https://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before September 16, 2020 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

I. Notice of Application

On February 18, 2019, STP Nuclear Operating Company (''STP Nuclear'' or ''the applicant'') 12090 FM 521, Wadsworth, Texas 77483, submitted under Section 6(d) of the Occupational Safety and Health Act of 1970 (''OSH Act''; 29 U.S.C. 655) and 29 CFR 1905.11 (''Variances and other relief under section 6(d)'') an application for a permanent variance from the provision of the OSHA standard that regulates ensuring isolation of permit-required confined spaces, as well as a request for an interim order pending OSHA's decision on the application for variance (OSHA–2020–0001–0001) at its Wadsworth, Texas facility. Specifically, STP Nuclear seeks a variance from the provision of the standard that requires ''isolation of permit space,'' meaning the process by which a permit-required space is removed from service and completely protected against the release of energy and material into the space (29 CFR 1910.146(b)) and (29 CFR 1910.146(d)(3)(iii)). STP Nuclear also requests an interim order pending OSHA's decision on the application for a variance.

According to the application, STP Nuclear operates two Pressurized Water Reactor nuclear power plants at its Wadsworth, Texas location. STP Nuclear's description of its operation indicates that these nuclear power plants use steam to drive turbine generators, which is cooled by circulating water through a condenser to convert the steam back into water. STP Nuclear uses a Circulating Water System (CWS) that cools the steam by pumping water from the Main Cooling Reservoir (MCR), through the condenser and back to the reservoir. The MCR is 7,000 acres and includes an intake structure where pumps that provide cooling to the units are located. These pumps include the circulating water (CW) pumps, of which there are a total of eight (four per unit). The flow from each CW pump discharges through a motor operated valve into a 96 foot diameter pipe which passes over the reservoir embankment at 59 feet elevation. The four pump discharge pipes combine into two 138 inch underground pipes that feed a manifold in the Turbine Generator Building (TGB). The circulating water flows through condenser tubes inside what STP Nuclear refers to as the ''water box.'' The manifold supplies water to each of the six main condenser water boxes with an 84 inch motor-operated valve at the inlet and outlet of each water box. The water exiting the water boxes enters a discharge manifold which then splits into two underground 138 inch pipes returning the water to the MCR passing over the reservoir embankment at 58 feet elevation. The applicant asserts that the design of the CWS is such that it cannot be completely removed from service for water box cleaning or tube repair, and that maintenance activities occur when one of the two Power Plants are removed from service for refueling, which happens once every eighteen months.

The condenser water box is a permit-required confined space that under STP Nuclear's procedures requires a confined-space permit and security alerts prior to entry. Employees can enter the water boxes to clean condenser tubes and to repair or plug leaking tubes only after being cleared by the STP Nuclear Entry Supervisor in accordance with STP Nuclear's confined space procedure. STP Nuclear performs maintenance on condenser water boxes prior to the summer months to ensure maximum efficiency, and therefore, maximum generation during the peak electric generating period in Texas. This maintenance activity (tube cleaning) minimizes fouling and blocking of the condenser tubes. Employees entering the water box to perform maintenance and repair activities could be exposed to the hazard of engulfment by water that could flow into the water box if condenser isolation valves were to rotate or otherwise fail during the maintenance or repair activity.

STP Nuclear asserts that without frequent maintenance, the condenser tubes could leak and introduce contaminants, such as sodium, into plant systems that can erode barriers that prevent release of radioactive materials. Further, STP Nuclear asserts that if the water box cannot be timely isolated to repair tubes, it may have to shut down the nuclear power plant, which will cause interruption to the power supply. STP Nuclear previously believed that procedures already in place—lockout/tagout of the isolation valve, continuous monitoring for leakage past the valve and standby attendant—were adequate to protect employees.

On March 22, 2018, OSHA received a complaint alleging that STP Nuclear failed to ensure isolation of the condenser water box as required by OSHA's permit-required confined space standard. In response to this complaint, STP Nuclear submitted a letter, dated March 28, 2018, to OSHA's Corpus Christi, Texas Area Office (OSHA–2020–0001–0002), asserting its belief that they are in full compliance with 29 CFR 1910.146 and describing their current practices to comply with the

standard. On April 20, 2018, the Corpus Christi, Texas OSHA Area Office provided a response to STP Nuclear's explanation stating that it was feasible to install two 5,000 pound blank flanges to isolate the system and directed STP Nuclear to take corrective action (OSHA–2020–0001–0003).

In STP Nuclear's February 18, 2019, variance application, the applicant asserts that isolating the water box using blank flanges creates a greater hazard and significant risk for injury. Further, the applicant believes that installing blank flanges has the potential to compromise the structural integrity of the system. To ensure isolation of the condenser water box prior to maintenance activities, STP Nuclear proposes in its variance application an alternative safety measure—drilling four holes into the 99.75 inch diameter upper valve flange, and fabrication of 20 three-fourth inch diameter mechanical stops (stop pins), which will be installed to block movement of the butterfly valve disc to ensure isolation of the water boxes during maintenance work.

OSHA initiated a preliminary technical review of STP Nuclear's variance application and developed a set of follow-up questions on June 9, 2019 (OSHA–2020–0001–0003), regarding the assertions of equivalent worker protection included in the application. On June 27, 2019, STP Nuclear provided written answers to the follow-up questions, (OSHA–2020–0001–0004) as well as supplemental materials to support the variance application including: A Hazard and Operability Study report and recommendations (hazard analysis using a ''HAZOP'' methodology); a copy of all detailed procedures used when employees are entering or inside the water box; and a copy of emergency procedures and equipment used while employees are working inside the water box.

In reviewing the application, OSHA evaluated the use of two blank flanges, a 99.5 inch diameter, 2.5 inch thick steel blank weighing 5,563 pounds each to isolate the condenser water boxes during maintenance activities. The applicant asserted in the variance application that installing a blank flange to isolate a condenser water box creates a greater hazard and significant risk for injury to both personnel and the physical building. STP Nuclear asserts that installing a blank flange requires removal of the water box inlet and outlet expansion joints and installation of two steel blanks. Installing the blank flanges as described above entails a high degree of risk, as it would require moving these heavy objects from the building entrance to the water box, using rigged chain falls to trapeze the blanks to the water box, as well as construction of a support structure for the water box, in order to support the additional weight of the 5,563 pound blanks and ensure the water box and/or inlet pipe does not misalign from removal of the expansion joint. Further, OSHA carefully reviewed the administrative and engineering controls outlined in the variance application and supplemental materials as part of its proposed alternative work practices identified in the variance application.

Following this review and discussions with STP Nuclear, OSHA determined that STP Nuclear proposed an alternative that will provide a workplace as safe and healthful as that required by the permit-required confined space standard. OSHA is granting STP Nuclear an interim order that permits it to continue operations while OSHA continues to consider the application for a permanent variance.

II. The Variance Application

Pursuant to the requirements of OSHA's variance regulations, the applicant certifies that it provided employee representatives of affected workers with a copy of the variance application. The applicant also certifies that it notified the workers of the variance application by posting, at prominent locations where it normally posts workplace notices, a summary of the application and information specifying where the workers can examine a copy of the application. In addition, the applicant informed the workers and their representatives of their rights to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

A. Background

STP Nuclear's variance application and the responses to OSHA's follow-up questions provided the following: Detailed descriptions of the condenser water box maintenance process; the proposed work alternative to isolate the condenser water box using stop pins while performing maintenance activities; and procedures developed to manage the permit-required confined space. Additionally, STP Nuclear provided a HAZOP'' study as technical evidence supporting STP Nuclear's assertion of equivalency of worker protection.

As an alternative to installation of blank flanges, STP Nuclear proposes a comprehensive engineered system and appropriate administrative controls to satisfy the isolation requirement. The engineered system uses mechanical stops (stop pins) to block the movement of the butterfly valve disk in combination with administrative procedures to isolate the condenser water box in order to perform maintenance activities. The stop pins function as the isolation device, in that utilizing the stop pins prevents the engagement of the condenser water box, thus interrupting the flow of water to the condenser water boxes to allow maintenance activities. STP Nuclear asserts that using stop pins to isolate butterfly valve disks in condenser water boxes match the requirements of 29 CFR 1910.146(d)(3)(iii).

Further, STP Nuclear asserts that its mechanical stop system has been evaluated via a HAZOP study, which is a process that seeks to identify potential operating hazards and risks in systems/processes. The HAZOP study included a Failure Modes and Effects Analysis (FMEA) that was developed and documented. The FMEA is an assessment of the 84 inch butterfly valves in the closed position, with stop pins installed, to physically isolate the condenser water box while the remainder of the CWS remains in operation. The HAZOP study seeks to identify the potential hazardous scenarios, as they relate to personnel entry into the isolated water box, to determine potential areas of concern, especially regarding a possible engulfment hazard. Issued June 20, 2019 (OSHA–2020–0001–0004), the HAZOP study included eight recommendations for additional engineering and administrative controls, all of which have been adopted by STP Nuclear. These recommendations are described in Proposed Condition D of this notice.

STP Nuclear contends that the administrative and engineering controls comprising the alternative safety measures included in the variance application provide the workers with a place of employment that is at least as safe and healthful as they would obtain under the provisions of OSHA's permit-required confined space standard.

B. Variance From 29 CFR 1910.146(b) and 29 CFR 1910.146(d)(3)(iii)

As an alternative means of compliance with the isolation requirements of 1910.146(b) and 1910.146(d)(3)(iii), STP Nuclear is proposing to use a comprehensive system of engineering and administrative control procedures. The engineering controls include (1) a modification of the condenser isolation valves to drill four holes into the 99.75 inch diameter upper valve flange, to

allow the installation of mechanical stops (''stop pins'') which block rotation of the isolation valve disks, (2) utilizing a physical lock on the 6 inch cross-tie valves, and (3) utilization of automated drains that provide a secondary means of evacuating water leakage from the isolated water box connected piping. STP Nuclear has also established administrative controls to support the use of the stop pin system, including: (1) Continuous monitoring for leakage past the isolation valve, (2) utilizing a dedicated water box drain pump operator while personnel are inside the isolated water box, (3) utilizing a standby attendant to aid in the evacuation of an employee working in the condenser water box in the event of an emergency, and (4) a dedicated emergency evacuation procedure.

Further, the applicant asserts that: (1) Full isolation of the water boxes would create a greater hazard to its employees, and (2) the continuous water system makes shutdown of the water supply impossible. Shutting down the circulating water system could potentially cause the nuclear power plant to leak radiation, which is a significant public health hazard.

C. Technical Review

OSHA conducted a review of STP Nuclear's application and the supporting technical documentation. After completing the review of the application and supporting documentation, OSHA concludes that STP Nuclear:

1. Has a permit-required confined space entry program;
2. Performed a hazard analysis using the Hazard and Operability Study (''HAZOP'') methodology to assess the risks of entering condenser water boxes to perform maintenance on condenser tubes;
3. Implemented controls recommended in HAZOP study (outlined in Proposed Condition D of this notice);
4. Established procedures for condenser water box online isolation and restoration;
5. Has developed the Condenser Water Box Online Isolation and Restoration procedure to remove condenser water boxes from service for maintenance;
6. Has modified or will modify the isolation valve seats in condenser water boxes by installing specified mechanical stops (''stop pins''). These stop pins are inserted downstream of the inlet disc and upstream of the outlet disc following condenser water box isolation and drain down;
7. Implemented detailed administrative procedures designed to ensure that all employees working on or near condenser water boxes, which include having a watch stander present at all times, as well as emergency evacuation procedures in the event that water begins flowing into isolated condenser water boxes;
8. Procured and provided appropriate equipment and supplies;
9. Made the alternative isolation control policies and procedures available to employees;
10. Trained authorized and affected employees on the application of the proposed alternative work practice and associated isolation control policies and procedures;
11. Developed additional administrative controls and procedures to minimize the potential for authorized and affected employees to work around isolated condenser water boxes;
12. Conducted a comparison of the blank flange versus use of stop pins, which mechanically limits disc travel providing additional personnel safety against engulfment.
13. Has effective emergency rescue procedures to quickly and effectively evacuate workers within the condenser water box, including a rescue team present on site during maintenance activities; and
14. Conducted a Failure Modes and Effects Analysis, which was an assessment of the 84 inch butterfly valves in the closed position.

III. Description of the Conditions Specified by the Interim Order and the Application for a Permanent Variance

This section describes the alternative means of compliance with 29 CFR 1910.146(b) and 29 CFR 1910.146(d)(3)(iii). These conditions form the basis of the interim order and STP Nuclear's application for a permanent variance.

Proposed Condition A: Scope

The scope of the interim order/proposed permanent variance would limit coverage to the work conditions specified under this proposed condition. Defining the scope of the proposed permanent variance provides STP Nuclear, STP Nuclear's employees, potential future applicants, other stakeholders, the public, and OSHA with necessary information regarding the work situations in which the proposed permanent variance would cover. To the extent that STP Nuclear does not comply with the conditions in this variance, it would, alternatively, be required to comply with OSHA standards.

Pursuant to 29 CFR 1905.11, an employer (or class or group of employers) may request a permanent variance for a specific workplace or workplaces. If OSHA approves a permanent variance, it would apply only to the specific employer(s) that submitted the application and only to the specific workplace or workplaces designated as part of the project. In this instance, if OSHA were to grant a permanent variance, it only would apply to the applicant, STP Nuclear at the Wadsworth, Texas nuclear plant. The Interim Order and Proposed Variance would not apply to any other employers or STP Nuclear locations outside of its Wadsworth, Texas facility.

Proposed Condition B: List of Abbreviations

This proposed condition defines the terms used in the interim order and proposed variance to clarify and standardize their meaning. Abbreviations used throughout this proposed permanent variance include the following:

1. CFR—Code of Federal Regulations
2. CWS—Circulating Water System
3. ECO—Equipment Clearance Order
4. FMEA—Failure Modes and Effects Analysis
5. HAZOP—Hazard and Operability Study
6. MCR—Main Cooling Reservoir
7. OSHA—Occupational Safety and Health Administration
8. OTPCA—Office of Technical Programs and Coordination Activities
9. RRP—Rope Rescue Program
10. TGB—Turbine Generator Building

Proposed Condition C: List of Definitions

The proposed condition defines a series of terms, mostly technical terms, used in the proposed permanent variance to standardize and clarify their meaning. Defining these terms serves to enhance the applicant's and the employees' understanding of the conditions specified by the proposed permanent variance.[1]

Proposed Condition D: Safety Practices and Procedures

This proposed condition requires that STP Nuclear (1) adhere to the Condenser Water Box Online Isolation and Restoration Procedure provided to OSHA with the Variance application and (2) implement the hazard prevention and control requirements provided with the Variance application

[1] In these conditions, the present tense form of the verb (*e.g.,* ''must'') pertains to the interim order, while the future conditional form of the verb (*e.g.,* ''would'') pertains to the application for a permanent variance (designated as ''permanent variance'').

to ensure the continued effective functioning of the alternate work practice (use of stop pins) to isolate condenser water boxes before performing maintenance activities. Further, STP Nuclear must implement the following additional administrative controls identified in the HAZOP study:

1. Close the cycle inlet and butterfly valves with a local handswitch.
2. Remove power from the inlet and isolation valve and hang Danger Tags on the local handswitch and the breaker.
3. Drain the condenser water box to another condenser water box using the permanent installed condenser drain down pumps.
4. Check for leakages past the isolation valve seat. In the event that a leak is found, STP Nuclear will use a handwheel to manually achieve proper disk seating and ensure that a Danger Tag is hung on the handwheel.
5. Establish and implement a procedure to ensure that no other maintenance will be performed on the condenser water box, unless permit-required confined space measures are used.
6. Modify each of the 12 condenser water box isolation valves to drill four holes into the 99.75 inch diameter upper valve range, which will be plugged when the condenser water box is in service and fabricate 20 three-fourth inch diameter stop pins, which will be installed to block movement of the butterfly valve disk and hang Danger Tags on the pins.
7. Confirm that lineup changes (*i.e.* pump switching, valve position changes) within the CWS are prohibited while personnel are within the water box.
8. Limit the number of personnel occupying the isolated water box to no more than 3 in the inlet or outlet and no more than 4 persons in total during condenser water box maintenance activities.
9. Utilize technology-based level measurement instruments with local audible alarms to alert the personnel working in the isolated water box of a rising water level in the CWS piping beneath the water box. This instrument would serve as a secondary means of monitoring the water level in addition to the manual level monitoring via Tygon tubing.
10. Utilize hydraulic calculations to analyze the potential leak paths into an isolated water box and quantify the inflow rates and durations to fill the water box. This will identify how much time personnel have to evacuate the water box in the event of a water leak into the isolated water box.
11. Utilize a physical lock on the 6 inch cross-tie valve (or replace the valve with a design that allows physical locking) to prevent any unauthorized operation of the valve during the condenser water box maintenance activity.
12. Monitor the water levels in the supply side water box (and return water box) regardless of when personnel are present. Continuous monitoring for water leakage on the supply and return water boxes of an isolated segment of the system as water leakage from either side could present a hazard to personnel even if they are not in the water box where the leakage is occurring.
13. Require the presence of a dedicated water box drain pump operator while personnel are occupying the isolated water box.
14. Utilize the water box low-point drains (6 inches for Unit 1 and 8 inches for Unit 2) to provide secondary means of evacuating water leakage from the isolated water box connected CWS piping.
15. Install a level indicator that will alarm to alert the employee in the water box to evacuate because of rising water levels and auto start the two drain pumps. This should be in addition to the portable system being used in monitoring the levels.
16. In addition to the watch stander attendant required under 29 CFR 1910.146, the rescue team members must be present at the water box throughout duration of the maintenance activities.

Proposed Condition E: Communication

This proposed condition requires the applicant to implement an effective system of information sharing and communication to provide workers performing maintenance activities within condenser water boxes of any hazards that may affect their safety. Effective information sharing and communication are intended to ensure that affected workers receive updated information regarding any safety-related hazards and incidents, and corrective actions taken, prior to the start of each shift. The proposed condition also requires the applicant to ensure reliable means of emergency communications are available and maintained for affected workers and support personnel during maintenance activities within the condenser water box. Availability of such reliable means of communications would enable affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during water box maintenance operations.

Proposed Condition F: Worker Qualification and Training

This proposed condition requires the applicant to implement an effective permit-required isolation qualification and training program for authorized employees who perform maintenance activities within condenser water boxes. Additionally, proposed Condition F also requires the applicant to train each affected employee on the purpose and use of the permit-required confined space procedures. Further, OSHA is imposing conditions beyond those submitted by STP Nuclear in the Variance application.

The proposed condition specifies the factors that an affected worker must know to perform safely during maintenance operations within the condenser water box, including how to enter, work in, and exit from a condenser water box under both normal and emergency conditions. Having well-trained and qualified workers performing condenser water box maintenance activities is intended to ensure that they can recognize and respond appropriately to electrical safety and health hazards. These qualification and training requirements enable affected workers to handle emergencies effectively, thereby preventing worker injury, illness, and fatalities. Additionally, proposed Condition F requires the applicant to train each affected employee in the purpose and use of the alternative permit-required confined space isolation procedures identified in the permanent variance application.

Proposed Condition G: Inspections, Tests, and Accident Prevention

This proposed condition requires the applicant to implement an effective program for completing inspections, tests, program evaluations and accident prevention for performing maintenance and cleaning activities within the condenser water box and associated work areas. This condition would help to ensure the safe operation and physical integrity of the condenser water boxes and the work areas necessary to safely conduct maintenance operations.

This condition also requires the applicant to conduct tests, inspections, corrective actions and repairs involving the use of the alternative isolation process used to perform maintenance activities on condenser water boxes identified in the variance application. Further, this requirement provides the applicant with information needed to schedule tests and inspections to ensure the continued safe operation of the

equipment and systems and to determine that the actions taken to correct defects are appropriate. These tests, inspections, corrective actions, and repairs should be conducted in concert with the Condenser Water Box Online Isolate and Restoration Procedure submitted to OSHA by STP Nuclear with the Variance application.

Proposed Condition H: Additional Recordkeeping Requirement

Under OSHA's recordkeeping requirements in 29 CFR part 1904 Recording and Reporting Occupational Injuries and Illnesses, STP Nuclear must maintain a record of any recordable injury, illness, or fatality (as defined by 29 CFR part 1904) resulting from the task of cleaning and performing maintenance activities within the condenser water box by completing OSHA Form 301, Injury and Illness Incident Report and OSHA Form 300, Log of Work-Related Injuries and Illnesses. In addition, STP Nuclear must maintain records of all maintenance activities performed at condenser water boxes at the STP Nuclear site, as well as associated hazardous condition corrective actions and repairs.

Proposed Condition I: Notifications

Under the proposed condition, the applicant is required, within specified periods of time, to: (1) Notify OSHA of any recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality that occurs as a result of cleaning or maintenance activities around the condenser water box; (2) provide OSHA a copy of the incident investigation report (using OSHA Form 301, Injury and Illness Incident Report) of these events within 24 hours of the incident; (3) include on OSHA Form 301, Injury and Illness Incident Report information on the conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented; (4) provide the certification that affected workers were informed of the incident and the results of the incident investigation; (5) notify OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the Corpus Christi, Texas Area Office at least 15 working days in advance, should the applicant need to revise the permit-required confined space isolation procedures related to condenser water box cleaning or maintenance affecting STP Nuclear's ability to comply with the conditions of the proposed permanent variance; and (6) provide OTPCA and the Corpus Christi, Texas Area Office, by January 31 of each calendar year, with a report covering the previous calendar year, evaluating the effectiveness of the alternate permit-required confined space isolation procedures set forth in the conditions of the permanent variance.

Additionally, this proposed condition requires the applicant to notify OSHA if it ceases to do business, has a new address or location for the main office, or transfers the operations covered by the proposed permanent variance to a successor company. In addition, the condition specifies that the transfer of the permanent variance to a successor company must be approved by OSHA. These requirements allow OSHA to communicate effectively with the applicant regarding the status of the proposed permanent variance, and expedite the agency's administration and enforcement of the permanent variance. Stipulating that an applicant is required to have OSHA's approval to transfer a variance to a successor company provides assurance that the successor company has knowledge of, and will comply with, the conditions specified by proposed permanent variance, thereby ensuring the safety of workers involved in performing the operations covered by the proposed permanent variance.

IV. Grant of Interim Order, Proposal for Permanent Variance, and Request for Comment

OSHA hereby announces the preliminary decision to grant an interim order allowing STP Nuclear to perform maintenance operations in condenser water boxes, subject to the conditions that follow in this document. This interim order will remain in effect until the agency modifies or revokes the interim order or makes a decision on STP Nuclear's application for a permanent variance. Beginning with the publication of this notice until the agency modifies or revokes the interim order or makes a decision on the application for a permanent variance, the applicant is required to comply fully with the conditions of the interim order as an alternative to complying with the isolation requirements of permit space contained in 29 CFR 1910.146 (the standard). The standard defines ''isolation of permit space'' in 29 CFR 1910.146(b) as: The process by which a permit-space is removed from service and isolated, and completely protected against the release of energy and material into the space by such means as: . . . blocking or disconnecting all mechanical linkages. Further, 29 CFR 1910.146(d)(3)(iii) requires isolation of the permit-required confined space.

In order to avail itself of the interim order, STP Nuclear must: (1) Comply with the conditions listed in the interim order for the period starting with the grant of the interim order until the agency modifies or revokes the interim order or makes a decision on the application for a permanent variance; (2) comply fully with all other applicable provisions of 29 CFR part 1910.146; and (3) provide a copy of this **Federal Register** notice to all employees affected by the proposed conditions, using the same means it used to inform these employees of the application for a permanent variance.

OSHA is also proposing that the same requirements would apply to a permanent variance if OSHA ultimately issues one for this employer. OSHA requests comment on those conditions as well as OSHA's preliminary determination that the specified alternatives and conditions would provide a workplace as safe and healthful as those required by the standard from which a variance is sought. After reviewing comments, OSHA will publish in the **Federal Register** the agency's final decision approving or rejecting the request for a permanent variance.

V. Specific Conditions of the Interim Order and the Application for a Permanent Variance

The following conditions apply to the interim order OSHA is granting to STP Nuclear. These conditions specify the alternative means of compliance with the definition of ''isolation of permit space'' in 29 CFR 1910.146(b) and 29 CFR 1910.146(d)(3)(iii) that STP Nuclear is proposing for its permanent variance. To simplify the presentation of the conditions, OSHA generally refers only to the conditions of the proposed permanent variance, but the same conditions apply to the interim order except where otherwise noted.[2]

The conditions would apply to all STP Nuclear employees located at the Wadsworth, Texas location during the maintenance and cleaning of condenser water boxes. These conditions are outlined in this Section.

A. Scope

The interim order applies, and the permanent variance would apply, only to the task of performing maintenance activities within condenser water boxes at STP Nuclear. The interim order and

[2] In these conditions, OSHA is using the future conditional form of the verb (*e.g.,* ''would''), which pertains to the application for a Permanent variance (designated as ''Permanent variance'') but the conditions are mandatory for purposes of the Interim Order.

proposed variance would not apply to construction work (*i.e.* work for construction, alteration and/or repair, including painting and decorating) performed within condenser boxes at STP Nuclear. The interim order and proposed variance apply only to work:

1. That occurs at STP Nuclear, 12090 FM 521, Wadsworth, Texas 77483; and

2. Performed in compliance with all applicable provisions of 29 CFR 1910.146. Additionally,

3. No other maintenance work, including electrical maintenance may be performed using the conditions of this interim order.

4. Except for the requirements specified by 29 CFR 1910.146(b) and 29 CFR 1910.146(d)(3)(iii), STP Nuclear must comply fully with all other applicable provisions of 29 CFR 1910.146 during maintenance activities of condenser water boxes.

5. The interim order will remain in effect until OSHA modifies or revokes it; or OSHA publishes a **Federal Register** notice granting the permanent variance in accordance with 29 CFR 1905.13, whichever occurs first.

B. List of Abbreviations

Abbreviations used throughout this proposed Permanent variance would include the following:

1. CFR—Code of Federal Regulations
2. CWS—Circulating Water System
3. ECO—Equipment Clearance Box
4. FMEA—Failure Modes and Effects Analysis
5. HAZOP—Hazard and Operability Study
6. MCR—Main Cooling Reservoir
7. OSHA—Occupational Safety and Health Administration
8. OTPCA—Office of Technical Programs and Coordination Activities
9. RRP—Rope Rescue Program
10. TGB—Turbine Generator Building

C. Definitions

The following definitions would apply to this proposed permanent variance. These definitions would supplement the definitions in STP Nuclear's application for permanent variance.

1. *Affected employee or worker*—an employee or worker who is affected by the conditions of this proposed permanent variance, or any one of his or her authorized representatives. The term ''employee'' has the meaning defined and used under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

2. *Competent person*—an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

3. *Engulfment*—the surrounding and effective capture of a person by a liquid or finely divided (flowable) solid substance that can be aspirated to cause death by filling or plugging the respiratory system or that can exert enough force on the body to cause death by strangulation, constriction, or crushing.

4. *Hazard and Operability Study*—an evaluation of tasks or operations to identify potential hazards and to determine the necessary controls.

5. *Isolation*—the process by which a permit space is removed from service and completely protected against the release of energy and material into the space by such means as: Blanking or blinding; misaligning or removing sections of lines, pipes, or ducts; a double block and bleed system; lockout or tagout of all sources of energy; or blocking or disconnecting all mechanical linkages.

6. *Permit-required confined space*—a confined space that has one or more of the following characteristics: (1) Contains or has a potential to contain a hazardous atmosphere; (2) Contains a material that has the potential for engulfing an entrant; (3) Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor which slopes downward and tapers to a smaller cross-section; or (4) Contains any other recognized serious safety or health hazard.

7. *Qualified person*—an individual who, by possession of a recognized degree, certificate, or professional standing, or who, by extensive knowledge, training, and experience, successfully demonstrates an ability to solve or resolve problems relating to maintenance of condenser water boxes.

D. Safety Practices and Procedures

1. STP Nuclear shall adhere to the Condenser Water Box Online Isolation and Restoration Procedure provided to OSHA with the Variance application while performing cleaning or maintenance activities within condenser water boxes, in accordance with STP Nuclear's permit-required confined space program.

2. STP Nuclear shall implement the hazard prevention and control requirements identified in the Variance application (use of stop pins) to isolate condenser water boxes before performing maintenance activities within condenser water boxes.

3. STP Nuclear shall close the cycle inlet and butterfly valves with a local handswitch.

4. STP Nuclear shall remove power from the inlet and isolation valve and hang Danger Tags on the local handswitch and the breaker.

5. STP Nuclear shall drain the condenser water box to another condenser water box using the permanently installed condenser drain down pumps.

6. STP Nuclear shall check for leakages past the isolation valve seat. In the event that a leak is found, STP Nuclear will use a handwheel to manually achieve proper disk seating and ensure that a Danger Tag is hung on the handwheel.

7. STP Nuclear shall establish and implement a procedure to ensure that no other maintenance will be performed on the condenser water box, unless permit-required confined space measures are used.

8. STP Nuclear shall modify each of the 12 condenser water box isolation valves to drill four holes into the 99.75 inch diameter upper valve range, which will be plugged when the condenser water box is in service and fabricate 20 three-fourth inch diameter stop pins, which will be installed to block movement of the butterfly valve disk and hang Danger Tags on the pins.

9. STP Nuclear shall confirm that lineup changes (*i.e.* pump switching, valve position changes) within the CWS are prohibited while personnel are within the water box.

10. STP Nuclear shall limit the number of personnel occupying the isolated water box to no more than 3 people in the inlet or outlet and no more than 4 people in total during condenser water box maintenance activities.

11. STP shall utilize technology-based level measurement instruments with local audible alarms to alert the personnel working in the isolated water box of a rising water level in the CWS piping beneath the water box. The instrument would serve as a secondary means of monitoring the water level in addition to the manual level monitoring via Tygon tubing.

12. STP Nuclear shall utilize hydraulic calculations to analyze the potential leak paths into an isolated water box and quantify the inflow rates and durations to fill the water box. This will identify how much time personnel have to evacuate the water box in the event of a water leak into the isolated water box.

13. STP Nuclear will utilize a physical lock on the 6 inch cross-tie valve (or replace the valve with a design that allows physical locking) to prevent any unauthorized operation of the valve during the condenser water box maintenance activity.

14. STP Nuclear shall monitor the water levels in the supply side water box (and return water box) regardless of when personnel are present. Continuous monitoring for water leakage on the supply and return water box of an isolated segment of the system as water leakage from either side could present a hazard to personnel even if they are no in the water box where the leakage is occurring.

15. STP Nuclear shall require the presence of a dedicated water box drain pump operator while personnel are occupying the isolated water box.

16. STP Nuclear shall utilize the water box low-point drains (6 inch for Unit 1 and 8 inch for Unit 2) to provide secondary means of evacuating water leakage from the isolated water box connected CWS piping.

17. STP Nuclear shall install a level indicator that will alert the employee in the water box to evacuate because of rising water levels and auto start the two drain pumps. This should be in addition to the portable system being used in monitoring the levels.

18. STP Nuclear shall ensure that rescue team members be present at the condenser water box throughout the duration of the maintenance activities.

E. Communication

STP Nuclear must:

1. Implement a system that informs workers performing maintenance activities within condenser water boxes of any hazardous occurrences or conditions that might affect their safety.

2. Provide a means of communication among affected workers and support personnel in energy isolation where unassisted voice communication is inadequate.

(a) Use an independent power supply for powered communication systems, and these systems would have to operate such that use or disruption of any one phone or signal location will not disrupt the operation of the system from any other location.

(b) Test communication systems at the start of each shift and as necessary thereafter to ensure proper operation.

F. Worker Qualifications and Training

STP Nuclear will implement an effective permit-required confined space isolation qualification and training program for authorized employees involved in performing maintenance activities within condenser water boxes. STP Nuclear must:

1. Utilize the permit-required confined space isolation training program submitted to OSHA as part of this Variance application, and train each authorized employee on the isolation process for condenser water boxes, and the procedures required under it;

2. Develop a training program and train each affected employee in the purpose and use of the alternative permit-required confined space isolation procedures used for maintenance of condenser water boxes under this interim order and document this instruction;

3. Ensure that workers performing maintenance activities within condenser water boxes know how to enter, work in, and exit from a condenser water box under both normal and emergency conditions;

4. Ensure that each authorized and affected employee have effective and documented training in the contents and conditions covered by this proposed variance and interim order; and

5. Ensure that only trained and authorized employees perform permit-required confined space isolation procedures for the task of performing maintenance of condenser water boxes at the STP Nuclear site.

G. Inspections, Tests, and Accident Prevention

STP Nuclear will have to implement the detailed program for completing inspections, tests, program evaluations, and incident prevention for the isolation of condenser water boxes for maintenance purposes in accordance with its permit-required confined space procedure submitted to OSHA as part of their Variance application. STP Nuclear must:

1. Ensure that a competent person (authorized employee) conducts daily visual checks and monthly inspections and functionality tests of condenser water boxes and permit-required confined space isolation procedures that ensure the procedure and conditions of this proposed variance and interim order are being followed.

2. Ensure that a competent person conducts daily inspections of the work areas associated with the maintenance of the condenser water boxes.

3. Develop a set of checklists to be used by a competent person in conducting daily inspections of the condenser water boxes and permit-required confined space procedures used while performing maintenance activities at condenser water boxes at the STP Nuclear facility.

4. STP Nuclear will remove from service any equipment that constitutes a safety hazard until STP Nuclear corrects the hazardous condition and has a qualified person approve the correction.

5. STP will maintain records of all maintenance activities of the condenser water box, as well as associated corrective actions and repairs, at the job site for the duration of the variance. Where available, the maintenance, servicing, and installation of replacement parts must strictly follow the manufacturer's specifications, instructions, and limitations.

H. Additional Recordkeeping Requirement

STP Nuclear must maintain a record of any recordable injury, illness, or fatality (as defined by 29 CFR 1904) resulting from the task of cleaning and performing maintenance activities within the condenser water box by completing OSHA Form 301, Injury and Illness Incident Report and OSHA Form 300, Log of Work-Related Injuries and Illnesses. In addition, STP Nuclear must maintain records of all maintenance activities performed at condenser water boxes at the STP Nuclear site, as well as associated hazardous condition corrective actions and repairs.

I. Notifications

To assist OSHA in administering the conditions specified herein, STP Nuclear must:

1. Notify OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the Corpus Christi, Texas Area Office of any recordable injury, illness, in-patient hospitalization, amputation, loss of an eye or fatality (by submitting the completed OSHA Form 301, Injury and Illness Incident Report) resulting from implementing the alternative isolation procedures of the proposed variance conditions while completing the tasks of cleaning and/or maintenance of the condenser water box, but still meet the recordable injury or illness criteria of 29 CFR 1904. The notification would have to be made within 8 hours of the incident or 8 hours after becoming aware of a recordable injury, illness, or fatality; a copy of the incident investigation (OSHA Form 301, Injury and Illness Incident Report) must be submitted to OSHA within 24 hours of the incident or 24 hours after becoming aware of a recordable injury, illness, or fatality.

2. Provide OTPCA and the Corpus Christi, Texas Area Office a copy of the incident investigation report (using OSHA Form 301, Injury and Illness Incident Report) of these events within 24 hours of the incident;

3. Include on the OSHA Form 301, Injury and Illness Incident Report information on the conditions associated with the recordable injury or illness, the root-cause determination, and the preventive and corrective actions identified and implemented.

4. Provide certification to OTPCA and the Corpus Christi, Texas Area Office within 15 working days of any incident of which STP Nuclear informed affected workers of the incident and the results of the incident investigation (including the root-cause determination and preventive and corrective actions identified and implemented).

5. Notify OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the Corpus Christi, Texas Area Office at least 15 working days in advance, should the applicant need to revise the permit-required confined space isolation procedures related to condenser water box cleaning or maintenance affecting its ability to comply with the conditions of the proposed permanent variance.

6. Provide OTPCA and the Corpus Christi, Texas Area Office, by January 31 of each calendar year, with a report covering the previous calendar year, identifying the maintenance activities performed on the condenser water boxes and evaluating the effectiveness of the alternate permit-required confined space isolation procedures set forth in the conditions of the permanent variance.

7. Inform OTPCA and the Corpus Christi, Texas Area Office as soon as possible, but no later than 7 days, after it has knowledge that it will:

(i) Cease doing business; or

(ii) Transfer the operations specified herein to a successor company.

6. Notify all affected employees of this proposed permanent variance by the same means required to inform them of the application for a variance.

OSHA will publish a copy of this notice in the **Federal Register**.

Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to Section 29 U.S.C. 655(6)(d), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1905.11.

Signed at Washington, DC, on August 27, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–19268 Filed 8–31–20; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of August 31, September 7, 14, 21, 28, October 5, 12, 19, 2020.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of August 31, 2020

There are no meetings scheduled for the week of August 31, 2020.

Week of September 7, 2020—Tentative

There are no meetings scheduled for the week of September 7, 2020.

Week of September 14, 2020—Tentative

Tuesday, September 15, 2020

10:00 a.m. Agency's Response to the COVID–19 Public Health Emergency (Public Meeting), (Contact: Luis Betancourt: 301–415–6146)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/*.

Thursday, September 17, 2020

10:00 a.m. Transformation at the NRC—Milestones and Results (Public Meeting), (Contact: Maria Arribas-Colon: 301–415–6026)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/*.

Week of September 21, 2020—Tentative

There are no meetings scheduled for the week of September 21, 2020.

Week of September 28, 2020—Tentative

Wednesday, September 30, 2020

9:00 a.m. Strategic Programmatic Overview of the Operating Reactors and New Reactors Business Lines and Results of the Agency Action Review Meeting (Public Meeting), (Contact: Candace de Messieres: 301–415–8395)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/*.

Week of October 5, 2020—Tentative

Thursday, October 8, 2020

10:00 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public Meeting), (Contact: Celimar Valentin-Rodriquez: 301–415–7124)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/*.

Week of October 12, 2020—Tentative

There are no meetings scheduled for the week of October 12, 2020.

Week of October 19, 2020—Tentative

Wednesday, October 21, 2020

10:00 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting), (Contact: Randi Neff: 301–287–0583)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/*.

1:00 p.m. All Employees Meeting with the Commissioners (Public Meeting)

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: August 28, 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–19367 Filed 8–28–20; 11:15 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Missing Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval of information collection, with modifications.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a collection of information under PBGC's regulation on Missing Participants, with modifications. PBGC needs the information submitted by plans under this collection to search for missing participants and beneficiaries and pay their benefits. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments must be submitted on or before November 2, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov.* Refer to ''Missing Participants'' and/or OMB Control No. 1212–0069 in the subject line.
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026.

All submissions received must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and refer to Missing Participants and/or OMB Control No. 1212–0069. All comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided.

Copies of the collection of information may be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, or calling 202–326–4040 during normal business hours. TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–326–4040.

FOR FURTHER INFORMATION CONTACT: Stephanie Cibinic, Deputy Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW, Washington DC 20005–4026; 202–229–6352. (TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–229–6352.)

SUPPLEMENTARY INFORMATION: The process of closing out a terminated retirement plan involves the disposition of plan assets to satisfy the benefits of plan participants and beneficiaries. One difficulty faced by plan administrators in closing out terminated plans is how to provide for the benefits of missing persons. Title IV of ERISA includes a provision (section 4050 of ERISA) under which the Pension Benefit Guaranty Corporation (PBGC) holds retirement benefits for missing participants and beneficiaries in terminated pension plans and seeks to reunite those participants and beneficiaries with the benefits being held for them.

The missing participants program was limited to single-employer DB plans covered by the title IV insurance program. The Pension Protection Act of 2006 authorized expansion of the missing participants program, and PBGC by final rule published on December 22, 2017 (82 FR 60800), extended the program to—

- defined contribution (DC) plans (not covered by title IV [1]),
- small professional service DB plans (not covered by title IV), and
- multiemployer DB plans (covered by title IV).

All four programs follow the same basic design. The most prominent difference among them lies in the mandatory or voluntary nature of the programs. For plans covered by the title IV insurance program, participation in the program is mandatory. For plans not covered by title IV, PBGC's regulation permits, but does not require, such plans to participate in PBGC's missing participants program.

PBGC needs information from plans that participate in the missing participants program to identify the plans and the missing participants and beneficiaries, to search for missing participants and beneficiaries, to determine the persons entitled to benefits that the plans transfer to PBGC and the form and amount of benefits payable, and to refer claimants of benefits being held elsewhere to the institutions holding the benefits.

PBGC intends to modify its information collection to require additional information about missing participants in two categories in order to properly withhold taxes when such participants are located and their benefits claimed and paid. For DC plans that permit Roth accounts, PBGC intends to require a breakdown of qualified and non-qualified Roth amounts transferred to PBGC (if any), and if non-qualified Roth amounts are being transferred, the date the first Roth contribution was made. Where relevant for DB and DC plans, PBGC intends to require identification of the portion of a participant's benefit transfer amount treated as foreign-source income, and if so, for DB plans how that determination was made. PBGC as administrator of the Missing Participants Program relies on information provided and certified to by the plan administrator or plan sponsor as applicable.

PBGC estimates that it will receive a total of 226 filings from plans each year under this collection of information. PBGC further estimates that the annual burden of this collection of information is 646 hours and $115,650.

The existing collection of information was approved under OMB control number 1212–0069 (expires January 31, 2021). PBGC intends to request that OMB extend its approval of this collection of information for three years. 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.

PBGC is soliciting public comments 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 methodologies and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

[1] Eligibility for the missing participants program under ERISA section 4050 is not by itself considered coverage by title IV or ERISA.

Issued in Washington, DC, by:

Stephanie Cibinic,

Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2020–19267 Filed 8–31–20; 8:45 am]

BILLING CODE 7709–02–P

PENSION BENEFIT GUARANTY CORPORATION

Announcement of OMB Approvals of Information Collections

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of OMB approval.

SUMMARY: The Office of Management and Budget (OMB) has approved certain Pension Benefit Guaranty Corporation (PBGC) information collections under the Paperwork Reduction Act. This notice lists the approved information collections and provides their OMB control numbers and current expiration dates.

FOR FURTHER INFORMATION CONTACT: Melissa Rifkin (*rifkin.melissa@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026; 202–229–6563. TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–229–6563.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and its implementing regulations require Federal agencies, after receiving OMB approval of information collections, to display OMB control numbers and inform respondents of their legal significance. In accordance with those requirements, PBGC hereby notifies the public that the following information collections, that are contained in PBGC's regulations and do not have a corresponding form, have been approved by OMB.

- OMB Control Number 1212–0017, Liability for Termination of Single-Employer Plans. The expiration date for this information collection contained in 29 CFR part 4062 is August 31, 2023.
- OMB Control Number 1212–0021, Variances for Sale of Assets. The expiration date for this information collection contained in 29 CFR part 4204 is June 30, 2023.
- OMB Control Number 1212–0023, Extension of Special Withdrawal Liability Rules. The expiration date for this information collection contained in 29 CFR part 4203 is June 30, 2023.
- OMB Control Number 1212–0031, Procedures for PBGC Approval of Plan Amendments. The expiration date for this information collection contained in 29 CFR part 4220 is June 30, 2023.
- OMB Control Number 1212–0034, Notice, Collection, and Redetermination of Withdrawal Liability. The expiration date for this information collection contained in 29 CFR part 4219 is June 30, 2023.
- OMB Control Number 1212–0035, Allocating Unfunded Vested Benefits. The expiration date for this information collection contained in 29 CFR part 4211 is June 30, 2023.
- OMB Control Number 1212–0039, Reduction or Waiver of Partial Withdrawal Liability. The expiration date for this information collection contained in 29 CFR part 4208 is June 30, 2023.
- OMB Control Number 1212–0044, Reduction or Waiver of Complete Withdrawal Liability. The expiration date for this information collection contained in 29 CFR part 4207 is June 30, 2023.

The PRA provides that 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. Publication of this notice satisfies this requirement with respect to the above-listed information collections, as provided in 5 CFR 1320.5(b)(2)(ii).

Issued in Washington, DC, by.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2020–19307 Filed 8–31–20; 8:45 am]

BILLING CODE 7709–02–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Verification of Adult Student Enrollment Status, RI 25–49

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR), Verification of Adult Student Enrollment Status, RI 25–49.

DATES: Comments are encouraged and will be accepted until October 1, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202)606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0215) was previously published in the **Federal Register** on April 28, 2020, at 85 FR 23543, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. 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.

RI 25–49 is used to verify that adult student annuitants are entitled to payment. The Office of Personnel Management must confirm that a full-time enrollment has been maintained.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Verification of Full-Time School Attendance.

OMB Number: 3206–0215.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 10,000.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 10,000 hours.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–19290 Filed 8–31–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Virtual Public Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the September 17, 2020, meeting of the Federal Prevailing Rate Advisory Committee previously announced in the **Federal Register** on Monday, December 23, 2019, at 84 FR 70580, is being changed to a virtual meeting via teleconference. There will be no in-person gathering for this meeting. This meeting will be open to the public, with an audio option for listening. This notice sets forth the agenda for the meeting and the participation guidelines.

DATES: The virtual meeting will be held on September 17, 2020, beginning at 10:00 a.m. (EDT).

ADDRESSES: The meeting will convene virtually.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, 202–606–2858, or email *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION:

Meeting Agenda. The tentative agenda for this meeting includes the following Federal Wage System items:

- The definition of Monroe County, PA
- The definition of San Joaquin County, CA
- The definition of the Salinas-Monterey, CA, wage area
- The definition of the Puerto Rico wage area
- Amendments to 5 CFR 532.201, 532.207, 532.235, and 532.247

Public Participation: The September 17, 2020, meeting of the Federal Prevailing Rate Advisory Committee is open to the public through advance registration. Public participation is available for the teleconference by audio access only. All individuals who plan to attend the virtual public meeting to listen must register by sending an email to *pay-leave-policy@opm.gov* with the subject line ''September 17 FPRAC Meeting'' no later than Tuesday, September 15, 2020.

The following information must be provided when registering:

- Name.
- Agency and duty station.
- Email address.
- Your topic of interest.

Members of the press, in addition to registering for this event, must also RSVP to *media@opm.gov* by September 15, 2020.

A confirmation email will be sent upon receipt of the registration. Audio teleconference information for participation will be sent to registrants the morning of the virtual meeting.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–19245 Filed 8–31–20; 8:45 am]

BILLING CODE P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Initial Certification of Full-Time School Attendance, RI 25–41

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection (ICR), Initial Certification of Full-Time School Attendance, RI 25–41.

DATES: Comments are encouraged and will be accepted until October 1, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0099) was previously published in the **Federal Register** on April 28, 2020, at 85 FR 23544, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. 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.

RI 25–41, Initial Certification of Full-Time School Attendance is used to determine whether a child is unmarried and a full-time student in a recognized school. OPM must determine this in order to pay survivor annuity benefits to children who are age 18 or older under title 5, U.S. C. Sections 8341(A)(4) and Chapter 84, Section 8441 (4)(C).

Analysis

Agency: Retirement Services, Office of Personnel Management.

Title: Initial Certification of Full-Time School Attendance.

OMB Number: 3206–0099.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 1,200.

Estimated Time per Respondent: 90 minutes.

Total Burden Hours: 1800.

Office of Personnel Management

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–19274 Filed 8–31–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Survivor Annuity Election for a Spouse, RI 20–63; Cover Letter Giving Information About the Cost To Elect Less Than the Maximum Survivor Annuity, RI 20–116; Cover Letter Giving Information About the Cost To Elect the Maximum Survivor Annuity, RI 20–117

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection (ICR), Survivor Annuity Election for a Spouse, RI 20–63; Cover Letter Giving Information About the Cost to Elect Less Than the Maximum Survivor Annuity, RI 20–116; Cover Letter Giving Information About the Cost to Elect the Maximum Survivor Annuity, RI 20–117.

DATES: Comments are encouraged and will be accepted until October 1, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0174) was previously published in the **Federal Register** on April 28, 2020, at 85 FR 23544, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. 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.

RI 20–63 is used by annuitants to elect a reduced annuity with a survivor annuity for their spouse. RI 20–116 is a cover letter for RI 20–63 giving information about the cost to elect less than the maximum survivor annuity. This letter is used to supply the information requested by the annuitant about the cost of electing less than the maximum annuity. RI 20–117 is a cover letter for RI 20–63 giving information about the cost to elect the maximum survivor annuity.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Survivor Annuity Election for a Spouse; Cover Letter Giving Information about the Cost to Elect Less Than the Maximum Survivor Annuity; Cover Letter Giving Information about the Cost to Elect the Maximum Survivor Annuity.

OMB Number: 3206–0174.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: RI 20–63 = 2,400; RI 20–116 & RI 20–117 = 200.

Estimated Time per Respondent: 55 Minutes [RI 20–63 = 45 minutes; RI 20–116 & RI 20–117 = 10 minutes].

Total Burden Hours: 1,834.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–19273 Filed 8–31–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0144 ; Designation of Beneficiary: Civil Service Retirement System (CSRS), SF 2808

AGENCY: Office of Personnel Management.

ACTION: 30 Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR), Designation of Beneficiary: Civil Service Retirement System (CSRS), SF 2808.

DATES: Comments are encouraged and will be accepted until October 1, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0144) was previously published in the **Federal Register** on March 23, 2020 at 85 FR 16390, allowing for a 60-day public comment period. The following comment was received for this collection:

''Request that OPM include a clause to allow employees and witnesses to sign this form using their electronic signature PIV/CAC card for continuity of operations, and to aid OPM in electronically processing retirement claims. Also, recommend that OPM permit agencies to certify for employees as most agencies still have a significant number of CSRS employees for continuity of operations.''

Our response is as follows:

''During this pandemic, the continuity of operations has remained smooth in Retirement Services where employees have found and continue to find ways to keep performing their duties during these unprecedented times. OPM is releasing a Benefits Administrative Letter (BAL) providing guidance on submitting retirement applications during COVID–19 operations. The BAL will be posted on OPM's web page soon. We're not currently considering permanent changes due to COVID–19.''

The purpose of this notice is to allow an additional 30 days for public comments. 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.

Standard Form 2808 is used by persons covered by CSRS to designate a beneficiary to receive the lump sum payment due from the Civil Service Retirement and Disability Fund in the event of their death.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: We Need the Social Security Number of the Person Named Below.

OMB Number: 3206–0144.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 2,000.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 500 hours.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–19275 Filed 8–31–20; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–229 and CP2020–259]

New Postal Product

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:* September 3, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–229 and CP2020–259; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 163 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 26, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 3, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–19229 Filed 8–31–20; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIME AND DATE: August 24, 2020, at 7:30 p.m.

PLACE: Washington, DC

STATUS: Closed.

ITEMS CONSIDERED:

1. Administrative Issues.
2. Strategic Issues.

On August 24, 2020, a majority of the members of the Board of Governors of

[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).

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. 2020–19455 Filed 8–28–20; 4:15 pm]

BILLING CODE 7710–12–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATES AND TIMES: September 9, 2020, at 9:00 a.m.

PLACE: Washington, DC

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Wednesday, September 9, 2020, at 9:00 a.m.

1. Strategic Items.
2. Financial and Operational Matters.
3. Compensation and Personnel Matters.
4. Administrative Items.

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: Katherine Sigler, acting 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. 2020–19447 Filed 8–28–20; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89686; File No. SR–IEX–2019–15]

Self-Regulatory Organizations; Investors Exchange LLC; Order Approving a Proposed Rule Change To Add a New Discretionary Limit Order Type Called D-Limit

August 26, 2020.

I. Introduction

On December 16, 2019, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt a new order type, the Discretionary Limit order (''D-Limit''). The proposed rule change was published for comment in the **Federal Register** on December 30, 2019.[3] On February 12, 2020, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[4] On March 27, 2020, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change (''OIP'').[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Latency Arbitrage

IEX explains that its proposal ''is designed to protect liquidity providers, institutional investors as well as market makers, from potential adverse selection by latency arbitrage trading strategies in a fair and nondiscriminatory manner. . . .'' [6] IEX uses the term ''latency arbitrage'' to refer to trading strategies that trade based on the market participant's ability to minimize latencies in seeing, and reacting to, quote and trade data through its use of low-latency systems and technology, as well as connectivity and proprietary market data it purchases from exchanges, which may allow them to react faster to changing market prices than other market participants who have not purchased those same low-latency systems, connectivity, and data sources, which can be relatively expensive.[7]

B. IEX Speed Bump

In the Notice, the Exchange explains how it has designed its market model around ''ways to counter or reduce speed advantages that can harm investors by exposing them to execution at stale prices when their orders are traded against by traders with more complete and timely information about market prices.'' [8] The primary feature of that market model is the IEX ''speed bump,'' which employs physical path latency to introduce an equivalent 350 microseconds of latency between the network access point (the Point-of-Presence, or ''POP'') and the Exchange's system at its primary data center.[9] The speed bump provides time for IEX to update pegged orders resting on its exchange when the national best bid and offer (''NBBO'') changes, so that the resting pegged orders are accurately pegged to current market prices.[10] Without this protection, pegged orders resting on IEX have the potential to be subject to latency arbitrage (*i.e.,* executed at disadvantageous ''stale'' prices because IEX has not yet been able to update the prices of those resting orders in response to changes in the NBBO) by those market participants that can rapidly aggregate market data feeds and react faster than IEX to NBBO updates.[11] The IEX speed bump by itself currently provides no protection or benefits for displayed orders or non-displayed orders at fixed limit prices.[12]

The speed bump works together with several non-displayed order types on IEX that are ''pegged'' to a specified

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87814 (December 20, 2019), 84 FR 71997 (''Notice''). Comments on the proposed rule change can be found at *https://www.sec.gov/comments/sr-iex-2019-15/sriex201915.htm.*

[4] *See* Securities Exchange Act Release No. 88186 (February 12, 2020), 85 FR 9513 (February 19, 2020).

[5] *See* Securities Exchange Act Release No. 88501 (March 27, 2020), 85 FR 18612 (April 2, 2020).

[6] Notice, *supra* note 3, at 71998.

[7] *See, e.g.,* Notice, *supra* note 3, at 72004 and IEX First Response to Comments, Letter from John Ramsay, Chief Market Policy Officer, IEX, dated February 13, 2020, at 2–3 (''IEX First Response to Comments'').

[8] *See* Notice, *supra* note 3, at 71998.

[9] *See id.* The IEX speed bump applies to all incoming and outgoing messages except for inbound market data from other trading centers and outbound transaction and quote information sent to the applicable securities information processor. In addition, updates to resting pegged orders on IEX are processed within the IEX trading system and do not require separate messages to be transmitted from outside the system.

[10] *See, e.g.,* Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142, 41157 (June 23, 2016) (File No. 10–222) (granting the application of IEX for registration as a national securities exchange).

[11] *See id.*

[12] *See id.* at 41155.

price.[13] These order types include the Discretionary Peg (''DPeg'') and the Primary Peg (''PPeg'').[14] DPeg and PPeg orders can ''exercise discretion'' to trade at prices more aggressive (*i.e.,* higher in the case of a peg order to buy, or lower in the case of a peg order to sell) than their default prices.[15] Specifically, IEX uses a proprietary mathematical calculation, called the crumbling quote indicator (''CQI''), to determine when these pegged order types are eligible to ''exercise discretion.'' [16] As described in the Notice, the CQI is designed to predict whether a particular quote is unstable or ''crumbling,'' meaning that the NBB likely is about to decline or the NBO likely is about to increase.[17]

C. Crumbling Quote Indicator

The Exchange utilizes real time relative quoting activity of certain Protected Quotations and a proprietary mathematical calculation (the ''quote instability calculation'') to assess the probability of an imminent change to the current Protected NBB to a lower price or Protected NBO to a higher price for a particular security (''quote instability factor'').[18] When the quoting activity meets predefined criteria and the quote instability factor calculated is greater than the Exchange's defined quote instability threshold, IEX treats the quote as ''unstable,'' and the CQI is on at that price level for up to two milliseconds (hereafter referred to as the ''quote instability determination price level'' or the ''CQI Price'').[19] During all other times, the quote is considered stable, and the CQI is off. When IEX determines, pursuant to the CQI methodology, that the current market for a specific security is unstable—meaning there is a heightened probability of an imminent quote change at the NBB or NBO—IEX's system will prevent DPeg and PPeg orders on that side of the market from exercising discretion and trading at a price that is more aggressive than the DPeg or PPeg order's resting price.[20]

D. D-Limit Order Type

In this proposal, IEX seeks to adopt the D-Limit order type, which would work in conjunction with the CQI by adjusting its limit price when the CQI is on.[21] A D-Limit order could be a displayed or non-displayed limit order that, upon entry and when posting to the IEX order book, is priced to be equal to and ranked at the order's limit price.[22]

Most notably, a D-Limit order (including a displayed D-Limit order) would be adjusted to a less aggressive price during periods of quote instability when the CQI is on. Specifically, if, upon entry of a D-Limit buy (sell) order, the CQI is on and the order has a limit price equal to or higher (lower) than the quote instability determination price level (*i.e.,* the CQI Price), IEX will automatically adjust the price of the D-Limit order to *one* minimum price variant (''MPV'') [23] lower (higher) than the CQI price. Similarly, when unexecuted shares of a D-Limit buy (sell) order are posted to the order book, if a quote instability determination is made and such shares are ranked and displayed (in the case of a displayed order) by IEX at a price equal to or higher (lower) than the CQI Price, IEX will automatically adjust the price of the resting D-Limit order to *one* MPV lower (higher) than the CQI Price.[24]

When the price of a D-Limit order is adjusted, the order will receive a new time priority. If multiple D-Limit orders are adjusted at the same time, IEX will maintain their relative time priority. Further, when the price of a D-Limit order is adjusted, the member that entered the order will receive an order message from the Exchange notifying the member of the price adjustment.

A D-Limit order whose price is adjusted by IEX will not revert back to the price at which it was previously ranked and, in the case of a displayed order, displayed. Rather, the order will continue to be ranked and, in the case of a displayed order, displayed at the new price, unless the order becomes subject to another automatic adjustment or if the order is subject to the price sliding provisions of IEX Rule 11.190(h).[25]

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[26] In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5) of the Exchange Act,[27] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers, and 6(b)(8) of the Exchange Act,[28] which requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

As outlined below, the Commission has carefully reviewed the proposed rule change, comments received, and IEX's response to comments to arrive at these findings. Below the Commission first discusses the existence of latency arbitrage on IEX and the effectiveness of CQI in detecting it. Second, the Commission discusses whether the D-Limit order type will lead to ''quote fading'' or affect IEX's ability to maintain a protected quotation under

[13] *See* Notice, *supra* note 3, at 71998 (citing IEX Rule 1.160(t)).

[14] *See* IEX Rule 11.190(b)(10) and 11.190(b)(8), respectively. DPegs are pegged to one minimum price variation, or ''tick,'' below the national best bid (''NBB''), in the case of buy orders, or one tick above the national best offer (''NBO''), in the case of sell orders, unless the submitter of the order has specified a limit price that is less aggressive than this default resting price. PPegs are pegged to one tick below the NBB, for a buy order, and one tick above the NBO, for a sell order, but is also available to trade at a price up to the NBB or down to the NBO, unless further restricted by the order's limit price.

[15] *See* Notice, *supra* note 3, at 71998.

[16] *See id.*

[17] *See id.*

[18] *See id.* The CQI utilizes a fixed formula that is codified in IEX's rulebook and thus is publicly known. *See* IEX Rule 11.190(g).

[19] *See id.* IEX assesses the stability of the Protected NBB and Protected NBO for each security.

[20] *See id.* The CQI is thus side specific.

[21] IEX proposes to amend IEX Rule 11.190(b)(7), which is currently reserved, to add the D-Limit order type.

[22] A non-displayed D-Limit order with a limit price more aggressive than the midpoint of the NBBO (''Midpoint Price'') will be subject to the Midpoint Price Constraint and be booked and ranked on the order book at a price equal to the Midpoint Price pursuant to IEX Rule 11.190(h)(2).

[23] *See* IEX Rule 11.210 (specifying a MPV of $0.01 for bids and offers priced equal to or greater than $1.00 per share).

[24] In the Notice, the Exchange provides examples of how D-Limit would operate. *See* Notice, *supra* note 3, at 72000–01.

[25] IEX Rule 11.190(h) provides for price sliding in the event of a locked or crossed market, to enforce the Midpoint Price Constraint, to comply with the display or execution requirements for a short sale order not marked short exempt during a Short Sale Period, or to comply with the Limit Up-Limit Down Price Constraint. As set forth in IEX Rule 11.190(h), an order that has been subject to price sliding *will* be repriced back to its more aggressive limit price when the market condition changes such that the condition necessitating the price sliding is no longer applicable. This is in contrast to the normal operation of a D-Limit order when it adjusts due to the CQI being triggered, at which point the D-Limit order's adjusted price will not reprice.

[26] 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). The Commission addresses comments about competition below in Section III.E.

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78f(b)(8).

Regulation NMS.[29] Third, the Commission discusses whether the D-Limit order type will permit unfair discrimination between customers, issuers, brokers, or dealers. Finally, the Commission discusses whether the D-Limit order type will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

A. Protection From Latency Arbitrage

As discussed above, IEX's stated purpose for the D-Limit order type is to protect liquidity providers on IEX from potential adverse selection resulting from latency arbitrage trading strategies, and thereby encourage its members to submit more displayed limit orders to IEX.[30]

Some commenters opposed to the proposal argue that the data and analysis provided by IEX are insufficient for the Commission to determine that IEX's proposal is consistent with the Exchange Act. They question IEX's characterization of latency arbitrage and the data IEX uses to show that it exists, and ask about the performance of the CQI during periods of higher market volatility and for thinly traded stocks.

One commenter asserts that IEX's data ''does not demonstrate the existence, or associated impact, of purported 'latency arbitrage' on IEX, or that the [p]roposal is appropriately tailored to address any such problem.'' [31] The commenter further argues that IEX fails to conduct a thorough analysis of liquidity taking orders executed when the CQI is ''on'' including whether such orders are from retail or institutional investors, are sweep orders taking out a price level across all exchanges, or are hedging activities.[32] The commenter states that IEX focuses on the length of time that the CQI is on rather than the trading volume that is affected.[33] In response, IEX states that resting limit orders on IEX ''are systematically subjected to adverse impacts of latency arbitrage strategies.'' [34] In support of its statement, IEX shows that the CQI was on for 1.64 seconds per symbol per day on average, which is 0.007% of the time during regular market hours.[35] In that very short period of time, however, the Exchange received 33.7% of marketable orders.[36] In other words, the CQI is almost always ''off,'' but during the very short periods of time when it is ''on,'' IEX observes that ''certain types of trading strategies are seeking to aggressively target liquidity providers during periods of quote instability.'' [37]

As for which market participants are seeking to remove resting liquidity when the CQI is on, IEX estimates, based on how it classifies its members' logical order entry ports,[38] that ''proprietary trading firms are more likely to trade against IEX resting orders when the CQI is on,'' while ''sessions classified as full-service and agency are more likely to seek to trade against IEX resting orders during the remainder of the day.'' [39]

IEX states that its data evidences that members that enter liquidity-taking orders when the CQI is on ''appear to be able to engage in a form of latency arbitrage by leveraging fast proprietary market data feeds and connectivity along with predictive strategies to chase short-term price momentum and successfully target resting orders at unstable prices.'' [40]

One commenter states that the CQI is overbroad, and thus the impact of D-Limit orders will be ''much broader, affecting all types of liquidity takers'' including retail.[41] The commenter reports that 15% of the retail-related liquidity-removing orders it routed to IEX in May 2020 arrived when the CQI was on.[42] The commenter questions whether the CQI may have turned on when it was routing portions of a large retail order to multiple exchanges to fill.[43] If those away executions appeared to IEX to sequentially remove liquidity in a ''crumbling'' manner, then the CQI could have turned on. In that case, had IEX been displaying D-Limit orders, those orders would get repriced before the commenter could remove that interest from IEX at the previously displayed less-aggressive price point unless the commenter accounts for the IEX access delay when routing so that its routing does not cause the CQI to turn on.[44] Thus, the commenter asserts that the CQI detects more than just latency arbitrage and may broadly discriminate against all types of liquidity takers, in particular orders that are routed *simultaneously* to multiple

[29] *See* 17 CFR 242.611.

[30] *See also* IEX First Response to Comments, *supra* note 7, at 1 (stating that ''certain microsecond-level latency arbitrage strategies . . . act as a powerful disincentive to the posting of displayed quotes by market participants, which has led to a long-term trend of declining displayed liquidity and less transparency in equities trading'').

[31] *See also* Letter from Stephen John Berger, Managing Director, Citadel Securities, dated April 23, 2020, at 5 (''Citadel First Letter''). *See also* Letter from Stephen John Berger, Managing Director, Citadel Securities, dated August 14, 2020, at 2 (''Citadel Third Letter'').

[32] *See* Citadel First Letter, *supra* note 31, at 5. *See also* Citadel Third Letter, *supra* note 31, at 2.

[33] *See* Citadel First Letter, *supra* note 31, at 5.

[34] *See* Notice, *supra* note 3, at 72002.

[35] *See id.* at 72001–02 (based on data from September 2019). On a volume-weighted basis, IEX reports that, during the same period, the CQI was on for 5.9 seconds per day per symbol, or 0.025% of the time during regular market hours. *See id.*

[36] *See id.* at 72001. Further, 24% of displayed volume on IEX is executed when the CQI is on. *See id.* at 71999.

[37] *See id.*

[38] *See id.* at 72002. One commenter objects to IEX's classification of it as a ''proprietary trading firm'' because ''over 50% of our trading activity on IEX is on behalf of retail investors.'' Citadel First Letter, *supra* note 31, at 4. The commenter clarified in a second comment letter that it ''typically enter[s] into back-to-back transactions (one on the external venue and one with the retail broker-dealer).'' Letter from Stephen John Berger, Managing Director, Citadel Securities, dated July 2, 2020, at 2 (''Citadel Second Letter''). In other words, the Commission understands that the commenter is not directly routing the customer's order to exchanges, but rather is, for example, buying shares for its own account and selling shares to the customer. An anonymous commenter, describing himself or herself as ''someone with very intimate knowledge about the retail and wholesaling process'' states that ''what Citadel is not clarifying is that retail orders are likely sent to Citadel at random times (initiated by actual retail investors living in different parts of the world), but Citadel likely *chooses* to route these orders to IEX *during* a CQI condition'' (emphasis in original). Letter from Anonymous, undated, at 2. The anonymous commenter asserts that ''[d]uring that time, Citadel has a free option to hold the order and decide what to do with it'' and believes that ''clearly they aren't holding this order and waiting for a better price for retail to show up—they are waiting to make as much money for Citadel as possible.'' *Id.* The anonymous commenter further asserts that ''[n]one of [Citadel's] example has anything to do with retail being harmed.'' *Id.* at 3. Further, IEX provides updated data from January to April 2020 for firms that are publicly listed as being members of the FIA Principal Traders Group (which IEX notes is a self-described ''association of firms that trade their own capital on exchanges . . . .''), but excluded that commenter from the analysis even though it is a member of the Principal Traders Group. *See* Letter from John Ramsay, Chief Market Policy Officer, IEX, dated May 10, 2020, at 13 (''IEX Second Response to Comments''). IEX states that its new data, despite excluding that commenter's trading activity, still ''precisely matches patterns seen for all firms classified as proprietary . . . .'' *Id. See also* Letter from Anonymous, undated (challenging Citadel's characterization of the potential for harm to retail investors) and Letter from John Ramsay, Chief Market Policy Officer, IEX, dated August 3, 2020, at 5–6 (''IEX Third Response to Comments'').

[39] Notice, *supra* note 3, at 72002.

[40] *Id.*

[41] Citadel Second Letter, *supra* note 38, at 1.

[42] *See id.* at 3–4. The commenter says that ''[t]o provide a sense of scale, we executed over 2.5 million retail orders during the month of May 2020 that required more size than was available at the NBBO across all exchanges at the time of routing.'' *Id.* at 3. The commenter also states that it is the ''leading destination for retail orders, executing approximately 40% of all U.S.-listed retail volume.'' Citadel Second Letter, *supra* note 38, at note 6.

[43] *See id.*

[44] *See id.* The commenter provided an example of an ''actual retail order that removed displayed liquidity on IEX during the month of May 2020.'' *See id.* at 4. While it is unclear if this is a typical example, and the commenter did not provide timestamps or indicate the execution prices received, the scenario shows that the commenter did not receive a full and immediate execution on two venues (CboeEDGX and Nasdaq), as it ended up posting 100 shares on each venue. *See id.*

exchanges to cross the spread and remove liquidity at the bid or offer price.[45]

In light of this, the commenter questions whether D-Limit orders on IEX will require broker-dealers to make changes to their routing strategies, and if so, whether those changes would increase complexity, introduce risks, and be consistent with regulatory requirements applicable to the routing of marketable orders.[46] Specifically, the commenter asserts that '''[a]ccounting' for the IEX speed bump means routing to IEX first and intentionally delaying routing to other exchanges when accessing displayed liquidity'' (emphasis omitted).[47] In response, IEX states that how D-Limit orders will interact with intermarket sweep orders depends on how broker-dealers route, which is ''precisely the same choice that brokers face in routing to every other type of displayed order that exists in the market today,'' and the ability to account for geographic and technological differences (like the speed bump, which ''is the equivalent of physical distance'') when routing is not uniquely affected by the presence of D-Limit orders.[48] As discussed directly below, the Commission has addressed this concern previously and reaffirms its views on the matter now, based on the understanding that intermarket routing can be accomplished in a manner to avoid such an outcome.

D-Limit orders should not necessitate material changes to routing strategies either for single orders or intermarket sweeps. The Commission previously addressed the commenter's concern about routing an order to IEX and accounting for its access delay when the Commission approved IEX's exchange registration. Specifically, the Commission explained that IEX's speed bump is ''well within the range of geographic and technological latencies that market participants experience today'' such that ''latency to and from IEX will be comparable to—and even less than—delays attributable to other markets that currently are included in the NBBO,'' and the Commission found the delay to be de minimis, *i.e.,* so short as to not frustrate the purposes of Rule 611 by impairing fair and efficient access to IEX's quotation.[49]

In considering the current proposal and concerns raised by the commenter, the same explanation provided to support approval of IEX's exchange registration pertains here. In effect, IEX's physical access delay (from the POP to the matching engine) is understood by market participants as the practical equivalent of treating the location of IEX's matching engine for routing purposes as more than 38 miles further away than its actual geographic location. In the Commission's view, market participants can, and generally do, account for this fact when routing to IEX. Thus, these routing adjustments do not constitute ''preferencing'' of IEX because the adjustments do not mean a market participant has to arrive and trade first on IEX.[50] Rather, to prevent the CQI from observing away executions and turning ''on'' before an order sent to IEX can execute on IEX, a broker-dealer need only continue to apply current routing techniques prevalent today. Such techniques, such as smart order routing strategies, are commonplace today and already take into account geographic and technological latencies, as well as exchange access delays, to capture liquidity across multiple venues simultaneously without signaling those executions to the market in a way that would impact prices or available liquidity.[51] If utilized, such routing strategies could avoid triggering the CQI because quotes would not ''crumble'' in sequence as the various orders are routed to assure coordinated simultaneous executions across venues. The commenter asserts that routing first to IEX would be necessary to avoid triggering the CQI on market sweeps, but that does not mean routing to and arriving at IEX first. Rather, smart order routing that seeks to have orders *arrive* and execute simultaneously across multiple venues focuses on order arrival and the order transmission time is only a means to an end to achieve that outcome.[52] Accordingly, the commenter has not presented persuasive evidence that all market sweeps necessarily trigger the CQI or that its liquidity-taking activities on IEX will be materially impacted to the detriment of retail investors. While the commenter presented evidence to show some correlation between its trading and the CQI being on, it did not present evidence that its trading caused the CQI to turn on or that such result is inevitable with current best practices in routing among broker-dealers. For instance, in the commenter's example it routed to six exchanges but did so in a way that appears to have obtained an execution on IEX last. If the commenter routed in a way that resulted in its order executing on IEX near-simultaneously with its executions on other markets, then the CQI could not have been triggered by the commenter's routed orders because the various exchange quotes would not have ''crumbled'' prior to the execution of the order on IEX. The means to route in this manner are common and do not require a broker-dealer to preference any particular exchange over any other exchange, as the point is to achieve simultaneous arrival and executions across multiple exchanges in a coordinated manner.

Rather, ''accounting'' for IEX's de minimis speed bump when routing orders is just like accounting for any other technological or geographic latency, and doing so is consistent with applicable rules and regulations and does not require inappropriately preferencing IEX. IEX's D-Limit proposal, because it does not introduce any new access delays, does not present any new issues in this respect. While the commenter focuses on the fact that IEX will be able to reprice D-Limit orders when the CQI triggers, market participants that post liquidity on IEX also monitor executions on away markets and could change or cancel

[45] *See* Citadel Third Letter, *supra* note 31, at 1–2.

[46] *See id.* at 5–6. *See also* Citadel Third Letter, *supra* note 31, at 4.

[47] Citadel Third Letter, *supra* note 31, at 4.

[48] Letter from John Ramsay, Chief Market Policy Officer, IEX, dated August 20, 2020, at 2–3.

[49] *See* Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142, 41161 (June 23, 2016). Specifically, after entering through the POP in Secaucus, New Jersey, a user's electronic message sent to the IEX trading system must physically traverse the IEX ''coil,'' which is a box of compactly coiled optical fiber cable equivalent to a prescribed physical distance of 61,625 meters (approximately 38 miles) (which is similar to the distance between the Nasdaq and NYSE data centers in Carteret and Mahwah, respectively). After exiting the coil, the message travels an additional physical distance to the IEX trading system, located in Weehawken, New Jersey. The entirety of that trip takes approximately 350 microseconds.

[50] By analogy, routing parts of a large order to multiple exchanges is similar to a group of friends who live in separate locations meeting at a restaurant for a 7:00 p.m. dinner reservation. Each friend leaves his or her house at a different time, depending on how far away each lives from the restaurant, and all plan to arrive at the same time to make their reservation. While the friend that lives furthest away needs to start the journey first, all arrive together. Routing a large stock order to multiple exchanges is the inverse of that hypothetical, in which the goal is to take liquidity on each exchange as close to simultaneously as possible before other market participants can see and react to those executions. Because of IEX's speed bump, it often will be the ''furthest away'' venue and so the journey to reach it starts first, but the execution does not need to occur first on IEX and thus preferencing IEX is not required.

[51] *See, e.g.,* Securities Exchange Act Release No. 84528 (November 2, 2018), 83 FR 58338 (November 19, 2018) (Disclosure of Order Handling Information; Final Rule) and Letter from Daniel Aisen, CEO, Proof Services LLC, dated December 24, 2019, at 5 (''Proof Letter''). *See also* Securities Exchange Act Release No. 78101, (June 17, 2016), 81 FR 41142, 41153 (June 23, 2016) (File No. 10–222), at note 265 (discussing accounting for the non-variable IEX access delay when routing to IEX).

[52] *See, e.g.,* Proof Letter, *supra* note 51, at 5. *See also supra* note 50.

their quotes on IEX in response to that same information. In other words, with or without D-Limit orders, if a broker-dealer does not seek to maximize its fill rates while minimizing information leakage by accounting for latencies (*e.g.,* technological, geographic, or access delay) when it routes portions of large orders to multiple venues near-simultaneously, the broker-dealer runs the risk of missing out on executions at displayed prices. Accounting for those latencies is possible, using affordable and readily-available technology, and addresses the commenter's concern, which is unrelated to whether IEX has or does not have D-Limit orders.

IEX further asserts that investors will not be negatively impacted when trying to access a quote on IEX that contains a displayed D-Limit order because brokers representing investor orders or trading on their behalf generally are not able to time their orders to arrive with the level of sophistication required to engage in latency arbitrage because they lack the ''low-latency tools to aggregate data from all the markets and react to price changes in microseconds.'' [53] Further, referencing the commenters that support the proposal, IEX explains that ''market participants who rely on the ability to access liquidity through 'intermarket sweep' orders have clearly said they do not believe D-Limit would limit their ability to access liquidity at displayed prices.'' [54] With respect to hedging activities, IEX argues that market makers hedge throughout the day and ''[i]t is not credible to suppose that orders from market markers sent to hedge risks on various markets happen to converge at IEX in the tiny time increments when the CQI signal is on.'' [55] IEX further states that market makers that rely on the equities markets to hedge have supported the proposal.[56] Finally, IEX states that marketable orders to take liquidity when the CQI is on account for over 20% of displayed volume executions on IEX, but less than 2% of total trading volume of non-displayed interest.[57]

IEX's characterization of latency arbitrage is supported by commenters asserting that latency arbitrage negatively impacts liquidity and price discovery. One commenter believes that ''speed advantages . . . have tilted the playing field in favor of firms specializing in 'latency arbitrage,' reducing the willingness of both long-term investors and market makers to display quotes, to the detriment of price discovery and market efficiency.'' [58] Another commenter states that ''[t]he disincentive to all market participants to provide displayed quotes in fear of getting 'picked off' when the price of a security is in transition to a new price level continues to plague displayed markets.'' [59] Similarly, another commenter opines that ''[a] growing body of academic research suggests that latency arbitrage strategies are equivalent to zero-sum 'races' between high-frequency traders (HFT) and may actually discourage liquidity provision by both HFT and non-HFT.'' [60] Other commenters similarly assert that latency arbitrage causes some institutions to avoid posting displayed liquidity on exchanges, which they say can impact liquidity and price discovery.[61]

The comment file on this proposal reflects a dichotomy of views on the issue of latency arbitrage. On the one hand, some commenters question IEX's characterization of latency arbitrage and the performance of IEX's CQI, which is intended to detect it. On the other hand, other commenters, including investment firms with longer-term investment horizons and agency broker-dealers, state that they are adversely impacted by latency arbitrage.

Even though the CQI is mostly off and comes on only when certain market-moving conditions are present, those small increments of time are meaningful on IEX because, as discussed above, a material amount of activity occurs during those moments.[62] In those rare moments when market prices are in transition, a race condition exists between liquidity providers who want to reprice their on-exchange displayed liquidity to reflect the changing market prices and the liquidity takers who want to take before those updates can occur.[63] This creates information asymmetries and can lead to other externalities, which can affect the willingness of many market participants to post displayed liquidity because it subjects their orders to adverse selection when prices move and they are not able to see or react as fast to those changing conditions.[64] In turn, this race can have a meaningful effect on all market participants because it can incentivize investors to trade in the dark, either off exchange or through non-displayed

[53] *See also* IEX Second Response to Comments, *supra* note 38, at 12 (stating that, if the CQI is on for 5 seconds in a day, then an investor's marketable order arriving randomly to IEX would have a 1 in 5,000 chance of arriving when the CQI is on).

[54] *See id.*

[55] *See id.* at 14.

[56] *See id.*

[57] *See id.* at 12.

[58] *See* Letter from Kevin Duggan, Managing Director, Capital Markets, Ontario Teachers' Pension Plan, Benoit Gauvin, Vice-President, CDPQ, and Alex Done, Deputy Comptroller, Office of New York City Comptroller, et al., at 1 (''Joint Letter from 27 Asset Managers''). *See also* Letter from Lev Bagramian, Senior Securities Policy Advisor, Better Markets, Inc., dated May 15, 2020.

[59] *See, e.g.,* Letter from Mehmet Kinak, VP & Global Head of Systematic Trading & Market Structure and Jonathan D. Siegel, VP & Senior Legal Counsel—Legislative & Regulatory Affairs, T. Rowe Price, dated February 5, 2020, at 1 (''T. Rowe Letter''); and Letter from Brian Urey, Senior Trader, Allianz Global Investors, dated May 12, 2020 (''Allianz Letter'').

[60] *See* and Letter from Marius-Andrei Zoican, Assistant Professor of Finance, University of Toronto-Mississauga, dated January 20, 2020, at 1 (''Zoican Letter''). *See also* Letter from John Christofilos, Senior VP, Chief Trading Officer, AGF, dated February 11, 2020, at 2 (''AGF Letter'') (''It is clear that latency arbitrage affects investors, brokers, and market makers, and as a result, the market is less liquid and more susceptible to volatile price swing.''); Letter from Sean Paylor, Trader, AJO, dated February 10, 2020, at 4 (''AJO Letter'') (''Trading from the back of the queue leads to lower fill rates during periods when the quote is stable and greater adverse selection when it is not ('last man standing' before a price change).''); Letter from Kenneth A. Bertsch, Executive Director, Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, dated February 11, 2020, at 2 (''CII Letter'') (''Long-term investors are at real and substantial risk from speed advantages of a small number of trading firms that specialize in 'latency arbitrage,' which imposes a multi-billion-dollar tax on institutional investors. A recent study sponsored by the Financial Conduct Authority suggested that this activity is endemic, and results in substantial losses to all liquidity providers.''); Letter from Philip Berlinski, Co-Chief Operating Officer, Equities, Global Markets, Goldman Sachs & Co. LLC, dated February 26, 2020, at 3 (''Goldman Sachs Letter'') (''Adverse selection stemming from latency arbitrage can have a negative effect on the national market system because liquidity providers may be more inclined to provide less liquidity at wider spreads.''); and Letter from Sanjana Kapur, Compliance Officer, Equity Compliance, Jefferies LLC, dated February 5, 2020, at 3 (explaining that one of its agency algorithms seeks ''the ability to participate in price discovery by displaying your interest without having to bear the cost of adverse selection (getting 'picked off' by arbitrage-based strategies relying primarily on speed)'').

[61] *See, e.g.,* AGF Letter, *supra* note 60, at 1; Letter from Joseph Scafidi, Global Heading of Trading, Carlos Oliveira, Heading of Trading Analytics and Market Structure, Brandes Investment Partners, LP, dated February 20, 2020, at 1 (''Brandes Letter''); Letter from Ray Ross, Chief Technology Officer, Clearpool Group, dated January 21, 2020, at 2 (''Clearpool Letter''); Goldman Sachs Letter, *supra* note 60, at 4; Letter from Gary Thompson, Executive Director, Head of Global Trading, Vontobel Asset Management, Inc., dated February 14, 2020, at 1.

[62] *See supra* note 36 and accompanying text.

[63] *See, e.g.,* Letter from Joseph Saluzzi, Themis Trading, dated February 6, 2020, at 2 (''[t]hose who have paid top-dollar for high speed data related products, race each other to pick off stale orders from investors who haven't necessarily paid for the same low latency technology.'') (''Themis Letter''); Zoican Letter, *supra* note 60, at 1 (stating that there is a growing body of academic research suggests that latency arbitrage strategies are equivalent to zero-sum 'races' between high-frequency traders).

[64] *See supra* notes 58–61 and accompanying text. *See also, e.g.,* AJO Letter, *supra* note 60, at 2 (''Instead of offering all market participants equal access at the same speed, the exchanges have created a multi-tiered system, effectively tilting the odds in favor of a small subset of firms that possess the resources to invest in the lowest-latency infrastructure'') and Allianz Letter, *supra* note 59, at 2.

exchange order types.[65] The result is that a valuable source of liquidity may instead seek out dark non-exchange trading venues where the speed traders' advantages are moot, but in doing so this liquidity is no longer displayed to and accessible by the market as a whole. Such an outcome does not advance the Exchange Act's goal of promoting fair and orderly securities markets. IEX's D-Limit order type seeks to compete with those other trading venues by incentivizing more displayed liquidity through improved execution quality for liquidity providers.

Furthermore, exchange functionality that protects resting displayed orders against adverse selection resulting from latency arbitrage will improve the execution quality experienced by market participants that post displayed liquidity and are affected by such adverse selection. This improved execution quality could encourage more displayed liquidity, which in turn, would contribute to fair and orderly markets and support the public price discovery process. Specifically, if sufficiently protected against being ''picked off'' when the conditions for latency arbitrage are present, long term investors will no longer experience those relatively poor executions and thus will have less incentive to avoid posting displayed orders on exchanges. Accordingly, as suggested by some commenters, long term investors could shift a portion of their order flow back onto the exchange as displayed orders. The result would be an increase in displayed liquidity as a more diverse group of long term investors participates in the exchange market, which would in turn facilitate fair competition, economically efficient executions, and an opportunity for long term investors' orders to be executed without the participation of a dealer.[66]

A substantial amount of IEX's overall execution volume is attributable to non-displayed interest. Thus, when the CQI is on, the marketable interest IEX receives is not seeking merely to access liquidity on IEX in the normal course, but rather is seeking specifically to remove a displayed quote on IEX in a manner consistent with what IEX identifies as latency arbitrage.[67] In other words, IEX has demonstrated that the market conditions that trigger activation of the CQI are the same short-term market conditions that the most highly sophisticated latency-sensitive traders detect and seek to trade on. The Commission also finds persuasive comments from asset managers supporting the proposal who argue that the prevalence of such trading strategies impacts their willingness to participate in the on-exchange displayed market where the public price discovery process takes place. IEX responds to those long-standing concerns by now offering a narrowly tailored tool that balances the ability of long-term investors to access displayed liquidity in the ordinary course against the current structural advantages enjoyed by short-term latency arbitrage trading strategies that rely on superior access to the fastest data and connectivity, while also encouraging liquidity providers to post more displayed liquidity.[68] Many commenters state that the proposal would be useful in addressing such concerns without being overbroad.[69] The Commission concludes that this attempt by IEX to promote the ability of long-term investors to post liquidity on its exchange by counterbalancing the existing advantages used in short-term trading strategies is consistent with the Exchange Act.[70] As discussed below, exchanges should be able to innovate to address this concern.

Therefore, because IEX's proposal promotes the interest of long term investors in a narrowly tailored manner that will inure to the benefit of displayed markets, leading to increased displayed liquidity from which all market participants ultimately will benefit, IEX's proposal is consistent with the Exchange Act, including the protection of investors and the public interest.

One commenter questions whether the statistics IEX presented in its filing, which were based on data collected during September 2019, ''are representative of other time periods or of different market environments.''[71] The commenter considers that period to be normal market conditions and believes that IEX should provide more ''representative data'' to address how the CQI operates during periods of market volatility.[72] The commenter states that IEX's failure to do so renders IEX's proposal incapable of showing whether the proposed D-Limit order is appropriately tailored to address the issue that IEX seeks to address.[73] The commenter also states that IEX provided aggregated data across all stocks but does not provide data in its filing for different types of stocks, like thinly traded symbols, which may or may not experience the CQI in the same way as more liquid stocks, and thus questions whether IEX's ''figures hold true for all categories of symbols, including those which are subject to frequent or routinely-high levels of volatility.''[74]

In response to these concerns, IEX provided additional data in its two responses to comments and asserts that the results remain consistent.[75] With respect to longer periods and periods of higher market-wide volatility, IEX looked at data from the fourth quarter of 2019 and found that, ''based on IEX average-weighted volume, the CQI was on for 0.021% of the time during regular market hours, virtually the same as the 0.025% of the time it was on for September 2019.''[76] IEX also looked at the period of January to April 2020, which IEX states involved an ''unprecedented 'stress test' as a result of market volatility connected to the COVID–19 pandemic,'' and IEX reports that the CQI was on between 0.026% (for January 2020) and 0.125% (for March 2020) of the time during regular market hours.[77] IEX asserts that, ''during

[65] *See, e.g.,* Letter from Gregory Davis, Managing Director and Chief Investment Officer, The Vanguard Group, Inc., dated April 23, 2020, at 3 (''Vanguard Letter'') (''This high-speed environment discourages all but the fastest market participants from posting their trading interest.'').

[66] *See* 15 U.S.C. 78k–1.

[67] *See supra* note 7 and accompanying text.

[68] IEX notes in its filing that other exchanges use transaction rebates and volume tiers ''to essentially compensate market makers and other liquidity providers for posting aggressive limit orders'' that are subjected to the effects of latency arbitrage, but IEX believes ''that these pricing schemes can contribute to a number of conflicts of interest and market distortions including, among others, conflicts of interests, excess intermediation and potential adverse selection, market fragmentation, complexity, the proliferation of new order types to enable avoidance of fees, and elevated fees to subsidize rebates'' and does not use them. *See* Notice, *supra* note 3, at 72002.

[69] *See, e.g.,* Allianz Letter, *supra* note 59; Brandes Letters, *supra* note 61; and T. Rowe Letter, *supra* note 59.

[70] *See infra* Sections III.C–E.

[71] Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, Nasdaq, Inc., dated January 21, 2020, at 6 (''First Nasdaq Letter''). *See also, e.g.,* Letter from Jeffrey Bacidore, Ph.D., President, The Bacidore Group, LLC, dated February 13, 2020, at 2–3 (''Bacidore Letter'').

[72] *See* First Nasdaq Letter, *supra* note 71, at 4–7. *See also* Bacidore Letter, *supra* note 71, at 2–3.

[73] *See* First Nasdaq Letter, *supra* note 71, at 4–7. *See also* Bacidore Letter, *supra* note 71, at 2–3.

[74] *See* First Nasdaq Letter, *supra* note 71, at 4–7. *See also* Bacidore Letter, *supra* note 71, at 2–3.

[75] *See* IEX First Response to Comments, *supra* note 7; IEX Second Response to Comments, *supra* note 38.

[76] *See* IEX First Response to Comments, *supra* note 7, at 15. IEX also examined aggregate CQI data during a December 2018, which IEX asserts was a period of relatively higher market-wide volatility. While IEX found that the CQI was ''on'' for relatively more time (an average of 0.060% per symbol per trading day during December 2018 compared to 0.025% during September 2019), IEX characterized that relatively higher level as ''nonetheless extremely low, corresponding to approximately 15 seconds per day per symbol on average during regular market hours.'' *Id.* at 16.

[77] IEX Second Response to Comments, *supra* note 38, at 16. IEX states that the CQI was ''on'' longer in March 2020 ''because of the extraordinary

Continued

one of the most volatile and unprecedented months in the history of the stock market,'' the CQI was only on for 0.125% of the trading day on average.[78] Further, IEX calculated the percent of displayed volume that traded when the CQI was ''on'' during that period, and found that it ranged between 22% (for March 2020) to 24.4% (for January 2020).[79] IEX concludes that its updated data ''confirms that the CQI signal performs extremely well and consistently in extreme, and in 'normal' market conditions.''[80]

IEX also examined data from the fourth quarter of 2019 on the amount of time that the CQI was on for certain individual stocks that IEX classified as subject to greater volatility, and found that for those stocks, ''which tend to also be stocks that are more thinly-traded, the CQI was on less often than for stocks with lower volatility.''[81]

With respect to the CQI and thinly traded stocks, IEX examined data from the fourth quarter of 2019 and found that ''the CQI was actually significantly less active than for stocks with higher [average daily volume].''[82] IEX explained that, for thinly traded stocks, ''the CQI necessarily will fire less often . . . because there are fewer data points from which to draw in making predictions'' and thus ''there will be less repricing of the orders, which directly counters the arguments that CQI would have a larger impact in those symbols.''[83] IEX concludes that its data shows that D-Limit would not impede access to thinly-traded or other stocks.[84]

A few commenters also request that IEX provide more information on the accuracy of the CQI. One commenter states that IEX's filing provides no data of when CQI ''activates mistakenly in circumstances where it should not do so'' where it would cause ''needless missed executions for liquidity takers.''[85] Similarly, another commenter states that IEX should provide more data on the accuracy of the CQI, such as the percentage of time that the CQI accurately predicts NBBO changes, the number of times the CQI inaccurately predicted a change, and how the accuracy rate has evolved with each update.[86]

IEX responds to those comments by providing data on CQI performance during the January to April 2020 period, where it found that the CQI ''accurately predicted the direction of the next price change (not time bound) in 75.5% of the cases, on a volume-weighted basis.''[87] A 75% accuracy rate for the CQI shows that it succeeds, far more often than not, in detecting the conditions for latency arbitrage, and thus it is successful in informing order types designed to mitigate the impact of that latency arbitrage.[88] The CQI is on so infrequently and detects events that are such idiosyncratic anomalies within the current market structure that only a small number of market participants are capable of detecting and acting upon them. As such, the CQI does not result in needless missed executions for most traders, though it will make it more difficult for a few latency arbitrage traders to profit by taking advantage of idiosyncrasies in market structure to trade with stale-priced displayed quotes on IEX, as further discussed below.

Thus, in response to all of the commenters' concerns discussed in this section about the CQI, and the representativeness of the data that IEX provided in support of its proposal, IEX provided additional data and analysis and concludes that ''(i) the fraction of the trading day that the CQI is on is consistent in different time periods; (ii) the CQI is on for less of the trading day for thinly-traded securities compared to all securities; (iii) the CQI is on for less of the trading day for securities that experienced higher volatility than for lower volatility securities; and (iv) during a high volatility period, the period of time the CQI was on continued to be extremely low (about 15 seconds during the trading day).''[89]

IEX has provided a sufficient amount of data and analysis to allow the Commission to consider the full range of issues raised by IEX's proposal. Based upon the overall record, including the data and analysis submitted by IEX described immediately above and the comments received, the Commission finds that the proposal is consistent with the Exchange Act. As explained above, the Commission finds that the proposal promotes the interest of long term investors in a narrowly tailored manner that will inure to the benefit of displayed markets, leading to increased displayed liquidity from which all market participants ultimately will benefit.[90] The Commission finds that the proposed D-Limit order type is narrowly and appropriately tailored to achieve those benefits. As discussed above, some commenters characterize the data IEX provided in its filing as insufficient, and question how the CQI performs during periods of higher market volatility and for thinly traded stocks.[91] However, the Commission is persuaded by the data and analysis IEX provided in its filing and its responses to comments.

Market events over the past several months have provided an environment for IEX to test the consistency of its CQI in periods of significant volatility. IEX did so and shows that the period of market volatility observed in early 2020 did not cause the CQI's behavior to differ markedly from the data IEX provided in its filing. Further, IEX shows that more volatile stocks and thinly traded stocks were not unduly impacted by the CQI. Thus, the Commission concludes that the data IEX provided in its filing on latency arbitrage and the CQI was ''representative of other time periods or of different market environments'' and IEX's ''figures hold true'' for different types of stocks that were subject to higher levels of volatility.

B. Prior Commission Consideration of the CQI

One commenter expressed concern that the use of CQI by IEX ''shifts the exchange's role from a platform designed to facilitate price discovery into an active participant in the price discovery function.''[92]

increase in the number of quote changes per stock in that month.'' *Id.* at 17.

[78] *Id.* at 16–17. IEX notes that during that period, the market-wide circuit breakers were triggered 4 times in 8 trading days and the VIX volatility index recorded its highest-ever value on March 16. *See id.*

[79] *Id.* at 17. IEX observes that this proportion remained ''remarkably consistent throughout the period'' even though the absolute number of trades was much higher in March and April. *See id.*

[80] *Id.*

[81] IEX First Response to Comments, *supra* note 7, at 16.

[82] *Id.* at 15.

[83] *Id.* at 16.

[84] *Id.*

[85] *See* First Nasdaq Letter, *supra* note 71, at 7.

[86] *See* Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, dated January 21, 2020, at 6 (''First FIA PTG Letter'').

[87] IEX Second Response to Comments, *supra* note 38, at 21. The CQI's accuracy is substantial.

[88] Further, the D-Peg order type, which is designed to protect non-displayed midpoint orders from latency arbitrage and is informed by the CQI, has been popular with the agency brokers and full-service brokers that it is intended to protect. Those market participants carefully monitor their execution quality and thus must regard the CQI as accurate or else they would not be expected to use D-Peg orders. *See id.* at 15 (noting that ''D-Peg alone has executed over 111 billion shares of volume since IEX was approved as an exchange with over 90% of that volume from agency and full-service brokers''). If the CQI were not accurate, then users of D-Peg orders would needlessly miss out on executions and, as a result, would receive poor execution quality and be expected to avoid using the D-Peg order type. Because the D-Peg order type is popular on IEX, its ability—by function of the CQI—to protect the liquidity provider is apparent.

[89] *Id.*

[90] *See supra* notes 62–70 and accompanying text.

[91] *See supra* notes 32–34 and accompanying text.

[92] Letter from Adam Nunes, Head of Business Development, Hudson River Trading LLC, dated January 21, 2020, at 2 (''HRT Letter''). *See also* Citadel First Letter, *supra* note at 31, at 11. One commenter argues that IEX will be exercising actual

The Commission disagrees with the commenter's characterization of the CQI functionality. The CQI does not place IEX into the role of an active participant in the price discovery function, nor is IEX making investment pricing decisions through the CQI. As the Commission previously addressed in connection with IEX's exchange registration, IEX's discretionary orders are ''unique in the way that the discretion functionality will be turned 'on' or 'off' depending on IEX's quote stability determination.'' [93] Among other things, IEX has ''encoded in its rule the totality of the discretionary feature'' and therefore the ''hardcoded conditionality'' of the discretionary feature does not provide IEX ''with actual discretion or the ability to exercise individualized judgment when executing an order.'' [94] Though the Commission was discussing the DPeg order type in the IEX exchange registration context, the Commission recognizes that D-Limit will use the exact same CQI functionality that underlies the DPeg. And, as the Commission has previously stated, the CQI, which uses a ''pre-determined, objective set of conditions that are detailed in IEX's [rules]'' and which any market participant can thus recreate on its own, will allow users to submit D-Limit orders and have them operate as designed and as reflected in IEX's rules. In so doing, users of D-Limit orders can better achieve their goals when their orders operate efficiently. Further, as discussed below, D-Limit orders and any associated liquidity-provision and price discovery benefits will be available to all users.

C. Quote Accessibility and Impact on Displayed Markets

Discretionary order types informed by the CQI, discussed above, are not new for IEX. What is novel in this proposal is that (1) the proposed D-Limit order could be *displayed* and (2) the CQI functionality would be used to ''exercise discretion'' to move the order to a *less* aggressive price.[95]

Several commenters assert that the D-Limit Order type, if displayed, would result in what the commenters refer to as ''quote fading'' or ''phantom liquidity'' on IEX if market participants have difficulty accessing the D-Limit order liquidity that is displayed on IEX, and some question whether the D-Limit order type would be consistent with the requirements of Regulation NMS.

1. Quote Fading and Phantom Liquidity

Quote fading and phantom liquidity both refer, from the perspective of the liquidity taker, to the ability to execute against a displayed quote. The ability of any market participant to successfully execute against any particular displayed quote is subject to a number of factors and is not guaranteed on any market, as at any time any market participant can be seeking to execute against an order that is being repriced, changed, cancelled, or executed by a different market participant.

Some commenters express concern that displayed D-Limit orders might result in more ''quote fading'' or ''phantom liquidity'' and thus negatively impact market participants seeking to take liquidity. One commenter describes its concern ''about quote accessibility as a result of a displayed limit order being repriced based on IEX's crumbling quote indicator'' and recommends that consideration be given ''to the impact on an order attempting to seek liquidity from a posted D-Limit Order'' when the CQI causes the D-Limit order to reprice because ''the IEX protected quote that broker-dealers are attempting to access would no longer be at the price that they are trying to execute against . . . .'' [96] That commenter further asserts that even if the extent of quote fading caused by the use of D-Limit Orders is not ''meaningful,'' there is no ''*de minimis* threshold to the Firm Quote Rule'' and therefore D-Limit orders ''could further erode the integrity of a displayed quotation.'' [97] Another commenter raises the same concern, stating that D-Limit quotes would be ''nothing more than a 'maybe' quote or indication of interest.'' [98] Likewise, another commenter articulates this concern by asserting that firms ''would be blind as to how to make informed trading decisions'' because there will be no indicator in the market data feeds that will reveal when IEX's quote includes a D-Limit order, which the commenter characterizes as an order type that is subject to fading.[99] More specifically, a different commenter opines that specific types of market participants—institutional and retail traders—will be harmed by the quote fading concerns presented by D-Limit orders when those traders experience declining fill rates as they sweep the market by sending a portion of a larger order to IEX but are unable to access D-Limit orders that are being repriced by IEX.[100]

In contrast, other commenters, including institutional investors and asset managers that trade equities, do not believe D-Limit orders will less accessible. For example, one commenter says that it is ''confident that D-Limit

discretion over the execution of a D-Limit order and thus will be engaging in traditional broker-dealer activities in offering the D-Limit order type informed by the CQI, because ''its predictive nature and potential for error makes it difficult to distinguish from typical broker-dealer order routing and execution algorithms (which are also codified).'' *See* First FIA PTG Letter, *supra* note 86, at 5–6. The Commission previously addressed the CQI and IEX's discretionary order type functionality and determined that it does not result in IEX engaging in traditional broker-dealer activities. *See, e.g.,* Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142, 41153 (June 23, 2016) (File No. 10–222) (granting the application of IEX for registration as a national securities exchange). Such also is the case with IEX's D-Limit proposal, as D-Limit orders will not allow IEX to exercise any discretion on any particular order by deviating from the CQI and D-Limit functionality, which is hardcoded in the IEX rulebook. While broker-dealer algorithms also are codified, broker-dealers do not have to align their algorithms with Section 6 of the Exchange Act nor do they need to file all applicable rules with the Commission as IEX does for the CQI and its order types.

[93] Securities Exchange Act Release No 78101, (June 17, 2016), 81 FR 41142, 41153 (June 23, 2016) (File No. 10–222).

[94] *Id.*

[95] Non-displayed D-Limit orders would not raise any new or novel issues not previously considered in connection with IEX's non-displayed discretionary order types. *See, e.g.,* Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142 (June 23, 2016) (File No. 10–222) (In the Matter of the Application of: Investors' Exchange, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission). *See also* Letter from R. T. Leuchtkafer, dated August 3, 2020, at 2–3 (''Leuchtkafer Letter'') (pointing out that IEX currently reprices displayed orders in certain scenarios, including to comply with other regulatory requirements, in situations that do not involve the CQI).

[96] Letter from Ellen Greene, Managing Director, Equity and Options Market Structure, SIFMA, dated February 5, 2020, at 1–2 (''SIFMA Letter''). *See also* Letter from Andrew Stevens, General Counsel, IMC, dated January 22, 2020, at 2 (''IMC Letter'') (characterizing D-Limit as a ''perilous gimmick that creates a safe zone for illusory orders'' that would allow ''systematic quote fading'').

[97] *See* SIFMA Letter, *supra* note 96, at 3. *Cf.* Goldman Sachs Letter, *supra* note 60, at 2–3 (arguing that, with respect to firm quote requirements, ''D-Limit Orders are no different from the operation of peg order types'' and thus comply with the requirements of Rule 602 of Regulation NMS). The possibility that a displayed quotation can change before someone can access it does not, by itself, mean that the quote is not firm for purposes of Rule 602. For example, the liquidity provider that posted the order might have changed or cancelled it.

[98] *See* Letter from Mary M. Dunbar, DLA Piper LLP (US), dated March 10, 2020, at 2–3 (''DLA Piper Letter''). D-Limit orders are not equivalent to an indication of interest, because indications of interest normally require a subsequent and manual ''firm up'' instruction by the submitting member in order to execute against incoming trading interest. *See, e.g.,* Securities Exchange Act Release No. 83663 (July 18, 2018), 83 FR 38768, 38847–48 (August 7, 2018) (Regulation of NMS Stock Alternative Trading Systems; Final Rule) (discussing IOIs).

[99] *See* First Nasdaq Letter, *supra* note 71, at 2–3.

[100] *See* First FIA PTG Letter, *supra* note 86, at 3–4.

orders will be as accessible to our orders and those representing other institutional asset managers as any other liquidity is available today from other venues.'' [101] Other commenters opine that D-Limit orders could be more accessible than liquidity on other venues.[102] Another commenter asserts that quote fading ''is not a new phenomenon'' and says that they ''experience quote fading every day on every other exchange'' as latency arbitragers commonly trade ahead of their liquidity seeking orders.[103] The commenter explains that, in its trading experience, ''latency arbitragers are front-running our liquidity-seeking child orders and taking the posted liquidity we seek before our orders arrive.'' The commenter regards this as ''unnecessary intermediation'' and argues it ''is not an example of price discovery, it is a form of predatory trading that increases investor costs'' and is ''also the very behavior that D-Limit seeks to combat.'' [104] Further, one commenter believes that institutional investors would not be harmed by displayed D-Limit orders ''since institutional order 'taking' strategies are driven by a fundamental demand for liquidity and are not intentionally seeking to trade while the CQI is 'on.' '' [105] Another commenter agreed, noting that institutional traders ''almost always initiate orders during stable markets, so they should have little trouble accessing displayed D-Limit quotes'' and when they do trade using ''reactive'' strategies ''there is such a dramatic gap in speed between the elite proprietary trading firms and even the relatively fast agency brokers, that by the time these reactive agency tactics are able to act, any favorable opportunities have already been exploited by their faster counterparts'' and ''they would have likely been too late either way.'' [106]

Responding to the concerns about quote fading and phantom liquidity, IEX asserts that ''an exchange quote is accessible only to the degree that the participant is able to send a message that can execute against the quote before someone else accesses it or the quote is cancelled before the taker's order arrives.'' [107] On that point, IEX argues that the commenters raising concerns over quote fading are implying that the D-Limit repricing ''will deprive investors or their agents of prices they otherwise would be able to access.'' [108] IEX does not believe that to be the case, and explains that ''exchange quotes are not equally accessible to all participants'' but rather ''are only reliably accessible to participants using the fastest trading strategies and the fastest market information.'' [109]

For example, with respect to situations in which the NBB or NBO is in transition, IEX believes that ''quotes on exchanges that remain at the soon-to-be stale price will either be accessed first by a fast market participant, or they will be canceled before they can be executed by anyone'' and thus concludes that ''[i]n either event, quotes on other exchanges will not be accessible in these moments to institutional investors, which are not seeking to trade in these moments.'' [110] IEX instead focuses on the prospect that if the D-Limit functionality ''gives liquidity providers more incentive to provide displayed liquidity, then any investor seeking to trade in the 99.96% of the day when the CQI is off will have more opportunities to access liquidity on IEX, without the need to buy new low-latency tools.'' [111]

Some commenters question whether similar order types, if adopted by other exchanges, could collectively result in quote fading or have other negative market-wide effects. One commenter believes that the market-wide impact ''may be profound for symbols that are subject to routinely-high levels of price volatility'' or ''during times of market duress,'' and that such impact would be ''amplified'' if other exchanges adopt something similar.[112] Another commenter states that approval of this proposal would ''open a Pandora's box, as other exchanges introduce similar order types, leading to more and more liquidity 'fading' in a correlated manner, an effect which could be most pronounced in times of market stress.'' [113] Likewise, another commenter states that ''it is important to consider that most of the liquidity on IEX is 'dark'/non-displayed . . . if one or more exchanges with significant lit liquidity were to offer the same D-Limit Order or similar order types, this functionality would exacerbate the number of inaccessible quotes in the marketplace.'' [114]

IEX's D-Limit order type, if displayed, would not impair access to IEX's quotation because IEX is not introducing any additional access delay. Further, IEX would only rarely reprice the order in response to a very targeted and specific pre-defined signal that suggests a high potential for latency arbitrage. When the CQI is off, which, as discussed above, is virtually the entire regular trading hours session, a D-Limit order is simply a regular limit order and thus will be as equally accessible as any other limit order on IEX. For the small part of the day when the CQI is on, market participants that are not engaging in latency arbitrage trading strategies are unlikely to be seeking to trade with a D-Limit order precisely when it is in the process of being repriced by IEX because IEX's data shows that latency arbitrage trading (as signaled by the CQI) is very highly concentrated and reactive in nature.[115] Conversely, dozens of commenters that represent institutional traders and investors say that they do not trade in this manner and are unable to compete with the small number of firms that purchase the necessary systems, connectivity, and exchange proprietary market data to target their trading to those precise periods when crumbling quotes cause the CQI to turn ''on.'' [116] Exchanges should be able to innovate to

[101] Letter from David Brooks, Director of Trading, The London Company of Virginia LLC, dated February 20, 2020, at 2 (''The London Company Letter'').

[102] *See* Joint Letter from 27 Asset Managers, *supra* note 58 (noting that ''other exchanges with protected quotations sell multiple speeds of technology and data, which may make their quotations less accessible to those who do not purchase the same tier of access from the exchange. So, in practical terms, we believe that IEX D-Limit meets the current standards of a protected quote and these quotes will likely be more accessible to traditional investors than quotes on other exchanges.'').

[103] AJO Letter, *supra* note 60, at 4.

[104] *Id.*

[105] T. Rowe Letter, *supra* note 59, at 2. The commenter believes that D-Limit orders would help liquidity providers defend themselves against ''reactive strategies used by a small subset of proprietary trading firms that invest in high speed infrastructure to predict price changes, leverage small latency advantages, and opportunistically trade against stale quotes.'' *Id.*

[106] Proof Letter, *supra* note 51, at 5.

[107] *See* IEX First Response to Comments, *supra* note 7, at 7.

[108] *See id.*

[109] *See id.*

[110] *See id.* at 8.

[111] *See id.* at 7–8.

[112] *See* First Nasdaq Letter, *supra* note 71, at 3. *But see* IEX Second Response to Comments, *supra* note 38 (discussing data from January to April 2020 to show that the CQI does not behave profoundly differently during periods of exceptional price volatility and market duress).

[113] *See* Bacidore Letter, *supra* note 71, at 3.

[114] *See* SIFMA Letter, *supra* note 96, at 4. *See also* DLA Piper Letter, *supra* note 98, at 5; Citadel First Letter, *supra* note at 31, at 10. To the extent that another exchange seeks to adopt its own speed bump, crumbling quote indicator, and D-Limit order type, the Commission would carefully analyze it and the comments received thereon, and consider whether the new proposal is narrowly tailored to achieve its stated objectives and consistent with the Exchange Act and the rules and regulations thereunder.

[115] *See, e.g.,* IEX Second Response to Comments, *supra* note 38, at 13–14.

[116] *See, e.g.,* T. Rowe Letter, *supra* note 59, at 2 (noting that ''institutional order 'taking' strategies are driven by a fundamental demand for liquidity and are not intentionally seeking to trade while the CQI is 'on.'''').

address this competitive imbalance in a manner that is consistent with the Exchange Act.

Given how narrowly tailored the CQI is and how infrequently it activates, IEX's D-Limit order type will not result in the average market participant experiencing significant quote fading when trying to take liquidity on IEX, though, as discussed above, it will by design effect speed traders engaging in latency arbitrage. By protecting liquidity providers in a narrowly tailored way, IEX may attract additional liquidity through D-Limit orders, including from new types of market participants, which will promote more displayed liquidity that will be available to all market participants.[117] Therefore, the Commission finds that the D-Limit order type is consistent with Section 6(b)(5) of the Exchange Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

2. Automated Quotes and Rule 611

In general, Rule 611 under Regulation NMS protects the best ''automated'' quotations of exchanges by obligating other trading centers to honor those ''protected'' quotations by not executing trades at inferior prices, or ''trading through'' such best automated quotations.[118] Only an exchange that is an ''automated trading center'' displaying an ''automated quotation'' is entitled to this protection.[119] Among other things, an ''automated quotation'' must be immediately and automatically executable.[120]

Several commenters argue that D-Limit orders will not be ''automated quotations'' under Regulation NMS, and thus they should not be ''protected'' quotations under Rule 611 of Regulation NMS.[121] They argue that the D-Limit functionality, combined with the IEX speed bump and IEX's ability to bypass it to adjust the price of displayed D-Limit orders when the CQI is on, is inconsistent with the requirements for immediate and automatic execution required for automated quotations to be protected under Rule 611.[122]

Other commenters disagree and argue that D-Limit orders would qualify as protected quotations under Regulation NMS. For example, one commenter notes that the Commission, when it approved IEX's exchange registration, already concluded that IEX is an automated trading center with protected quotations.[123] The commenter asserts that ''[t]he introduction of the D-Limit Order does not alter that analysis'' and that''[t]here is no delay embedded within D-Limit Orders.'' [124] The commenter concludes that ''D-Limit Orders are no different'' and ''are as accessible as any other quote.'' [125]

The Commission previously determined that IEX can maintain a protected quotation when it approved IEX's exchange registration.[126] Because IEX is not introducing any new delay or modifying its speed bump in connection with D-Limit orders, IEX's quote can continue to be an ''automated quotation'' that is ''protected'' under Rule 611 even if it contains a D-Limit order.[127]

D. Unfair Discrimination

Section 6(b)(5) of the Exchange Act requires, among other things, that rules of the Exchange may not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[128] Several commenters argue that the D-Limit order type will unfairly discriminate against liquidity takers in favor of liquidity providers. One commenter asserts that D-Limit orders are ''specifically designed to advantage liquidity providers, and to allow them to avoid unfavorable executions,'' but ''displayed quotations on IEX will be more difficult to access for liquidity takers when the market is moving in their favor'' to the extent that IEX's quote is composed of D-Limit orders that get repriced.[129] Another commenter similarly believes that D-Limit orders will unfairly discriminate against liquidity takers, ''particularly for orders that are sent to more than one venue for execution, such as intermarket sweep orders,'' if market participants need to modify their routing practices.[130]

One commenter critiques IEX's argument that the CQI is ''on'' only for a limited duration by referring to IEX's data that shows ''a very significant portion of total trading activity will be affected, as 33.7% of marketable orders are received and 24% of displayed volume is executed during these periods.'' [131] Similarly, another commenter points to commentary from an IEX officer saying that ''[i]n November 2019, just 3 member firms at IEX were responsible for 55% of all the lit taking volume while the [CQI] Signal was 'on,' even though those firms accounted for only 13% of the total volume on IEX.'' [132] The commenter asserts that ''[b]ased upon such statistics, the Commission should consider whether latency arbitrage on

[117] *See also supra* note 68–70 and accompanying text. *See also infra* note 138 and accompanying text.

[118] *See* 17 CFR 242.611. ''Trading through'' refers to the purchase (sale) of NMS stock at a price lower (higher) than the best bid (offer).

[119] *See* 17 CFR 242.600(b)(4) (defining ''automated trading center'') and 17 CFR 242.600(b)(3) (defining ''automated quotation'')

[120] *See* 17 CFR 242.600(b)(3).

[121] *See, e.g.,* First Nasdaq Letter, *supra* note 71, at 9; HRT Letter, *supra* note 92, at 4; SIFMA Letter, *supra* note 96, at 3; and IMC Letter, *supra* note 96, at 2.

[122] *See, e.g.,* SIFMA Letter, *supra* note 96, at 3; Citadel First Letter, *supra* note 31, at 7; DLA Piper Letter, *supra* note 98, at 4; Letter from Kristen Malinconico, US Chamber of Commerce, Center for Capital Markets Competitiveness, dated April 23, 2020, at 1; Letter from John L. Thornton, Co-Chair, Hal S. Scott, President, and R. Glenn Hubbard, Co-Chair, Committee on Capital Markets Regulation, dated April 23, 2020, at 1–2 (''Committee on Capital Market Regulation Letter''); Bacidore Letter, *supra* note 71, at 2; First FIA PTG Letter, *supra* note 86, at 7; HRT Letter, *supra* note 92, at 4; First Nasdaq Letter, *supra* note 71, at 10–11. Another commenter argues that ''the combination of the 'Discretionary Limit' order type and the IEX speed bump will impair fair and efficient access to IEX displayed quotes, meaning that the intentional access delay can no longer be considered *de minimis* under the Commission's Automated Quotations Interpretive Guidance in the context of this specific order type. Therefore, displayed quotes using the 'Discretionary Limit' order type will not qualify as 'automated quotations' for purposes of Rule 611.'' *See* First FIA PTG Letter, *supra* note 86, at 6–7. *See also* HRT Letter, *supra* note 92, at 2–3; DLA Piper Letter *supra* note 98, at 4–5.

[123] *See* Goldman Sachs Letter, *supra* note 60, at 2.

[124] *Id.*

[125] *Id. See also* IEX Second Response to Comments, *supra* note 38, at 10.

[126] *See* Securities Exchange Act Release No 78102, (June 17, 2016), 81 FR 40785, 41162 (June 23, 2016) (File No. S7–03–16). *See also* Securities Exchange Act Release No. 78102 (June 17, 2016) (File No. S7–03–16) (Commission Interpretation Regarding Automated Quotations Under Regulation NMS). *See also* 17 CFR 242.600(b)(4) (defining ''automated quotations'').

[127] *See also supra* Section III.A (discussing the CQI).

[128] 15 U.S.C. 78f(b)(5).

[129] First FIA PTG Letter, *supra* note 86, at 4. *See also* First Nasdaq Letter, *supra* note 71, at 7; DLA Piper Letter, *supra* note 98, at 6. Another commenter believes that D-Limit orders will discriminate between fast and slow liquidity takers, and says that liquidity takers that do not engage in latency arbitrage will be forced to protect against financial harm from the D-Limit functionality by building technology to mimic or predict the CQI functionality. *See* DLA Piper Letter, *supra* note 98, at 6. The commenter argues that doing so would be ''a prohibitively expensive option for many of them and completely impractical if other markets adopted similar rules.'' *Id.* As further explained below, the repricing of D-limit orders will be applied only in rare and discrete moments of time when the CQI is triggered, which significantly reduces the possibility of D-Limit being applied to the detriment of liquidity takers not engaged in latency arbitrage strategies. Furthermore, as noted above, several commenters who engage in liquidity-taking trading activity—but do not employ latency arbitrage—state that they have been harmed by latency-arbitrage strategies, and do not believe the CQI will inhibit their ability to access IEX's quote. *See supra* notes 103–104.

[130] Citadel First Letter, *supra* note 31, at 7–8.

[131] *Id.* at 7.

[132] First Nasdaq Letter, *supra* note 71, at 7.

IEX is actually the serious and widespread problem that IEX asserts it to be'' and urges the Commission to ''consider whether it would be fair for IEX to discriminate against 45% of its lit taking volume to address a perceived problem with only three firms.'' [133]

Other commenters believe that D-Limit orders will not be unfairly discriminatory. For example, one commenter believes that D-Limit orders will ''equally benefit long-term investors, their brokers, and market makers alike'' and notes that ''[a]ny market participant can use D-Limit, regardless of their sophistication or technological capability, and any speed or information advantage they may or may not have.'' [134] Another commenter explains that D-Limit will ''provide any Member with narrowly targeted protection . . . but without the need for the Member to have any geographical or informational advantages or its own predictive analytical capabilities.'' [135] Some commenters suggest that the D-Limit order type will benefit all market participants in that it has the potential to increase the depth of displayed liquidity and narrow spreads in some stocks,[136] contribute to price discovery,[137] and encourage more market participants, particularly long term investors, to submit displayed liquidity on IEX.[138]

In response to these comments, IEX agrees that the D-Limit order type will benefit liquidity providers ''by protecting their orders during discrete moments when latency arbitrage strategies are most aggressive'' but argues that such benefit is not unfair because, in turn, liquidity takers will benefit from ''an increased supply of liquidity from a more diverse group of participants'' and will attract ''more stable liquidity that is not driven by sub-millisecond price moves, whether they are 'making' or 'taking' liquidity.'' [139] IEX emphasizes that the D-Limit order type ''is not intended to ensure that trades are profitable'' but rather is designed to promote displayed liquidity.[140]

IEX's proposal identifies a legitimate disadvantage in latency arbitrage, which many market participants say they face when posting displayed liquidity on exchanges. As further explained above, the proposed D-Limit order type (operating in conjunction with the CQI) is designed to operate in a manner that protects investors and the public interest because it is narrowly tailored to address this concern.[141] Additionally, a large number of market participants (including a diverse group of agency brokers, institutional traders, asset managers, and pension funds that collectively manage trillions of dollars' worth of investor assets) commented on this proposal to confirm that aggressive liquidity taking activity during CQI events is of such concern and impact on them, and the investors on whose behalf they invest, that it affects their trading and can dissuade them from posting liquidity.

The Commission has critically reviewed and considered the data and analysis that IEX provides in its submissions to show that non-pegged limit orders on IEX are systematically subjected to adverse impacts of latency arbitrage strategies. IEX has provided extensive information in its filing and the letters it submitted in response to comments. Further, because the CQI formula is codified in IEX's rulebook, it is fully transparent and commenters had the opportunity not only to review IEX's material and critique it, but to submit their own trading data and analysis to the Commission on the existence of latency arbitrage, the effectiveness of the CQI in detecting it, and the efficacy of IEX's discretionary order types in combating it, though no commenter did so.

IEX's receipt of a significant percentage of marketable orders in a short period of time during crumbling quote events negatively affects market participants that post displayed liquidity on IEX. As discussed above, IEX states that though the CQI was, on average, on for only 0.007% of the trading day for each security, IEX received 33.7% of marketable orders and executed 24% of displayed volume during this short time period.[142] Subsequently, during the very volatile period of January to April 2020, IEX reports that the CQI was on between 0.026% (for January 2020) and 0.125% (for March 2020) of the time during regular market hours [143] and the percent of displayed volume that traded when the CQI was ''on'' during that period ranged between 22% (for March 2020) to 24.4% (for January 2020).[144] The displayed volume figures reflect the fact that relatively little of IEX's overall transaction volume currently involves the execution of displayed orders.[145] The effects of latency arbitrage therefore appear more pronounced for liquidity providers that display interest on IEX. Further, IEX has shown that the CQI performs consistently over calm markets and periods of more volatile trading, so

[133] *Id.* IEX responds by suggesting that the commenter ''misread[s]'' that data and asserts that ''aggressive taking orders while the CQI is on are strongly correlated to latency arbitrage strategies, not just those from the top three takers.'' IEX First Response to Comments, *supra* note 7, at 14. As discussed above, the Commission concludes that latency arbitrage is occurring on IEX and it is a problem for liquidity providers on IEX. As further discussed above, the Commission concludes that IEX's D-Limit proposal appropriately balances competition among orders and the interests of long term and short term traders in a manner that meets the needs of long term investors through a narrowly tailored order type that will promote liquidity for all market participants.

[134] T. Rowe Price Letter, *supra* note 59, at 2. *See also* CII Letter, *supra* note 60, at 2; The London Company Letter, *supra* note 101, at 2; Joint Letter from 27 Asset Managers, *supra* note 58, at 2; Vanguard Letter, *supra* note 65, at 3.

[135] Letter from Tyler Gellasch, Executive Director, Healthy Markets Transparency and Trust, dated February 14, 2020, at 7–8 (''Healthy Markets First Letter''). *See also* Leuchtkafer Letter, *supra* note 95, at 2–3.

[136] *See, e.g.,* Letter from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, LLC, dated January 16, 2020, at 2; and Letter from Eric Swanson, CEO, XTX Markets LLC (Americas), dated January 17, 2020, at 5.

[137] *See, e.g.,* Letter from Peter D. Stutsman, Global Head of Equity Trading, Capital Group, dated March 16, 2020, at 2; Letter from Curtis F. Bradbury, Chief Operating Officer, Stephens Inc., dated February 28, 2020, at 2; and Letter from David Cannizzo, Managing Director, Head of Electronic Trading & Market Structure, and Rich Delayo, Director, Electronic Trading & Market Structure, Raymond James & Associates, Inc., dated February 24, 2020 (''Raymond James Letter''), at 2; Allianz Letter, *supra* note 59.

[138] *See, e.g.,* Joint Letter from 27 Asset Managers, *supra* note 58; Clearpool Letter, *supra* note 61, at 2; Themis Letter, *supra* note 63, at 3; CII Letter, *supra* note 60, at 4; Zoican Letter, *supra* note 60, at 2; and Vanguard Letter, *supra* note 65, at 2.

[139] IEX Second Response to Comments, *supra* note 38, at 20. *See also* Allianz Letter, *supra* note 59 (asserting that latency arbitrage ''hurts the interests of our clients and the performance of their investments'' not just when they post liquidity but also when they take liquidity because they ''have to pay more (when buying) or sell for less as there is less displayed liquidity at the best bid and offer prices'').

[140] IEX Second Response to Comments, *supra* note 38, at 20. IEX also notes that ''there are trade-offs between using D-Limit, as opposed to a pegged or standard limit order, including in cases where a firm's priority is obtaining a faster execution rather than avoiding adverse selection.'' *Id.* at 21. Further, IEX asserts that ''unlike the 'asymmetric advantages' that other exchanges routinely sell today (different connectivity, market data, trading protocols) for millions of dollars, IEX is offering D-Limit to all of its members equally and at no additional cost compared to any other limit order.'' *Id.* at 5.

[141] *See supra* Section III.A.

[142] *See id.* at 72001–02.

[143] *See* IEX Second Response to Comments, *supra* note 38, at 16. IEX states that the CQI was ''on'' longer in March 2020 ''because of the extraordinary increase in the number of quote changes per stock in that month.'' *Id.* at 17.

[144] *See id.* IEX observes that this proportion remained ''remarkably consistent throughout the period'' even though the absolute number of trades was much higher in March and April. *See id.*

[145] IEX states in its filing that only 13% of traded volume was from displayed limit orders. *See* Notice, *supra* note 3, at 72002.

its application to D-Limit orders is well understood.

Based on the Commission's understanding of broker-dealers, as also reflected in the comment letters from institutional traders, most broker-dealers have not purchased the fastest connectivity and market data from multiple individual exchanges that are necessary to be able to trade at the precise moments in time identified by the CQI. In the race to access a ''stale'' quote, speed is paramount, and the systems, connectivity, and data needed to achieve the necessary speed to take advantage of the information asymmetries that underlie latency arbitrage are expensive and uncommon among broker-dealers.

The CQI formula, by design, identifies only successively crumbling markets. As shown by the data above, it is not overbroad and does not, for example, turn on in response to intermarket sweeps from large orders that execute simultaneously across multiple markets. Thus, D-Limit orders will not reprice in response to normal market conditions and regular liquidity sweeps, and thus will not harm long-term investors who take liquidity. Rather, the unique crumbling market conditions that the CQI identifies are rare, and can only be recognized and acted on by the most sophisticated broker-dealers whose ability to profit from these moments comes at the expense of the institutional investors who do not or cannot reasonably compete. IEX has proposed an order type to offset the speed advantage that some traders have in a manner that is not overbroad in its application.[146]

Accordingly, the Commission concludes that IEX has identified and quantified a latency arbitrage concern that adversely impacts a diverse set of participants on its exchange, many of which are sophisticated about market structure and have commented on how they have seen first-hand the impact as they trade in the markets on behalf of others, including public investors. In addressing the adverse impacts of latency arbitrage, the Commission acknowledges that D-Limit orders will provide a benefit to liquidity providers but not liquidity takers, and will negatively impact liquidity takers that employ latency arbitrage strategies. For the reasons discussed below, the Commission finds that neither the benefit provided to liquidity providers nor the negative effects on liquidity takers employing certain strategies is unfairly discriminatory under the Exchange Act.

IEX has narrowly tailored the functionality of D-Limit orders to address a very specific trading dynamic that takes place during an exceptionally small fraction of the trading day (for any one CQI event and collectively for all CQI events across different types of stocks and under different market conditions). Disparate capabilities with respect to systems, connectivity, and market data between liquidity providers and liquidity takers using latency arbitrage strategies disadvantage the ability of liquidity providers to update potentially stale quotes. While displayed D-Limit orders may impact a large number of marketable orders that seek to access a stale D-Limit quote precisely when IEX is in the process of repricing it, that is the specific harm against which IEX is seeking to protect liquidity providers—the combination of a large number of marketable orders all collectively targeting those infrequently occurring precise moments when disparate access to low-latency systems, connectivity, and data sources favors a few short term traders at the expense of long term traders.[147]

IEX's D-Limit order attempts to address that advantage through a narrowly tailored order type that carries out the liquidity provider's instructions by exercising discretion infrequently to update the D-Limit order's limit price using predetermined, transparent, and rule-based automated standards.[148] Further, IEX will allow all traders to use D-Limit orders on the same terms and without additional charge to protect their limit orders from targeted latency arbitrage. D-Limit orders consequently have the potential to encourage more types of market participants to post more displayed liquidity on an exchange, and may contribute to price discovery and displayed depth to the benefit of all market participants.

Thus, the proposal is not unfairly discriminatory because it makes available a benefit that any liquidity provider can readily access and provides a narrowly focused protection that is calibrated to impact only the small number of liquidity takers that engage in latency arbitrage in order to incentivize liquidity providers to post orders for the benefit of all market participants. While protecting against latency arbitrage with this order type will affect a large number of marketable orders received in small increments of time, those orders dissuade many liquidity providers from posting limit orders on exchanges. Consequently, D-Limit orders should benefit all market participants by incentivizing more firms to post limit orders and thereby contribute to liquidity that all market participants can access. Finally, as discussed above, D-Limit orders will encourage long term investors to participate in the displayed exchange market by protecting them against one particular strategy employed by short term traders. It is not unfairly discriminatory for an exchange to address that advantage in a narrowly tailored manner that promotes investor protection and the public interest. Accordingly, the Commission concludes that IEX's proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission is mindful that, in considering the IEX proposal, some commenters compare it to a recent proposal from CboeEDGA to adopt an access delay of up to 4 milliseconds for all liquidity taking orders during which liquidity providers could continue to access their orders without delay.[149] One commenter states that IEX's D-Limit proposal is similar to the CboeEDGA proposal in that liquidity takers would be disadvantaged in favor of liquidity providers, and liquidity providers on the host exchange could be advantaged vis-à-vis liquidity providers on other exchanges that do not offer similar protections.[150] One commenter questions the data provided by both exchanges as to the existence of a problem, its purported impact, or the

[146] *See supra* Section III.A.

[147] In addition, non-displayed D-Limit orders will not affect liquidity takers that cannot see non-displayed orders and thus would not purposefully and knowingly route to IEX to trade with them.

[148] As discussed above, IEX's rules set forth the precise predetermined mathematical formula that IEX uses to determine whether a ''crumbling quote'' situation exists and the D-Limit order abides by those rules based on system logic in an entirely automated manner. Neither IEX nor the member submitting the order has any actual discretion or ability to exercise individualized judgment when using a D-Limit order. When the CQI is off (on average approximately 99% of the regular trading day), a D-Limit order will behave like any other limit order. When the CQI is on, IEX will only reprice the specific side (bid or offer) at issue and will only move the price to a less aggressive price that is only one MPV away (lower for a bid or higher for an offer) from the CQI price and IEX will not provide the user with any optionality to do otherwise. Further, when a D-Limit order reprices, it will receive a new timestamp, and thus will not receive any priority advantage over other orders.

[149] *See* Securities Exchange Act Release No. 88261 (Feb. 21, 2020), 85 FR 11426 (Feb, 27, 2020) (CboeEDGA–2019–012) (order disapproving proposed rule change to introduce a liquidity provider delay mechanism) (''CboeEDGA Order'').

[150] *See* First FIA PTG Letter, *supra* note 86, at 4. *See also* IMC Letter, *supra* note 96, at 2 and Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, dated April 23, 2020, at 1 (''Second FIA PTG Letter''). The Commission addresses concerns about competitive disadvantages in the next section.

benefits of the proposed solution.[151] The commenter also questions why IEX is providing a benefit ''to sophisticated proprietary trading firms acting as liquidity providers without a corresponding obligation.'' As noted above, any user will be able to submit D-Limit orders.[152] Two other commenters assert that the concerns raised about the CboeEDGA proposal are similar to the concerns that these commenters raise for this proposal, notably the quote fading, unfair discrimination, burden on competition, and narrowly tailored concerns discussed above.[153]

Another commenter notes that, unlike CboeEDGA's proposal, the D-Limit order will not provide market participants with an ''option'' to change their order but rather will reprice 100% of the time when the CQI triggers, which process is both ''transparent and certain.'' [154]

Another commenter that opposed CboeEDGA's proposal and supports IEX's proposal distinguishes the two proposals by explaining that D-Limit is ''non-discriminatory'' in that any market participant can use it without ''technological investment that is generally outside the reach for most institutional investors and their brokers.'' [155] The commenter also explains that IEX's proposal is ''deterministic and transparent'' and presents less of a quote fading concern for institutional investors since the CQI is narrowly tailored.[156]

The two proposals differ substantially.[157] Specifically, IEX, unlike CboeEDGA, presented substantial evidence of latency arbitrage occurring on its market and has narrowly tailored D-Limit orders to specifically protect against it. In the CboeEDGA disapproval order, the Commission stated that CboeEDGA did not ''provide specific analysis as to why it is appropriate to apply the 4 millisecond delay to all incoming executable orders that would remove liquidity from the EDGA Book from all market participants as opposed to tailoring a response to target the trading of a relatively small number of market participants who engage in latency arbitrage.'' [158] Second, CboeEDGA did not address the impact on relatively slower liquidity providers, who might be unable to cancel or modify their quotes during the 4 millisecond delay and thus ''would continue to face the risk of adverse selection'' and would be unable to benefit from the CboeEDGA delay.[159] Finally, CboeEDGA did not ''provide[] specific analysis or demonstrate[] that the proposed rule change would not permit unfair discrimination against liquidity taking orders that are not related to latency arbitrage as they would be treated in the same manner as orders engaged in latency arbitrage that the Exchange seeks to target in its effort to protect EDGA liquidity providers.'' [160]

In contrast, as further explained above, IEX provides data and analysis that demonstrate a harm caused by latency arbitrage strategies employed by liquidity takers with significant technological advantages over liquidity providers and those liquidity takers that do not engage in latency arbitrage trading strategies.[161] Because IEX will reprice all D-Limit orders without further action from the user, all users will benefit equally regardless of their technological capabilities and ability to take action within a prescribed period. Likewise, D-Limit orders will be repriced only in rare and discrete moments of time when the CQI is triggered, which would significantly reduce the possibility of D-Limit being applied to the detriment of liquidity takers not engaged in latency arbitrage strategies. Thus, IEX's D-Limit proposal does not raise the same issues as those raised by the CboeEDGA proposal because D-Limit is narrowly tailored to be triggered only at precise and specific moments in time during which resting orders may be exposed specifically to latency arbitrage.[162]

E. Burden on Competition

Finally, the Exchange's proposal is consistent with Section 6(b)(8) of the Exchange Act,[163] which requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Several commenters question whether D-Limit orders will impose a burden on competition that is inconsistent with the Exchange Act.[164] One commenter argues that D-Limit orders ''are designed to take advantage of the fact that other market participants are subject to the IEX speed bump when updating prices, whereas D-Limit orders are not.'' [165] Another commenter claims that the D-Limit order type ''advantages liquidity providers on IEX over liquidity providers on other venues, as IEX liquidity providers can free-ride on the pricing heuristics and risk taking capabilities of others by posting prices equal to the NBBO and relying on IEX to observe away executions and reprice D-Limit orders to frequently avoid unfavorable executions.'' [166]

Other commenters that support the proposal say it is a narrowly tailored competitive response that facilitates the ability of natural liquidity providers to protect themselves from microsecond liquidity arbitrage, and therefore it furthers competition.[167] For example,

[151] *See* Citadel First Letter, *supra* note at 31, at 5–6. The commenter further states that a D-Limit order will ''lose much of its value if IEX is alone at the NBBO and therefore routed to first, as the CQI signal will not provide added protection in this situation'' and therefore may ''not generally be expected to narrow prevailing market-wide spreads.'' Id. at 6. As the Commission discusses above, D-Limit orders are intended to incentivize investors to display limit orders in general and at any price. Even if D-Limit orders are not used to narrow the best displayed quotes, to the extent they add displayed liquidity at the best displayed quotes liquidity takers would still benefit as they would have access to more liquidity at the best prices.

[152] *See* Citadel First Letter, *supra* note at 31, at 9. The consideration of benefits provided to registered market makers in return for obligations to the market recognizes that market makers are typically afforded special privileges by exchanges, including preferential priority and margin treatment, in return for their undertaking quoting and other obligations. D-Limit orders will be available for use by any market participant and will not entitle the user to any additional benefits.

[153] *See* First Nasdaq Letter, *supra* note 71, at 11; Citadel First Letter, *supra* note at 31, at 2. *See also* HRT Letter, *supra* note 92, at 3; Committee on Capital Market Regulation Letter, *supra* note 122, at 2. *Cf.* SIFMA Letter, *supra* note 96, at 3.

[154] Healthy Markets First Letter, *supra* note 135, at 2. *See also* T. Rowe Letter, *supra* note 59, at 2.

[155] T. Rowe Letter, *supra* note 59, at 2.

[156] *See id.*

[157] The CboeEDGA proposal would have broadly imposed a non-tailored access delay constantly and consistently during trading hours to all liquidity taking messages, but liquidity providers would have been able to access their displayed orders (*e.g.,* to change or cancel them) without being subject to the delay.

[158] CboeEDGA Order, *supra* note 149, at 11436.

[159] *Id.* at 11436.

[160] *Id.* at 11435.

[161] *See supra* note 40 and accompanying text and Section II.A.

[162] *See also* IEX First Response to Comments, *supra* note 7, at 7–9; Clearpool Letter, *supra* note 61, at 2–3; and Healthy Markets First Letter, *supra* note 135 (each contrasting D-Limit with the CboeEDGA proposal).

[163] 15 U.S.C. 78f(b)(8).

[164] *See* 15 U.S.C. 78f(b)(8) (requiring that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act).

[165] *See* HRT Letter, *supra* note 92, at 3. The commenter stated that ''[e]xchanges should not have the ability to make investment pricing decisions such as pricing orders using price predictions'' and argues that the resulting ''competition will not be on fair terms as exchanges have inherently better access to the matching engine . . . .'' *Id.* at 2.

[166] Citadel First Letter, *supra* note 31, at 10. *See also* First FIA PTG Letter, *supra* note 86, at 4.

[167] *See, e.g.,* Allianz Letter, *supra* note 59. *But see* Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, Nasdaq, Inc., dated March 26, 2020, at 2 (''Some broker-dealers choose to compete with proprietary trading firms, and purchase data and connectivity products that allow them to do so, while others choose not to do so.'').

one commenter believes that ''the D-Limit order type is pro-competitive'' because it offers market participants that do not buy the fastest market data ''a potential way to mitigate the risk of posting liquidity without participating in a costly high-speed race to minimize latency.'' [168]

In response to the comments, IEX asserts that ''[t]he asymmetry involved in the latency arbitrage strategies that are the focus of D-Limit favors the few participants that can take liquidity using the most sophisticated tools, in contrast to both market makers and brokers acting for investors that provide liquidity by posting displayed quotes.'' [169] In particular, IEX argues that brokers representing investors ''must cope with the latency caused by geographic dispersion of exchanges, the additional latency caused by systems configurations required to comply with regulatory and risk parameters in their capacity as agent, and the need to route orders in different ways to meet the needs of their various clients'' and, as a result, they are ''destined to lose out to firms that can prioritize speed over all other factors.'' [170] IEX concludes that the resulting ''imbalance in market competition between those who provide liquidity, versus those who take it, necessarily reduces the incentives to provide displayed quotes and therefore reduces liquidity available to investors.'' [171] Further, IEX argues that because every D-Limit order will ''be required to specify a limit price, which may or may not be equal to the NBBO,'' these orders should ''contribute meaningfully to price discovery, as commenters have stated.'' [172]

As discussed at length above, the D-Limit order type is narrowly tailored to accomplish its objectives by mitigating the effects of latency arbitrage for long-term investors while incentivizing more displayed liquidity on the Exchange. Presently, as noted by several commenters with institutional trading experience, many market participants are reluctant to post displayed liquidity because of their prior experience with having that interest be adversely selected by latency arbitrage traders with whom they cannot reasonably compete.[173] To take advantage of their low-latency systems and technology, latency arbitrage traders purchase connectivity and proprietary market data from exchanges, which they utilize to react faster to changing market prices than other market participants. Those other market participants might not be able to afford those same low-latency systems, or purchase high-end connectivity and market data from multiple individual exchanges to protect themselves. The resulting competitive imbalance between latency arbitrage traders and others can make those other market participants reluctant to post displayed limit orders on exchanges. The lack of displayed liquidity can, in turn, harm price discovery and lead to greater off-exchange trading, which can negatively impact markets and market participants. Exchanges should be able to innovate to address this competitive imbalance in a manner that is consistent with the Exchange Act.

IEX's proposal seeks to better balance the interests of liquidity providers and long-term investors seeking liquidity with those of short-term investors utilizing latency arbitrage strategies. The D-Limit functionality will help mitigate the effects of latency arbitrage on liquidity providers and, as explained above, will likely lead to more displayed liquidity on the Exchange, which benefits all market participants through additional liquidity and enhanced public price discovery.[174] Further, because it is so narrowly tailored, liquidity takers who are not employing latency arbitrage strategies are unlikely to be seeking to remove a D-Limit order when it is being repriced, and thus D-Limit orders will not impose a burden on liquidity.

Accordingly, the Commission finds that D-Limit orders will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The D-Limit order type is IEX's competitive response to mitigate current competitive imbalances between liquidity providers and latency arbitrage liquidity takers. It is designed to encourage market participants to post more priced limit orders, including displayed orders, on IEX, and thereby promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market, and, in general, protects investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[175] that the proposed rule change (SR–IEX–2019–15) be, and it hereby is, approved.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–19204 Filed 8–31–20; 8:45 am]

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[168] Vanguard Letter, *supra* note 65, at 3 (further noting that ''[o]rganizations that do not pay for data products that provide unparalleled speed advantages are discouraged from posting liquidity on exchanges because they may receive unfavorable executions''). *See also* Allianz Letter, *supra* note 59; Raymond James Letter, *supra* note 137.

[169] IEX First Response to Comments, *supra* note 7, at 3.

[170] *Id.*

[171] *Id.*

[172] IEX Second Response to Comments, *supra* note 38, at 21.

[173] *See supra* note 116 and accompanying text.

[174] *See supra* Section III.A.

[175] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89693; File No. 265–33]

Asset Management Advisory Committee

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: Notice is being provided that the Securities and Exchange Commission Asset Management Advisory Committee (''AMAC'') will hold a public meeting on September 16, 2020, by remote means. The meeting will begin at 9:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.* Persons needing special accommodations to take part because of a disability should notify the contact person listed below. The public is invited to submit written statements to the Committee. The meeting will include a discussion of matters in the asset management industry relating to the ESG and Private Investments Subcommittees; and improving diversity and inclusion. It will also include a follow-up discussion on COVID–19 matters relating to AMAC's meeting of May 27, 2020.

DATES: The public meeting will be held on September 16, 2020. Written statements should be received on or before September 11, 2020.

ADDRESSES: The meeting will be held by remote means and webcast on *www.sec.gov.* Written statements may be submitted by any of the following methods. To help us process and review your statement more efficiently, please use only one method. At this time, electronic statements are preferred.

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rule-comments@sec.gov.* Please include File Number 265–33 on the subject line; or

Paper Statements

• Send paper statements to Vanessa Countryman, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to File No. 265–33. This file number should be included on the subject line if email is used. The Commission will post all statements on the Commission's website at (*http://www.sec.gov/comments/265-33/265-33.htm*).

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. For up-to-date information on the availability of the Public Reference Room, please refer to *https://www.sec.gov/fast-answers/answerspublicdocshtm.html* or call (202) 551–5450.

All statements received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Christian Broadbent, Senior Special Counsel, Sirimal Mukerjee, Branch Chief, or Angela Mokodean, Branch Chief, at (202) 551–6720, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, and the regulations thereunder, Dalia Blass, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: August 27, 2020.

Vanessa A. Countryman,

Committee Management Officer.

[FR Doc. 2020–19300 Filed 8–31–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89678; File No. SR–LCH SA–2020–002]

Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to Clearing of Markit iTraxx MSCI ESG Screened Europe Index Contracts

August 26, 2020.

I. Introduction

On June 26, 2020, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), 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,[2] a proposed rule change to amend the LCH SA Methodology Services Reference Guide: CDS Margin Framework (''CDS Margin Framework'') to: (i) Permit the clearing of CDS contracts on the iTraxx MSCI ESG Screened Europe index (the ''ESG Index''); (ii) make certain clarifications to facilitate validations of the CDS Margin Framework; and (iii) correct drafting errors in the CDS Margin Framework. On July 8, 2020, LCH SA filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1 (hereafter the ''proposed rule change''), was published for comment in the **Federal Register** on July 15, 2020.[4] The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Clearing of the ESG Index

As described further in the Notice, the ESG Index is a subset of the iTraxx Europe Main Index containing companies from the iTraxx Europe Main Index (transactions on which LCH SA currently clears) that meet certain corporate responsibility criteria.[5] Before clearing CDS contracts on the ESG Index, LCH SA must ensure it can account for the risks associated with clearing transactions in the ESG Index. To account for such risks, LCH SA would apply its CDS Margin Framework to CDS contracts on the ESG Index. Thus, by modifying the CDS Margin Framework to apply to CDS contracts on the ESG Index, the proposed rule change would permit LCH SA to clear transactions in the ESG Index.

To apply the CDS Margin Framework to transactions in the ESG Index, the proposed rule change would make two changes to the CDS Margin Framework. First, in Sections 2.3.3 and 3.8.1.3, the proposed rule change would remove references to specific CDS indices so that the CDS Margin Framework no longer refers to these indices by name (like the iTraxx Europe Main Index). The proposed rule change would replace these specific references with generic references to an index or indices. Thus, the proposed rule change would help to ensure that the CDS Margin Framework applies to CDS contracts on all indices that LCH SA clears, including the ESG Index, rather than the specific indices currently named in the CDS Margin Framework.

Second, in Section 3.8.1.3, the proposed rule change would replace a specific reference to the constituents of the iTraxx Europe Main Index with a more generic reference to the constituents of the indices cleared by LCH SA and revise a formula to make the formula applicable to the iTraxx Europe Main Index and its sub-indices, which would include the ESG Index (as mentioned above, the ESG Index is a subset of the iTraxx Europe Main Index). Again, these changes would help to ensure that these aspects of the CDS Margin Framework apply to CDS contracts on all indices that LCH SA clears, including the ESG Index.

LCH SA represents that clearing of CDS contracts on the ESG Index will not require any other changes to the CDS Margin Framework or LCH SA CDS Clearing Rule Book.[6]

B. Clarifications to the CDS Margin Framework To Facilitate Validations

The proposed rule change would also make the following changes to the CDS Margin Framework. These changes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 corrected minor errors in the description of the proposed rule change as originally filed with the Commission by explaining the clarifications made to Sections 3.2 and 3.8 of the CDS Margin Framework and removing a description of a change not being made as part of this filing.

[4] Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Introduction of Clearing of the New Markit iTraxx MSCI ESG Screened Europe Index Contracts, Exchange Act Release No. 89268 (July 9, 2020), 85 FR 42959 (July 15, 2020) (SR–LCH–SA–2020–002) (''Notice'').

[5] *See* Notice, 85 FR at 42960. This description is excerpted from the Notice, 85 FR at 42959. Capitalized terms not otherwise defined herein have the meanings assigned to them in the CDS Margin Framework or the LCH SA CDS Clearing Rule Book, as applicable.

[6] *See* Notice, 85 FR at 42960.

address changes requested by LCH SA's Risk Model Validation team so that it can better assess the CDS Margin Framework.

First, the proposed rule change would amend Section 3.8 with respect to wrong way risk margin. In Section 3.8.1.2, the proposed rule change would add a distinction between CDS contracts on Senior Unsecured Debt securities and CDS contracts on Senior Loss Absorbing Capacity securities. With this change, LCH would calculate wrong way risk margin for CDS contracts on these securities separately, as two different instruments. Next, the proposed rule change would add explanation to Section 3.8.2 to better describe the calibration of certain changes to the calculation of the wrong-way risk component of margin when applying that component to certain indices that contain U.S.-based companies.

Similarly, the proposed rule change would amend Section 4.1, regarding liquidity and concentration risk margin. The proposed rule change would add further description to Section 4.1 of the parameters used in a formula that is part of the calculation of liquidity and concentration risk margin. Also in Section 4.1, the proposed rule change would add description to explain further a variable in a formula that LCH SA uses to compute the Average Liquidity Score and how the value of that variable corresponds to the particular days in the time period that LCH uses to compute the average of the score. Finally, the proposed rule change would amend Section 4.1.8, regarding a formula used in the determination of the liquidity charge for index basis packages, to make a component of that formula an absolute value.

Finally, in anticipation of the transition from the Euro Overnight Index Average (EONIA) to the new Euro Short-Term Rate and the Fed Funds Rate to the Secured Overnight Financing Rate, the proposed rule change replace references to a specific named interest rate (like EONIA) with more generic references to a rate, in Section 5.2.

C. Corrections to the CDS Margin Framework

In addition to the clarifications requested by LCH SA's Risk Model Validation team, the proposed rule change would make a number of other updates to the CDS Margin Framework to correct drafting errors.

First, Section 2.3.3 names three specific dealers that LCH may use as sources for historical price data. The proposed rule change would remove references to these specific dealers and instead refer generically to dealers and their history of prices. LCH SA is making this change because it may wish to contact other dealers, as needed, beyond those currently named in Section 2.3.3. Thus, the revised drafting would remove an unintentional limitation on LCH SA's ability to obtain historical price data from a variety of dealers.

Next, Section 3.2 contains a table that describes, in a summary format, the various components of LCH SA's margin methodology and whether those components apply to CDS and options on index CDS. This table in Section 3.2 currently incorrectly states that wrong way risk margin does not apply to options on index CDS. The proposed rule change would correct this drafting error by amending the table to state that wrong way risk margin does apply to options on index CDS.

Section 3.5.6 contains formulas that LCH SA uses to calculate profit and loss for the spread margin and short charge component of margin. The proposed rule change would correct these formulas to reflect the fact that the same date is selected to calculate the portfolio profit and loss for all contracts in the portfolio.

Similarly, the proposed rule change would update the list of CDS contracts considered in Section 3.6. Section 3.6 describes LCH SA's calculation of margin associated with interest rate risk. This calculation considers CDS contracts of varying lengths, starting at one month. The proposed rule change would remove from this calculation CDS contracts lasting nine months. Due to a change imposed by ISDA related to the interest rate curve, LCH SA represents that it is no longer correct to include CDS contracts lasting nine months.

Section 3.8 provides an overview of wrong way risk margin. As part of this overview, Section 3.8 also describes the short charge component of margin. As currently stated, this description of the short charge component is incorrect because it states that short charge covers the risk that two entities default. LCH SA represents that this is not correct and is a drafting error because the short charge component covers the risk that at least one entity defaults. The proposed rule change would correct this description to note that the short charge covers the risk that at least one entity defaults.

Finally, Section 3.8.1 contains a number of formulas related to the calculation of wrong way risk margin. LCH SA states that these formulas as drafted are incomplete because they are missing a second value of zero. The proposed rule change would correct this drafting error by adding to the formulas the second value of zero.

III. Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.[7] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[8] and Rule 17Ad–22(e)(6)(i) thereunder.[9]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of LCH SA be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to assure the safeguarding of securities and funds which are in the custody or control of LCH SA or for which it is responsible.[10]

The Commission believes the changes to the CDS Margin Framework described in Section II.A above should facilitate LCH SA's clearing of CDS contracts on the ESG Index by ensuring that LCH SA's margin calculations apply to the risks of clearing such contracts. Because accounting for the risks of clearing CDS contracts on the ESG Index is necessary before LCH SA may begin clearing such contracts, the Commission believes this aspect of the proposed rule change should facilitate LCH SA's clearing of CDS contracts on the ESG Index and, therefore, the prompt and accurate clearance and settlement of CDS contracts and transactions.

Moreover, the Commission believes the changes to the CDS Margin Framework described in Section II.B above should improve LCH SA's ability to assess and validate the CDS Margin Framework.[11] Because such assessments could identify potential errors or other issues with the CDS Margin Framework,

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(6)(i).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] The Commission notes that, pursuant to Rule 17Ad-22(e)(6)(vii), LCH SA must 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 requires a model validation for its margin system and related models to be performed not less than annually or more frequently as required by its risk management framework.

the Commission believes that, by improving LCH SA's ability to assess and validate the CDS Margin Framework, the changes described in Section II.B above should help to ensure the continued performance of the CDS Margin Framework and, therefore, LCH SA's ability to calculate margin using the CDS Margin Framework. For similar reasons, the Commission believes the changes described in Section II.C above should improve the CDS Margin Framework, and LCH SA's ability to calculate margin using the CDS Margin Framework, by correcting drafting errors.

Because they should improve LCH SA's ability to calculate margin using the CDS Margin Framework, the Commission believes that the changes described in Section II.B and Section II.C above should enhance LCH SA's ability to use margin to avoid losses that could result from miscalculating the risks associated with clearing transactions. The Commission further believes that these losses could negatively affect LCH SA's ability to clear and settle transactions and safeguard funds. Therefore, the Commission believes that by improving LCH SA's ability to avoid losses that could result from mismanaging the risks associated with clearing transactions, these aspects of the proposed rule change should promote the prompt and accurate clearance and settlement of CDS contracts and transactions and assure the safeguarding of securities and funds which are in the custody or control of LCH SA or for which it is responsible.

For these reasons, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[12]

B. Consistency With Rule 17Ad–22(e)(6)(i)

Rule 17Ad–22(e)(6)(i) requires that LCH SA 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.[13] As discussed above, the Commission believes the changes to the CDS Margin Framework described in Section II.A above should facilitate LCH SA's clearing of CDS contracts on the ESG Index by modifying LCH SA's margin calculations to take into account the risks of clearing such contracts. The Commission therefore believes these changes should help to ensure that LCH SA's margin system considers, and produces margin levels commensurate with, the risks and particular attributes of CDS contracts on the ESG Index.

Moreover, as discussed above, the Commission believes the changes described in Section II.B above should improve LCH SA's ability to assess and validate the CDS Margin Framework. The Commission further believes this aspect of the proposed rule change should help LCH SA to identify any possible errors in, and make improvements to, the CDS Margin Framework. Similarly, as discussed above, the Commission believes the changes described in Section II.C above should improve the CDS Margin Framework by correcting drafting errors. The Commission further believes this aspect of the proposed rule change should help resolve possible errors in applying the CDS Margin Framework and reduce the possibility for confusion or mistakes in using the CDS Margin Framework. Finally, by helping to improve the CDS Margin Framework, resolve possible errors, and reduce the possibility for confusion or mistakes, the Commission believes that the changes described in Section II.B and Section II.C above should help to ensure that LCH SA's margin system considers, and produces margin levels commensurate with, the risks and particular attributes of the transactions cleared by LCH SA.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(6)(i).[14]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[15] and Rule 17Ad–22(e)(6)(i) thereunder.[16]

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act[17] that the proposed rule change, as modified by Amendment No. 1 (SR–LCH–SA–2020–002), be, and hereby is, approved.[18]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

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[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(6)(i).

[14] 17 CFR 240.17Ad–22(e)(6)(i).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(e)(6)(i).

[17] 15 U.S.C. 78s(b)(2).

[18] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89684; File No. SR–NYSE–2019–67]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To Amend Chapter One of the Listed Company Manual To Modify the Provisions Relating to Direct Listings

August 26, 2020.

I. Introduction

On December 11, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Chapter One of the Listed Company Manual (''Manual'') to modify the provisions relating to direct listings. On December 13, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 30, 2019.[3] On February 13, 2020, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 26, 2020, the Commission instituted proceedings to determine whether to approve or disapprove the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87821 (December 20, 2019), 84 FR 72065 (December 30, 2019) (''Original Notice''). Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2019-67/srnyse2019-67.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 88190 (February 13, 2020), 85 FR 9891 (February 20, 2020). The Commission designated March 29, 2020, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

proposed rule change, as modified by Amendment No. 1.[6] On June 22, 2020, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the proposed rule change as modified by Amendment No. 1.[7] On June 24, 2020, the Commission extended the time period for approving or disapproving the proposal to August 26, 2020.[8] The proposed rule change, as modified by Amendment No. 2, was published for comment in the **Federal Register** on June 30, 2020.[9] The Commission is approving the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposal, as Modified by Amendment No. 2

Section 102.01B, Footnote (E) of the Manual states that the Exchange generally expects to list companies in connection with a firm commitment underwritten initial public offering (''IPO''), upon transfer from another market, or pursuant to a spin-off, but also allows for the possibility of using a direct listing, as described below.[10] Currently, Footnote (E) states that the Exchange recognizes that companies that have not previously had their common equity securities registered under the Exchange Act, but that have sold common equity securities in a private placement, may wish to list their common equity securities on the Exchange at the time of effectiveness of a registration statement [11] filed solely for the purpose of allowing existing shareholders to sell their shares.[12] The Exchange has proposed to define this type of direct listing already permitted by the Exchange's rules as a ''Selling Shareholder Direct Floor Listing.'' [13] In addition, the Exchange has proposed to recognize an additional type of direct listing in which a company that has not previously had its common equity securities registered under the Exchange Act would list its common equity securities on the Exchange at the time of effectiveness of a registration statement pursuant to which the company would sell shares itself in the opening auction on the first day of trading on the Exchange in addition to, or instead of, facilitating sales by selling shareholders (a ''Primary Direct Floor Listing'').[14] Under the proposal, the Exchange would, on a case-by-case basis, exercise discretion to list companies that are listing in connection with a Selling Shareholder Direct Floor Listing or a Primary Direct Floor Listing.[15]

With respect to a Selling Shareholder Direct Floor Listing, the Exchange proposal retains the existing standards regarding how the Exchange will determine whether a company has met its market value of publicly-held shares listing requirement. The Exchange will continue to determine that such company has met the $100 million aggregate market value of publicly-held shares requirement based on a combination of both (i) an independent third-party valuation (''Valuation'') of the company; and (ii) the most recent trading price for the company's common stock in a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer (''Private Placement Market'').[16] Alternatively, in the absence of any recent trading in a Private Placement Market, the Exchange will determine that such company has met its market value of publicly-held shares requirement if the company provides a Valuation evidencing a market value of publicly-held shares of at least $250 million.[17]

With respect to a Primary Direct Floor Listing, the Exchange has proposed that it will deem a company to have met the applicable aggregate market value of publicly-held shares requirement if the company will sell at least $100 million in market value of the shares in the Exchange's opening auction on the first day of trading on the Exchange.[18] Alternatively, where a company is conducting a Primary Direct Floor Listing and will sell shares in the opening auction with a market value of less than $100 million, the Exchange will determine that such company has met its market value of publicly-held shares requirement if the aggregate market value of the shares the company will sell in the opening auction on the first day of trading and the shares that are publicly held immediately prior to the listing is at least $250 million, with such market value calculated using a price per share equal to the lowest price of the price range established by the issuer in its registration statement.[19]

[6] *See* Securities Exchange Act Release No. 88485 (March 26, 2020), 85 FR 18292 (April 1, 2020) (''OIP'').

[7] Amendment No. 2 to the proposed rule change revised the proposal to, among other things, (1) delete the proposed changes to Section 102.01A of the Manual that would have provided additional time under certain circumstances for companies listing in connection with a direct listing to meet the initial listing distribution standards; (2) add provisions specifying how companies listing in connection with a direct listing would qualify for listing if it includes both sales of securities by the company and possible sales by selling shareholders; (3) add a new order type for companies to use when selling securities in a direct listing and describe how such companies would participate in a direct listing auction; and (4) remove references to direct listing auctions from Rule 7.35C, Exchange-Facilitated Auctions. Amendment No. 2 to the proposed rule change is available on the Commission's website at *https://www.sec.gov/comments/sr-nyse-2019-67/srnyse201967-7332320-218590.pdf.*

[8] *See* Securities Exchange Act Release No. 89147 (June 24, 2020), 85 FR 39226 (June 30, 2020). The Commission designated August 26, 2020, as the date by which it should either approve or disapprove the proposed rule change.

[9] See Securities Exchange Act Release No. 89148 (June 24, 2020), 85 FR 39246 (June 30, 2020) (''Notice'').

[10] *See* Section 102.01B, Footnote (E) of the Manual.

[11] The reference to a registration statement refers to a registration statement effective under the Securities Act of 1933 (''Securities Act'').

[12] *See* Section 102.01B, Footnote (E) of the Manual. *See also* Securities Exchange Act Release No. 82627 (February 2, 2018), 3 FR 5650 (February 8, 2018) (SR–NYSE–2017–30) (''NYSE 2018 Order'') (approving proposed rule change to amend Section 102.01B of the Manual to modify the provisions relating to the qualifications of companies listing without a prior Exchange Act registration in connection with an underwritten IPO and amend the Exchange's rules to address the opening procedures on the first day of trading for such securities).

[13] *See* proposed Section 102.01B, Footnote (E) of the Manual. Under the proposal, the Exchange would specify that such company may have previously sold common equity securities in ''one or more'' private placements. The Exchange also has proposed to move the description of this type of direct listing as involving a company ''where such company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements'' so that this description appears in conjunction with the definition of ''Selling Shareholder Direct Floor Listing.'' *See id.*

[14] *See* proposed Section 102.01B, Footnote (E) of the Manual. A Primary Direct Floor Listing would include any such listing in which either (i) only the company itself is selling shares in the opening auction on the first day of trading; or (ii) the company is selling shares and selling shareholders may also sell shares in such opening auction. *See id.*

[15] *See* proposed Section 102.01B, Footnote (E) of the Manual.

[16] *See* proposed Section 102.01B, Footnote (E) of the Manual. The Exchange will attribute a market value of publicly-held shares to the company equal to the lesser of: (i) The value calculable based on the Valuation; and (ii) the value calculable based on the most recent trading price in a Private Placement Market. *See* Section 102.01B, Footnote (E) of the Manual. For specific requirements regarding the Valuation and the independence of the valuation agent conducting such Valuation, *see* Section 102.01B, Footnote (E) of the Manual. Section 102.01B, Footnote (E) of the Manual also sets forth specific factors for relying on a Private Placement Market price. Generally, the Exchange will only rely on a Private Placement Market price if it is consistent with a sustained history over a several month period prior to listing evidencing a market value in excess of the Exchange's market value requirement.

[17] *See* Section 102.01B, Footnote (E) of the Manual. Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares. *See* Section 102.01A, Footnote (B) of the Manual.

[18] *See* proposed Section 102.01B, Footnote (E) of the Manual.

[19] *See* proposed Section 102.01B, Footnote (E) of the Manual. The Exchange states that, for example,

Continued

According to the Exchange, a company may list on the Exchange in connection with an IPO with a market value of publicly-held shares of $40 million and, in the Exchange's experience in listing IPOs, a liquid trading market develops after listing for issuers with a much smaller value of publicly-held shares than the Exchange anticipates would exist after the opening auction in a Primary Direct Floor Listing under the proposed market value of publicly-held shares requirements.[20] Consequently, the Exchange believes that these requirements would provide that any company conducting a Primary Direct Floor Listing would be of a suitable size for Exchange listing and that there would be sufficient liquidity for the security to be suitable for auction market trading.[21] The Exchange also states that, with the exception of the proposed requirement for Primary Direct Floor Listings, shares held by officers, directors, or owners of more than 10% of the company stock are not included in calculations of publicly-held shares for purposes of Exchange listing rules.[22] The Exchange states that such investors may acquire in secondary market trades shares sold by the issuer in a Primary Direct Floor Listing that were included when calculating whether the issuer meets the market value of publicly-held shares initial listing requirement.[23] The Exchange further states that it believes that because of the enhanced publicly-held shares requirement for listing in connection with a Primary Direct Floor Listing, which is much higher than the Exchange's $40 million requirement for a traditional underwritten IPO, and the neutral nature of the opening auction process, companies using a Primary Direct Floor Listing would have an adequate public float and liquid trading market after completion of the opening auction.[24]

The Exchange states that any company listing in connection with a Primary Direct Floor Listing or a Selling Shareholder Direct Floor Listing would continue to be subject to and need to meet all other applicable initial listing requirements. According to the Exchange, this would include the requirements of Section 102.01A of the Manual to have 400 shareholders of round lots and 1.1 million publicly-held shares outstanding at the time of initial listing, and the requirement of Section 102.01B of the Manual to have a price per share of at least $4.00 at the time of initial listing.[25]

The Exchange has proposed a new order type to be used by the issuer in a Primary Direct Floor Listing and has proposed rules regarding how that new order type would participate in a Direct Listing Auction.[26] Specifically, the Exchange has proposed to introduce an Issuer Direct Offering Order (''IDO Order''), which would be a Limit Order to sell that is to be traded only in a Direct Listing Auction for a Primary Direct Floor Listing.[27] The IDO Order would have the following requirements: (1) Only one IDO Order may be entered on behalf of the issuer and only by one member organization; (2) the limit price of the IDO Order must be equal to the lowest price of the price range established by the issuer in its effective registration statement (the price range is defined as the ''Primary Direct Floor Listing Auction Price Range''); (3) the IDO Order must be for the quantity of shares offered by the issuer, as disclosed in the prospectus in the effective registration statement; (4) an IDO Order may not be cancelled or modified; and (5) an IDO Order must be executed in full in the Direct Listing Auction.[28] Consistent with current rules, a Designated Market Maker (''DMM'') would effectuate a Direct Listing Auction manually, and the DMM would be responsible for determining the Auction Price.[29] Under the proposal, the DMM would not conduct a Direct Listing Auction for a Primary Direct Floor Listing if (1) the Auction Price would be below the lowest price or above the highest price of the Primary Direct Floor Listing Auction Price Range; or (2) there is insufficient buy interest to satisfy both the IDO Order and all better-priced sell orders in full.[30] The Exchange states that if there is insufficient buy interest and the DMM cannot price the Auction and satisfy the IDO Order as required, the Direct Auction would not proceed and such security would not begin trading.[31] The Exchange represents that, if a Direct Listing Auction cannot be conducted, the Exchange would notify market participants via a Trader Update that the Primary Direct Floor Listing has been cancelled and any orders for that security that had been entered on the Exchange, including the IDO Order, would be cancelled back to the entering firms.[32]

Currently, Rule 7.35A(h) generally provides that, once an Auction Price has been determined, better-priced orders are guaranteed to participate in the Auction at the Auction Price, whereas at-priced orders are not guaranteed to participate and will be allocated according to specified priority rules.[33] The Exchange has proposed that an IDO Order would be guaranteed to participate in the Direct Listing Auction at the Auction Price.[34] If the limit price of the IDO Order is equal to the Auction Price, the IDO Order would have priority at that price.[35] The Exchange states that providing priority to an at-priced IDO Order would increase the potential for the IDO Order to be executed in full, and therefore for the Primary Direct Floor Listing to proceed.[36]

if the company is selling five million shares in the opening auction, there are 45 million publicly-held shares issued and outstanding immediately prior to listing, and the lowest price of the price range disclosed in the company's registration statement is $10 per share, then the Exchange will attribute to the company a market value of publicly-held shares of $500 million. *See* Notice, *supra* note 9, 85 FR at 39247.

[20] *See* Notice, *supra* note 9, 85 FR at 39250.

[21] *See* Notice, *supra* note 9, 85 FR at 39250.

[22] *See* Notice, *supra* note 9, 85 FR at 39247. The Exchange states that these types of inside investors may purchase shares sold by the company in the opening auction, and purchase shares sold by other shareholders or sell their own shares in the opening auction and in trading after the opening auction, to the extent not inconsistent with general anti-manipulation provisions, Regulation M, and other applicable securities laws. *See id.*

[23] *See* Notice, *supra* note 9, 85 FR at 39247.

[24] *See* Notice, *supra* note 9, 85 FR at 39247.

[25] *See* Notice, *supra* note 9, 85 FR at 39247.

[26] Under current Rule 1.1(f), the term ''Direct Listing'' means ''a security that is listed under Footnote (E) to Section 102.01B of the Listed Company Manual.'' The Exchange has proposed to modify this definition to specify that the term ''Direct Listing'' may refer to either a Selling Shareholder Direct Floor Listing or a Primary Direct Floor Listing. *See* proposed Rule 1.1(f). *See also* Rule 7.35(a)(1) for the definition of ''Auction'' and Rule 7.35(a)(1)(E) for the definition of ''Direct Listing Auction.''

[27] *See* proposed Rule 7.31(c)(1)(D). *See also* Rule 7.31(a)(2) for the definition of ''Limit Order.''

[28] *See* proposed Rule 7.31(c)(1)(D)(i)–(v).

[29] ''Auction Price'' is defined as the price at which an Auction is conducted. *See* Rule 7.35(a)(5). The Exchange states that because an IDO Order would not be entered by the DMM, the Exchange has proposed to include IDO Orders among the types of Auction-Only Orders that are not available to DMMs. *See* Notice, *supra* note 9, 85 FR at 39248, n.21. *See also* proposed Rule 7.31(c). An ''Auction-Only Order'' is a Limit or Market Order that is to be traded only in an auction pursuant to the Rule 7.35 Series (for Auction-Eligible Securities) or routed pursuant to Rule 7.34 (for UTP Securities). *See* Rule 7.31(c). *See also* Rule 7.31(a)(1) for the definition of ''Market Order.''

[30] *See* proposed Rule 7.35A(g)(2). A buy (sell) order is ''better-priced'' if it is priced higher (lower) than the Auction Price, and this includes all sell Market Orders and Market-on-Open Orders. *See* Rule 7.35(a)(5)(A). *See also* Rule 7.31(c)(1)(B) for the definition of ''Market-on-Open Order.'' A buy (sell) order is ''at-priced'' if it is priced equal to the Auction Price. *See* Rule 7.35(a)(5)(B).

[31] *See* Notice, *supra* note 9, 85 FR at 39249.

[32] *See* Notice, *supra* note 9, 85 FR at 39249.

[33] *See* Rule 7.35A(h)(1) and (2).

[34] *See* proposed Rule 7.35A(h)(4).

[35] *See* proposed Rule 7.35A(h)(4).

[36] *See* Notice, *supra* note 9, 85 FR at 39249.

In addition, the Exchange has proposed to specify that two existing provisions would apply in the case of a Selling Shareholder Direct Floor Listing only. Currently, a DMM will publish a pre-opening indication before a security opens if the Auction Price is anticipated to be a change of more than the Applicable Price Range [37] from a specified Indication Reference Price.[38] Under the proposal, the Indication Reference Price for a security that is a Selling Shareholder Direct Floor Listing that has had recent sustained trading in a Private Placement Market prior to listing would be the most recent transaction price in that market or, if none, would be a price determined by the Exchange in consultation with a financial advisor to the issuer of such security.[39] Further, when facilitating the opening on the first day of trading of a Selling Shareholder Direct Floor Listing that has not had a recent sustained history of trading in a Private Placement Market prior to listing, the DMM would consult with a financial advisor to the issuer of such security in order to effect a fair and orderly opening of such security.[40] The Exchange states that these provisions are not applicable to a Primary Direct Floor Listing because, unlike for a Selling Shareholder Direct Floor Listing, the registration statement for a Primary Direct Floor Listing would include a price range within which the company anticipates selling the shares it is offering.[41]

In the case of a Primary Direct Floor Listing, the Exchange has proposed a new measure of the Indication Reference Price. Specifically, for a security that is offered in a Primary Direct Floor Listing, the Indication Reference Price would be the lowest price of the Primary Direct Floor Listing Auction Price Range.[42]

The Exchange states that any services provided by a financial advisor to the issuer of a security listing in connection with a Selling Shareholder Direct Floor Listing or a Primary Direct Floor Listing (the ''financial advisor'') and the DMM assigned to that security must provide such services in a manner that is consistent with all federal securities laws, including Regulation M and other anti-manipulation requirements.[43] The Exchange states that, for example, when a financial advisor provides a consultation to the Exchange as required by Rule 7.35A(d)(2)(a)(iv), when the DMM consults with a financial advisor in connection with Rule 7.35A(g)(1), or when a financial advisor otherwise assists or consults with the DMM as to pricing or opening of trading in a Selling Shareholder Direct Floor Listing or Primary Direct Floor Listing, the financial advisor and DMM will not act inconsistent with Regulation M and other anti-manipulation provisions of the federal securities laws, or Exchange Rule 2020.[44] The Exchange represents that it has retained the Financial Industry Regulatory Authority (''FINRA'') pursuant to a regulatory services agreement to monitor such compliance with Regulation M and other anti-manipulation provisions of the federal securities laws, and Rule 2020.[45] The Exchange has proposed a new commentary that states that, in connection with a Selling Shareholder Direct Floor Listing, the financial advisor to the issuer of the security being listed and the DMM assigned to such security are reminded that any consultation that the financial advisor provides to the Exchange as required by Rule 7.35A(d)(2)(A)(iv) and any consultation between the DMM and financial advisor as required by Rule 7.35A(g)(1) is to be conducted in a manner that is consistent with the federal securities laws, including Regulation M and other anti-manipulation requirements.[46]

Finally, the Exchange has proposed to remove references to Direct Listing Auctions from Rule 7.35C, which concerns Exchange-facilitated auctions.[47] The Exchange states that, because of the importance of the DMM to the Direct Listing Auction, if a DMM is unable to manually facilitate a Direct Listing Auction, the Exchange would not proceed with a Selling Shareholder Direct Floor Listing or a Primary Direct Floor Listing.[48]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[49] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Exchange Act,[50] 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 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission has consistently recognized the importance of exchange listing standards. Among other things, such listing standards help ensure that exchange listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[51]

[37] The ''Applicable Price Range'' for determining whether to publish a pre-opening indication, with limited exception, is 5% for securities with an Indication Reference Price over $3.00 and $0.15 for securities with an Indication Reference Price equal to or lower than $3.00. *See* Rule 7.35A(d)(3)(A).

[38] *See* Rule 7.35A(d)(1)(A).

[39] *See* proposed Rule 7.35A(d)(2)(A)(iv).

[40] *See* proposed Rule 7.35A(g)(1). The Exchange has proposed a non-substantive change to this provision to modify a reference to ''Private Placement'' to utilize the defined term ''Private Placement Market.'' *See id.*

[41] *See* Notice, *supra* note 9, 85 FR at 39249.

[42] *See* proposed Rule 7.35A(d)(2)(A)(v). The Exchange states that, for example, if the Primary Direct Floor Listing Auction Price Range is $10.00 to $20.00, then the Indication Reference Price would be $10.00. *See* Notice, *supra* note 9, 85 FR at 39248, n.22.

[43] *See* Notice, *supra* note 9, 85 FR at 39249.

[44] *See* Notice, *supra* note 9, 85 FR at 39249 (citing Rule 2020, which provides that ''No member or member organization shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent contrivance'').

[45] *See* Notice, *supra* note 9, 85 FR at 39249. The Exchange further represents that it expects to issue regulatory guidance in connection with a company conducting a Primary Direct Floor Listing, and that such regulatory guidance would include a reminder to member organizations that activities in connection with a Primary Direct Floor Listing, like activities in connection with other listings, must be conducted in a manner not inconsistent with Regulation M and other anti-manipulation provisions of the federal securities laws and Rule 2020. *See id.* at 39249, n.28.

[46] *See* proposed Rule 7.35A, Commentary .10.

[47] *See* proposed Rule 7.35C(a), (a)(3), (b)(1), and (b)(3).

[48] *See* Notice, *supra* note 9, 85 FR at 39249.

[49] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[50] 15 U.S.C. 78f(b)(5).

[51] The Commission has stated in approving exchange listing requirements that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to the financial markets and the investing public. In addition, once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained. *See, e.g.,* NYSE 2018 Order, *supra* note 12, 83 FR at 5653, n.53; Securities Exchange Act Release Nos. 81856 (October 11, 2017), 82 FR 48296, 48298 (October 17, 2017) (SR–NYSE–2017–31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR–NYSE–2017–11). The Commission has stated that adequate listing standards, by promoting fair and orderly markets,

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The Exchange's listing standards currently provide the Exchange with discretion to list a company whose stock has not been previously registered under the Exchange Act, where such company is listing in connection with a Selling Shareholder Direct Floor Listing.[52] The Exchange has proposed to allow companies to list in connection with a Primary Direct Floor Listing, which would for the first time provide a company the option, without a firm commitment underwritten offering, of selling shares to raise capital in the opening auction upon initial listing on the Exchange.[53]

Several commenters expressed support for the proposed expansion of direct listings to permit a primary offering.[54] One commenter, for example, stated that it supports alternative formats for IPOs, including direct listing proposals like the one proposed by the Exchange, and expressed the view that issuers should be offered choices that match their objectives so long as they protect the integrity of the markets and are fair and clear to investors, using transparent processes.[55] Another commenter believed that allowing for multiple pathways for private companies to achieve exchange listing would encourage more companies to participate in public equity markets and provide investors a broader array of attractive investment opportunities.[56]

The Commission believes that a number of the changes set forth in Amendment No. 2 support a finding that the proposal is consistent with the Act. More specifically, the Commission believes that the following aspects result in a proposal for a Primary Direct Floor Listing that is reasonably designed to be consistent with the protection of investors and the maintenance of fair and orderly markets, as well as the facilitation of capital formation: (i) Addition of the IDO Order type and other requirements which address how the issuer will participate in the opening auction; (ii) discussion of the role of financial advisors; (iii) addition of the Commentary that provides that specified activities are to be conducted in a manner that is consistent with the federal securities laws, including Regulation M and other anti-manipulation requirements; (iv) retaining of FINRA to monitor compliance with Regulation M and other anti-manipulation provisions of the federal securities laws and NYSE Rule 2020; (v) clarification of how market value will be determined for qualifying the company's securities for listing; and (vi) elimination of the grace period for meeting certain listing requirements.

With respect to the aggregate market value of publicly-held shares requirement, the Exchange proposes to require that it will deem a company to have met such requirement if the company will sell at least $100 million in market value of shares in the Exchange's opening auction on the first day of trading. Alternatively, where a company will sell shares in the opening auction with a market value of less than $100 million, the Exchange will deem the company to have met such requirement if the aggregate market value of the shares the company will sell in the opening auction on the first day of trading and the shares that are publicly held immediately prior to listing is at least $250 million. According to the Exchange, a company may list in connection with an IPO with a market value of publicly-held shares of $40 million and, ''in the Exchange's experience in listing IPOs, a liquid trading market develops after listing for issuers with a much smaller value of publicly-held shares than the Exchange anticipates would exist after the opening auction in a Primary Direct Floor Listing.'' [57] In Amendment No. 2, the Exchange clarified that market value would be calculated using a price per share equal to the lowest price of the price range multiplied by the number of shares being offered, as set forth by the issuer in its registration statement.[58] One commenter expressed the view that the proposal, as originally noticed for comment, appropriately updated the publicly-held shares and distribution requirements associated with direct listings in order to ensure the development of a liquid trading market.[59]

The Exchange's proposed aggregate market value of publicly-held shares requirement provides the Exchange with a reasonable level of assurance that the company's market value supports listing on the Exchange and the maintenance of fair and orderly markets. The proposed requirements are comparable to or higher than the aggregate market value of publicly-held shares required by the Exchange for initial listing in other contexts.[60] Specifically, the Exchange's proposed minimum market value requirements, which are designed in part to ensure sufficient liquidity, of $100 million and $250 million for Primary Direct Floor Listings are higher than the $40 million minimum market value requirement for IPOs [61] and comparable to the $100 million and $250 million minimum market value requirements for Selling Shareholder

are consistent with Section 6(b)(5) of the Exchange Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. *See, e.g.,* NYSE 2018 Order, *supra* note 12, 83 FR at 5653, n.53; Securities Exchange Act Release Nos. 87648 (December 3, 2019), 84 FR 67308, 67314, n.42 (December 9, 2019) (SR–NASDAQ–2019–059); 88716 (April 21, 2020), 85 FR 23393, 23395, n.22 (April 27, 2020) (SR–NASDAQ–2020–001).

[52] *See* Section 102.01B, Footnote (E) of the Manual. *See also* NYSE 2018 Order, *supra* note 12, 83 FR at 5654.

[53] *See* NYSE Listed Company Manual Section 102.01B, Footnote (E) of the Manual which states in part that the Exchange expects to list companies in connection with a firm commitment underwritten IPO, upon transfer from another market, or pursuant to a spin-off.

[54] *See* Letter from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities (February 18, 2020) (''Citadel Letter''), at 1; Letter from Paul Abrahimzadeh and Russell Chong, Co-Heads, U.S. Equity Capital Markets, Citigroup Capital Markets Inc. (February 26, 2020) (''Citigroup Letter''); Letter from Matthew B. Venturi, Founder & CEO, ClearingBid, Inc. (January 21, 2020) (''ClearingBid Letter''), at 5; Letter from David Ludwig, Head of Americas Equity Capital Markets, Goldman Sachs Group, Inc. (February 7, 2020) (''Goldman Sachs Letter''); Letter from Burke Dempsey, Executive Vice President Head of Investment Banking, Wedbush Securities (April 20, 2020) (''Wedbush Letter'').

[55] *See* Citigroup Letter, *supra* note 54. This commenter also stated its belief that the direct listing format would afford broad participation in the capital formation process and help establish a shareholder base that has a long-term interest in partnering with management teams. *See id.*

[56] *See* Goldman Sachs Letter, *supra* note 54. This commenter also referenced the recent direct listings by Spotify Technology S.A. and Slack Technologies, Inc., and expressed the view that the development of a direct listing approach to becoming a public company has been a significant step forward in providing companies greater choice in their path to going public, and that the ability to include a primary capital raise in a direct listing will further enhance this flexibility. *See id. See also* Citadel Letter, *supra* note 54, at 1; Wedbush Letter, *supra* note 54.

[57] Notice, *supra* note 9, 85 FR at 39250. As described above, in determining that a company has met the market value of publicly-held shares standards the Exchange will consider the market value of all shares sold by the company in the opening auction, rather than excluding shares that may be purchased by officers, directors, or owners of more than 10% of the company's common stock, notwithstanding that generally the Exchange's listing standards exclude shares held by such insiders from its calculations of publicly-held shares. The Exchange asserts that the Primary Direct Floor Listing will have an adequate public float and liquid trading market after completion of the opening auction given the higher market value requirement than that required for listing an underwritten IPO. *See* Notice, *supra* note 9, 85 FR at 39247.

[58] *See* Notice, *supra* note 9, 85 FR at 39247 and note 19, *supra,* and accompanying text.

[59] *See* Citadel Letter, *supra* note 54, at 1.

[60] *See* Section 102.01B of the Manual.

[61] In addition to the $40 Million standard, the Exchange's current listing standards require an aggregate market value of publicly held shares of $100 million for companies that list other than at the time of an IPO, spin-off, or initial firm commitment underwritten public offering. *See* Section 102.01B of the Manual.

Direct Floor Listings.[62] The Commission further believes that using the lowest price in the price range established by the issuer in its registration statement to determine the minimum market value is a reasonable and conservative approach given that, as described below, the Primary Direct Floor Listing will not proceed at a lower price.

In the Order Instituting Proceedings, the Commission expressed concern that, with a Primary Direct Floor Listing, the company could be the only seller (or a dominant seller) participating in the opening auction and thus could be in a position to uniquely influence the price discovery process, and stated that the Exchange had not explained how its opening auction rules would apply in a Primary Direct Floor Listing.[63]

In Amendment No. 2, the Exchange proposed to add the IDO Order as a new order type to be used by the issuer in a Primary Direct Floor Listing, and to clarify in its rules how the DMM would conduct the opening auction for such listings. As discussed above, the issuer would be required to submit an IDO Order in the opening auction with a limit price equal to the low end of the Primary Direct Floor Listing Auction Price Range, and for the full quantity, as reflected in the registration statement. The IDO Order cannot be modified or canceled by the issuer once entered. Further, the DMM would conduct the opening auction only if the auction price is within the Primary Direct Floor Listing Auction Price Range disclosed in the registration statement, and the IDO Order and all better priced sell orders can be satisfied in full. If the auction price is equal to the limit price of the IDO Order (*i.e.,* the low end of the Primary Direct Floor Listing Auction Price Range), the IDO Order would have priority over other sell orders at that price.[64] The Commission believes that the IDO Order and related clarifications proposed by the Exchange assure that the method by which the issuer participates in the opening auction is clearly defined, that the issuer is not in a position to improperly influence the price discovery process, and that the auction is otherwise consistent with the disclosures in the registration statement. The Commission further believes it is appropriate for the IDO Order to have priority over other sell orders at the same price if the auction price is at the limit price of the IDO Order, because the auction will not occur at all unless the IDO Order is satisfied in full, and this would assure that both the issuer and better priced sell orders are able to sell securities in the auction.[65] The Commission believes that the IDO Order requirements described above help to mitigate concerns about the price discovery process in the opening auction and would provide some reasonable assurance that the opening auction and subsequent trading promote fair and orderly markets and that the proposed rules are designed to prevent manipulative acts and practices, and protect investors and the public interest in accordance with Section 6(b)(5) of the Exchange Act.

In Amendment No. 2, the Exchange added language to its proposal, discussed above, reminding a financial adviser to an issuer and the DMM that any consultations with the financial adviser must be conducted in a manner consistent with the federal securities laws, including Regulation M and other anti-manipulation requirements.[66] The Exchange also represents that it has retained FINRA to monitor such compliance and that it plans to issue regulatory guidance in this area. The Commission believes that these are reasonable steps to help assure compliance by participants in the direct listing process with these important provisions of the federal securities laws and that the proposed changes are consistent with preventing manipulative acts and practices, and protecting investors and the public interest in accordance with Section 6(b)(5) of the Exchange Act.

Finally, several commenters expressed concerns that the lack of traditional underwriter involvement in direct listings generally would increase risks for investors, suggesting that direct listings circumvent the traditional due diligence process and traditional underwriter liability.[67] One commenter believed that approval of the proposal would likely increase the number of companies that forego the traditional IPO process,[68] and significantly increase the risks for retail investors, including by circumventing the due diligence process.[69] This commenter expressed

[62] One commenter raised a concern that the Exchange does not provide any data to support its conclusion that there would be adequate liquidity for a security listing in connection with a Primary Direct Floor Listing. *See* Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors (July 16, 2020) (''CII Letter III''), at 5. While the Exchange did not provide the data specifically referenced by the commenter, as noted above, the proposed minimum market value requirements are comparable to or higher than those applied by the Exchange in other contexts. *See supra* notes 16–17 and accompanying text. The existing $40 million and $100 million market value requirements in Section 102.01B of the Manual are longstanding requirements that have supported the listing of companies on the Exchange that are suitable for listing over many years. The Commission also previously approved the standards for Selling Shareholder Direct Floor Listings as supporting listing on the Exchange and the maintenance of fair and orderly markets thereby protecting investors and the public interest in accordance with Section 6(b)(5) of the Exchange Act (*see* NYSE 2018 Order, *supra* note 12, 83 FR at 5654).

[63] One commenter expressed general support for the proposal and offered a variety of observations beyond the scope of the proposal, including with respect to the importance of opening auction information. *See* ClearingBid Letter, *supra* note 54, at 1.

[64] In addition, as discussed above, the Exchange proposes that the DMM will publish a pre-opening indication in a Primary Direct Floor Listing if the auction price is expected to be outside a price range around an ''Indication Reference Price'' equal to the low end of the price range reflected in the registration statement. The Commission believes this is a reasonable and conservative reference price because the auction cannot occur at a lower price, and if the auction occurs at a higher price the proposal errs on the side of requiring opening indication information to be disseminated to market participants.

[65] In addition, the Commission believes that the proposed changes to Rule 7.35C to remove the references to Direct Listing Auction would assure that all direct listings occur with a DMM that will facilitate the opening auction manually, and should help promote fair and orderly markets in connection with direct listings, because of the role of the DMM in ensuring that the conditions described above to conduct the auction have been met. The Commission also believes that the proposed changes to (i) Section 102.01B of the Manual, Footnote (E) to clarify the description of a Selling Shareholder Direct Floor Listing, (ii) Rule 1.1(f) to amend the definition of ''Direct Listing,'' and (iii) Rule 7.35A(g)(1) to use the defined term ''Private Placement Market'' will provide clarity to the Exchange's rules, consistent with the protection of investors and the public interest under Section 6(b)(5) of the Exchange Act.

[66] *See* Notice, *supra* note 9, 85 FR at 39249, and proposed Rule 7.35A, Commentary .10. *See also supra* note 45 and accompanying text noting that the Exchange will be issuing a regulatory circular to remind member organizations that activities in connection with a Primary Direct Floor Listing, like activities in connection with other listings, must be conducted in a manner not inconsistent with Regulation M and other anti-manipulation provisions of the federal securities laws and NYSE Rule 2020.

[67] *See, e.g.,* Letter from Christopher A. Iacovella, Chief Executive Officer, ASA (December 12, 2019) (''ASA Letter I''), at 1.

[68] The Commission acknowledges the possibility that some companies may pursue a Primary Direct Floor Listing instead of a traditional IPO. The Commission also believes that some companies may pursue a Primary Direct Floor Listing that would not otherwise go public, or that would wait to pursue a traditional IPO until a later stage of development, both of which would potentially reduce opportunities for public shareholders to share in growth opportunities. Thus, the Commission believes that the proposed rule change may result in additional investment opportunities while providing companies more flexible options for becoming publicly traded.

[69] *See* ASA Letter I, *supra* note 67, at 1–2. This commenter believed that allowing companies to raise primary capital through a direct listing ''would be a complete end run around the traditional underwriting process and . . . create a massive loophole in the regulatory regime that governs the offerings of securities to the public.'' *Id.* at 1. In this commenter's view, two recent high-profile direct listings—Spotify and Slack—did not work out particularly well for retail investors, and a robust underwriting process would have

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concern that direct listings could weaken certain shareholder investor protections, and recommended that the Commission make clear that financial advisors, exchanges, control shareholders, and directors involved in a direct listing automatically incur statutory underwriter liability under the Securities Act and are required to hold the regulatory capital necessary to act as a de facto underwriter.[70]

Another commenter recommended that the Commission disapprove the proposal and expressed concern that shareholder legal rights under Section 11 of the Securities Act may be particularly vulnerable in the case of direct listings, and that investors in direct listing companies may have fewer legal protections than investors in IPOs.[71] The commenter stated that it could not support direct listings as an alternative to IPOs if public companies could limit their liability for damages caused by untrue statements of fact or material omissions of fact within registration statements associated with direct listings.[72]

On the other hand, one commenter supported direct listings as a suitable option for certain issuers, and took the position that ''[d]ue diligence is already ably done by the legions of experienced accountants, lawyers, consultants, rating agencies, etc.'' [73]

In response, the Exchange stated that it disagrees that the absence of underwriters creates a loophole in the regulatory regime that governs offerings of securities to the public.[74] According to the Exchange, while involvement of a traditional underwriter is often necessary to the success of an IPO or other public offering, underwriter participation in the public capital-raising process is not required by the Securities Act, and companies regularly access the public markets for capital raising and other purposes without using traditional underwriters.[75] In the Exchange's view, the due diligence process in Primary Direct Floor Listings is the responsibility of the gatekeepers who participate in the transaction, such as the company's board of directors, its senior management, and its independent accountants.[76] The Exchange further stated that a company pursuing a Primary Direct Floor Listing would go through the same process of publicly filing a registration statement as an underwritten offering, and if a company's business model exhibits weaknesses, they will be exposed to the public prior to listing.[77]

As to the comments concerning underwriter liability and due diligence, the Commission agrees, as noted by the Exchange, that the Securities Act does not require the involvement of an underwriter in registered offerings. Moreover, given the broad definition of ''underwriter'' [78] in the Securities Act, a financial advisor to an issuer engaged in a Primary Direct Floor Listing may, depending on the nature and extent of the financial advisor's activities and on the facts and circumstances, be deemed a statutory ''underwriter'' with respect to the securities offering, with attendant underwriter liabilities.[79] In addition, given the broad definition of underwriter, required involvement of financial advisors, and the financial advisors' reputational interests and potential liability, including as statutory underwriters, the Commission believes that the financial advisors to issuers in Primary Direct Floor Listings will be incentivized to engage in robust due diligence, notwithstanding the lack of a firm commitment underwriting agreement. Even absent the involvement of a statutory underwriter, investors would not be precluded from pursuing any claims they may have under the Securities Act for false or misleading offering documents, nor would the absence of a statutory underwriter affect the amount of damages investors may be entitled to recover.

In addition, issuers and other gatekeepers, with their attendant liability, play important roles in assuring that disclosures provided to investors are materially accurate and complete. The Commission therefore does not view a firm commitment underwriting as necessary to provide adequate investor protection in the context of a registered offering. Indeed, exchange-listed companies often engage in offerings that do not involve a firm commitment underwriting. Given that

uncovered more of these companies' vulnerabilities before these securities were offered to the public. *See id.* at 2. Another commenter stated that these direct listings may have been successes for private investors, but the retail and public investors that purchased stock in Spotify and Slack were under water for years, and one company is facing a lawsuit because of how direct listings are modeled. *See* Letter from Anonymous (June 30, 2020).

[70] *See* ASA Letter I, *supra* note 67, at 2; Letter from Christopher A. Iacovella, Chief Executive Officer, American Securities Association (March 5, 2020) (''ASA Letter II''), at 2–3. Several additional commenters raised a variety of concerns with the use of a direct listing to conduct a primary offering. For example, one commenter expressed the view that ''bailing out'' private market investors with reduced offering requirements would incent companies to remain private longer, reduce transparency, and impair price discovery. *See* Letter from Anonymous (December 4, 2019). Another commenter took the position that direct listings are a method for insiders to ''rip-off'' IPO investors. *See* Letter from Allan Rosenbalm (December 4, 2019). Yet another commenter was critical of direct listings for a variety of reasons, and expressed the view, among other things, that they are ''an attempt to bypass the independent skilled investment banking and investment management professionals when establishing the initial market value of the company.'' Letter from Anonymous (January 3, 2020). And another commenter stated that a primary capital raise would have many red flags, questioned how to trust a private company's accounting methods that are not consistent with the public markets, and stated that a direct listing is ''fraudulent with no liability.'' *See* Letter from Anonymous (July 1, 2020). The Commission acknowledges these concerns, but believes the proposed rule change is consistent with investor protection in light of the fact that Primary Direct Floor Listings will be registered under the Securities Act, and that such registration statements will require both bona fide price ranges and audited financial statements prepared in accordance with either U.S. GAAP or International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board.

[71] *See* Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors (January 16, 2020) (''CII Letter I''), at 2; Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors (April 16, 2020) (''CII Letter II''), at 2; CII Letter III, *supra* note 60, at 3–4, 6.

[72] *See* CII Letter I, *supra* note 71, at 2–3; CII Letter II, *supra* note 71, at 3. This commenter was particularly concerned about positions taken by the issuer in a recent lawsuit relating to the direct listing of Slack, and expressed the view that the issuer ''relies on (1) attacking the right of secondary market purchasers to bring a Section 11 claim; and (2) the inability to determine what shares were 'covered' by Slack's registration statement.'' CII Letter I, *supra* note 71, at 2. Among other things, the commenter urged the Commission to explore establishing a system of traceable shares before approving a direct listing regime. *See id.* at 2–3; CII Letter III, *supra* note 62, at 4.

[73] Wedbush Letter, *supra* note 54.

[74] *See* Letter from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel & Corporate Secretary, NYSE (March 16, 2020) (''NYSE Response Letter''), at 2.

[75] *See* NYSE Response Letter, *supra* note 74, at 2–3.

[76] *See* NYSE Response Letter, *supra* note 74, at 2–3. The Exchange took the position that IPOs carry a certain amount of risk for investors, that an underwritten IPO does not insulate investors from that risk, and that there is no reason to believe that companies with direct listings will perform any better or worse than companies with underwritten IPOs. *See id.* at 3.

[77] *See* NYSE Response Letter, *supra* note 74, at 4. The Exchange also took the position that the absence of lock-up agreements with pre-IPO shareholders in Primary Direct Floor Listings does not create short-term price instability, and that at most it shifts the timing of such instability from six months after the offering to closer to the time of listing. *See id.*

[78] Section 2(a)(11) of the Securities Act defines ''underwriter'' to mean ''any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates, or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking.''

[79] The Commission does not agree, as asserted by one commenter, that financial advisors, exchanges, control shareholders, and directors involved in a direct listing will automatically incur statutory underwriter liability under the Securities Act. *See* ASA Letter I, *supra* note 67, at 2; ASA Letter II, *supra* note 70, at 2–3. Whether or not any person would be considered a statutory underwriter would be evaluated based on the particular facts and circumstances, in light of the definition of underwriter contained in Section 2(a)(11).

the proposed rule change will require all Primary Direct Floor Listings to be registered under the Securities Act, and in light of the fact that the existing liability framework under the Securities Act for registered offerings will apply to all such Primary Direct Floor Listings, the Commission concludes the proposed rule change is consistent with investor protection.

The Commission further believes that Primary Direct Floor Listings may provide benefits to existing and potential investors, relative to firm commitment underwritten offerings. First, because the securities to be issued by the company in connection with a Primary Direct Floor Listing would be allocated based on matching buy and sell orders, in accordance with the proposed rules, some investors may be able to purchase securities in a Primary Direct Floor Listing who might not otherwise receive an initial allocation in a firm commitment underwritten offering. The proposed rule change therefore has the potential to broaden the scope of investors that are able to purchase securities in an initial public offering, at the initial public offering price, rather than in aftermarket trading. Second, because the price of securities issued by the company in a Primary Direct Floor Listing will be determined based on market interest and the matching of buy and sell orders, some believe that Primary Direct Floor Listings may be a more accurate way to price securities offerings.[80] In a firm commitment underwritten offering, the offering price is decided through negotiations between the issuer and the underwriters for the offering. The opening auction in a Primary Direct Floor Listing provides for a different price discovery method for initial public offerings which some believe may result in more appropriate pricing for the offered shares, a potential benefit to existing and potential investors. The Commission believes that the proposed rule change, by providing an opening process in which buy and sell orders are matched, in accordance with the proposed rules, to determine the offering price, may allow for efficiencies in the way IPOs are priced and allocated without sacrificing investor protection.

Commenters also raised concerns about shareholder claims pursuant to Section 11 of the Securities Act. The Commission notes that this issue is not exclusive to Primary Direct Floor Listings but rather is a recurring issue, particularly in the context of aftermarket securities purchases. Purchasers in a registered offering may face difficulty tracing their shares back to the registration statement whenever a company conducts a registered offering for less than all of its shares. Thus, even in the context of traditional firm commitment offerings, the ability of existing shareholders who meet the conditions of Rule 144 to sell shares on an unregistered basis may result in concurrent registered and unregistered sales of the same class of security at the time of an exchange listing, leading to difficulties tracing purchases back to the registered offering.[81] Although judicial precedent on this topic may continue to evolve, the Commission is aware of only one court that has considered this issue in the direct listing context to date, and that court ruled in favor of allowing the plaintiffs to pursue Section 11 claims.[82] The Commission does not believe that the proposed rule change to permit Primary Direct Floor Listings poses a heightened risk to investors, and finds that the proposed rule change is consistent with investor protection.

For the reasons discussed above, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[83] that the proposed rule change (SR–NYSE–2019–67), as modified by Amendment No. 2 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[84]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–19203 Filed 8–31–20; 8:45 am]

BILLING CODE 8011–01–P

[80] *See* Matt Levine, *Soon Direct Listings Will Raise Money,* Bloomberg, *available at https://www.bloomberg.com/opinion/articles/2019-11-27/soon-direct-listings-will-raise-money.*

[81] In a Primary Direct Floor Listing, all company shares will be sold in the opening auction, making it potentially easier to trace those shares back to the registration statement than in other contexts.

[82] *See Pirani* v. *Slack Techs., Inc.,* 2020 U.S. Dist. LEXIS 70177 (N.D. Cal., April 21, 2020).

[83] 15 U.S.C. 78s(b)(2).

[84] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89679; File No. SR–FINRA–2020–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Delete the FINRA Order Audit Trail System (OATS) Rules

August 26, 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 14, 2020, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. 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

FINRA is proposing to eliminate the Order Audit Trail System (''OATS'') rules in the FINRA Rule 7400 Series and FINRA Rule 4554 (Alternative Trading Systems—Recording and Reporting Requirements of Order and Execution Information for NMS Stocks) once members are effectively reporting to the consolidated audit trail (''CAT'') and the CAT's accuracy and reliability meet certain standards, as described below. The Rule 7400 Series and Rule 4554 are collectively referred to herein as the ''OATS Rules.''

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(a) Background

FINRA and the national securities exchanges (collectively, the ''Participants'') [3] filed with the Commission, pursuant to Section 11A of the Exchange Act [4] and Rule 608 of Regulation NMS thereunder,[5] the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').[6] The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.[7] The Plan was published for comment in the **Federal Register** on May 17, 2016,[8] and approved by the Commission, as modified, on November 15, 2016.[9] On March 15, 2017, the Commission approved the FINRA Rule 6800 Series to implement provisions of the CAT NMS Plan that are applicable to FINRA members.[10]

The CAT NMS Plan is intended to create, implement and maintain a consolidated audit trail that will capture in a single consolidated data source customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification or execution.[11] Among other things, Section C.9. of Appendix C to the Plan, as modified by the Commission, requires each Participant to ''file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC's approval of the CAT NMS Plan.'' [12] The Plan notes that ''the elimination of such rules and the retirement of such [sic] systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.'' [13] Finally, the Plan requires the rule filing to discuss the following:

(i) Specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired;

(ii) whether the availability of certain data from Small Industry Members [14] two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems; and

(iii) whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.[15]

In response to these requirements, the proposed rule change deletes the OATS Rules from the FINRA rulebook.[16] The proposed rule change will be implemented once the CAT achieves the specific accuracy and reliability standards described below and FINRA has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations and confirmed that the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Industry Member Data, which as discussed further below, will replicate what is in OATS today.[17]

[3] For a complete list of Participants, see Exhibit A to the Limited Liability Company Agreement of Consolidated Audit Trail, LLC, available at *www.catnmsplan.com/sites/default/files/2020-07/LLC-Agreement-of-Consolidated-Audit-Trail-LLC-as-of-7.24.20.pdf.*

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT Compliance Rule Series or in the CAT NMS Plan.

[7] 17 CFR 242.613.

[8] *See* Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

[9] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''Approval Order'').

[10] *See* Securities Exchange Act Release No. 80255 (March 15, 2017), 82 FR 14563 (March 21, 2017) (Order Approving File No. SR–FINRA–2017–003). *See also* Securities Exchange Act Release No. 89119 (June 22, 2020), 85 FR 38468 (June 26, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–018).

[11] *See, e.g.,* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45723 (August 1, 2012).

[12] In compliance with this requirement, in May 2017, FINRA filed a proposed rule change to eliminate the OATS Rules and amend FINRA's electronic blue sheet (''EBS'') rules, Rules 8211 and 8213 (''original proposal''). *See* Securities Exchange Act Release No. 80783 (May 26, 2017), 82 FR 25423 (June 1, 2017) (Notice of Filing of File No. SR–FINRA–2017–013). FINRA filed an amendment to the original proposal on August 25, 2017. *See* Securities Exchange Act Release No. 81499 (August 30, 2017), 82 FR 42168 (September 6, 2017). The original proposal was subsequently withdrawn but provided similar views and mechanisms for eliminating the OATS Rules as this proposed rule change does and, as noted above, also proposed to amend the EBS rules. *See* Securities Exchange Act Release No. 82524 (January 17, 2018), 83 FR 3239 (January 23, 2018) (Notice of Withdrawal of File No. SR–FINRA–2017–013).

FINRA notes that the current filing addresses only the elimination of the OATS Rules. Proposed amendments to the EBS rules would be subject to a separate FINRA rule filing made in conjunction with SEC rulemaking to amend Rule 17a–25 under the Exchange Act. 17 CFR 240.17a–25.

[13] *See* CAT NMS Plan, Appendix C, Section C.9.

[14] As noted in footnote 6, unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT Compliance Rule Series or in the CAT NMS Plan. ''Small Industry Member'' is defined in FINRA Rule 6810(nn) as an Industry Member that qualifies as a small broker-dealer as defined in SEA Rule 0–10(c). On April 20, 2020, the Commission granted exemptive relief from certain provisions of the CAT NMS Plan related to broker-dealers that do not qualify as Small Industry Members solely because such broker-dealers satisfy Rule 0–10(i)(2) under the Exchange Act in that they introduce transactions on a fully disclosed basis to clearing firms that are not small businesses or small organizations (referred to as ''Introducing Industry Members''). Specifically, the Commission provided exemptive relief from requiring Introducing Industry Members to comply with the requirements of the CAT NMS Plan that apply to Industry Members other than Small Industry Members (''Large Industry Members''), provided that the Participants require such Introducing Industry Members to comply with the requirements of the CAT NMS Plan that apply to Small Industry Members. *See* Securities Exchange Act Release No. 88703 (April 20, 2020), 85 FR 23115 (April 24, 2020) (Order Granting Limited Exemptive Relief Related to Certain Introducing Brokers From the Requirements of the CAT NMS Plan) (the ''Introducing Brokers Exemptive Order'').

As used herein, the term ''Small Industry Member'' includes Introducing Industry Members in accordance with the Introducing Brokers Exemptive Order.

[15] *See* CAT NMS Plan, Appendix C, Section C.9.

[16] FINRA is considering whether there are additional FINRA rules that can be deleted or amended, as necessary, upon the implementation of CAT, *e.g.,* trade reporting rules requiring the submission of ''non-tape'' regulatory reports relating to riskless principal and agency transactions (Rules 6282, 6380A, 6380B and 6622), Rule 6431 (Recording of Quotation Information) and Rule 4590 (Synchronization of Member Business Clocks). Such proposed changes would be subject to a separate rule filing with the SEC.

In addition, FINRA notes that there are multiple rules throughout the FINRA rulebook that cross-reference or otherwise incorporate some or all of the OATS Rules. If the Commission approves the proposed rule change, FINRA would file a proposed rule change to delete or amend, as applicable, the references to the OATS Rules before the amendments in the current proposed rule change are implemented.

[17] FINRA notes that OATS was originally proposed to fulfill one of the undertakings contained in an order issued by the Commission relating to the settlement of an enforcement action against FINRA (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) for failure to adequately enforce its rules. *See* Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) (Order Approving File No SR–NASD–97–56) (''OATS Approval Order''); *see also* Securities Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3–9056 (''SEC Order''). In the OATS Approval Order, the Commission concluded that OATS satisfied the conditions of the SEC Order and was consistent with the Exchange Act. *See* 63 FR at 12566–67. As noted, the Plan is designed to create, implement and maintain a CAT that would

(b) Specific Accuracy and Reliability Standards

The first issue the Plan requires the proposed rule change to discuss is ''specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.'' [18] FINRA believes that relevant error rates are the primary, but not the sole, metric by which to determine the CAT's accuracy and reliability and will serve as the baseline requirement needed before OATS can be retired.

As discussed in Section A.3(b) of Appendix C to the CAT NMS Plan, the Participants established an initial Error Rate, as defined in the Plan, of 5% on initially submitted data (*i.e.,* data as submitted by a CAT Reporter before any required corrections are performed). The Participants noted in the Plan that their expectation was that ''error rates after reprocessing of error corrections will be de minimis.'' [19] The Participants based this Error Rate on their consideration of ''current and historical OATS Error Rates, the magnitude of new reporting requirements on the CAT Reporters and the fact that many CAT Reporters may have never been obligated to report data to an audit trail.'' [20]

FINRA agrees with the Participants' conclusion that a 5% pre-correction threshold ''strikes the balance of adapting to a new reporting regime, while ensuring that the data provided to regulators will be capable of being used to conduct surveillance and market reconstruction, as well as having a sufficient level of accuracy to facilitate the retirement of existing regulatory reports and systems where possible.'' [21] However, FINRA does not believe that a 5% error rate alone would ensure a sufficient level of data accuracy and reliability for purposes of surveillance and investigations, and as noted above, the expectation is that error rates after reprocessing of error corrections also must be de minimis. Accordingly, FINRA believes that, when assessing the accuracy and reliability of the data for the purposes of retiring OATS, the error thresholds should be measured in more granular ways and should also include maximum error rates of post-correction data, which represents the data most likely to be used by FINRA to conduct surveillance. Although FINRA is proposing to measure the appropriate error rates in the aggregate, rather than firm-by-firm, FINRA believes that the error rates should be measured solely for equity securities since options orders are not currently reported regularly or included in OATS.

To ensure the CAT's accuracy and reliability, FINRA is proposing that, before OATS could be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting in each of the categories below for a period of at least 180 days of 5% or lower, measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).[22] FINRA is proposing to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. FINRA believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds for Industry Member reporting while also ensuring that single-day measurements do not unduly affect the overall measurements.

Based on prior experience with OATS, FINRA believes that a 2% post-correction error rate is the appropriate maximum standard for purposes of retiring OATS. Currently, OATS non-compliance rates are lower than 2%—generally at or slightly below 1%. However, compliance rates have not always been at this level, particularly with the implementation of new OATS reporting requirements.[23] These higher non-compliance rates following major releases have been temporary and did not result in a degradation of FINRA's surveillance capabilities. With experience over time, the OATS compliance rates have dramatically improved and, as noted above, the post-correction error rate is generally at or below 1% today. FINRA anticipates that this will be the case with respect to CAT reporting, which is anticipated to be more complex and new to some firms and therefore more likely to contain errors when initially reported. Thus, FINRA believes that a 2% post-correction error rate strikes a reasonable balance between the potential costs of retaining OATS and requiring duplicative reporting by firms for a longer period in order to achieve a lower error rate and any potential impact on FINRA's surveillance capabilities, which FINRA anticipates would be temporary. Importantly and as further discussed below, while error rates are a key standardized measure in determining whether OATS retirement is appropriate, FINRA's use of the data in the CAT also must confirm that there are no material issues that have not been corrected, the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations and the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Industry Member Data. As such, even if maximum error rates are met, FINRA must evaluate and confirm

capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. FINRA has already adopted rules to enforce compliance by its Industry Members, as applicable, with the provisions of the Plan. *See* Rule 6800 Series.

Once the CAT can replace OATS, FINRA believes it will be appropriate to delete the OATS Rules that were implemented to comply with the SEC Order. FINRA will not transition from OATS to CAT until its surveillance program is fully prepared for such transition. Accordingly, FINRA believes that it would continue to be in compliance with the requirements of the SEC Order once the OATS Rules are deleted.

[18] *See* CAT NMS Plan, Appendix C, Section C.9.

[19] *See* CAT NMS Plan, Appendix C, Section A.3(b), at note 102.

[20] *See* CAT NMS Plan, Appendix C, Section A.3(b).

[21] *See supra* note 20.

[22] The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. *See* CAT NMS Plan, Appendix C, Section A.2(a).

[23] As discussed in the CAT NMS Plan, the Participants considered industry experience with OATS for purposes of determining the applicable Error Rate for the CAT, noting that there have been three major industry impacting releases: (1) OATS Phase III, which required manual orders to be reported to OATS; (2) OATS for OTC Securities which required OTC equity securities to be reported to OATS; and (3) OATS for NMS which required all NMS stocks to be reported to OATS. Each of these releases was accompanied by significant updates to the required formats which required OATS reporters to update and test their reporting systems and infrastructure. The CAT NMS Plan also cites the combined average error rates for the time periods immediately following release across five significant categories for these three releases: The average rejection percentage rate, representing order events that did not pass systemic validations, was 2.42%. The average late percentage rate, representing order events not submitted in a timely manner, was 0.36%. The average order/trade matching error rate, representing OATS Execution Reports unsuccessfully matched to a FINRA Facility trade report was 0.86%. The average Exchange/Route matching error rate, representing OATS Route Reports unsuccessfully matched to an exchange order was 3.12%. Finally, the average Interfirm Route matching error rate, representing OATS Route Reports unsuccessfully matched to a report representing the receipt of the route by another reporting entity was 2.44%. The Plan further notes that the error rates for the 1999 initial OATS implementation were significantly higher (*e.g.,* the initial rejection rates for OATS were 23% and the late reporting rate was 2.79%). *See* CAT NMS Plan, Appendix C, Section A.3(b).

that overall, there are no material issues and the data is accurate and reliable.[24]

FINRA is proposing to use error rates in each of the following categories, measured solely for equities, to assess whether the threshold pre- and post-correction error rates are being met:

• *Rejection Rates and Data Validations.* FINRA has reviewed the data validations for the CAT, which are set forth in the Industry Member Technical Specifications published by the Plan Processor,[25] and confirmed that they are substantially similar to OATS. While not required to be designed the same as OATS, data validations must be functionally equivalent to OATS in accordance with the CAT NMS Plan (*i.e.,* the same types of basic data validations must be performed by the Plan Processor to comply with the CAT NMS Plan requirements). Appendix D of the Plan, for example, requires that certain file validations [26] and syntax and context checks be performed on all submitted records.[27] If a record does not pass these basic data validations, it must be rejected and returned to the CAT Reporter to be corrected and resubmitted.[28] The Plan also requires the Plan Processor to provide daily statistics on rejection rates after the data has been processed, including the number of files rejected and accepted, the number of order events accepted and rejected, and the number of each type of report rejected.[29] FINRA is proposing that, over the 180-day period, aggregate rejection rates (measured solely for equities) must be no more than 5% pre-correction or 2% post-correction across all CAT Reporters.

• *Intra-Firm Linkages.* The Plan requires that ''the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order.'' [30] At a minimum, this requirement includes the creation of an order lifecycle between ''[a]ll order events handled within an individual CAT Reporter, including orders routed to internal desks or departments with different functions (*e.g.,* an internal ATS).'' [31] FINRA is proposing that aggregate intra-firm linkage rates across all Industry Member Reporters must be at least 95% pre-correction and 98% post-correction.

• *Inter-Firm Linkages.* The order linkage requirements in the Plan also require that the Plan Processor be able to create the lifecycle between orders routed between broker-dealers.[32] FINRA is proposing that at least a 95% pre-correction and 98% post-correction aggregate match rate be achieved for orders routed between two Industry Member Reporters.[33]

• *Order Linkage Rates.* In addition to creating linkages within and between broker-dealers, the Plan also includes requirements that the Plan Processor be able to create lifecycles to link various pieces of related orders.[34] For example, the Plan requires linkages of order information to create an order lifecycle from origination or receipt to cancellation or execution. In addition, the Plan requires linkages between customer orders and ''representative'' orders created in firm accounts for the purpose of facilitating a customer order, riskless principal orders, and orders worked through average price accounts.[35] Pursuant to the phased approach for Industry Member reporting, certain of these order linkages will not be required in the initial phase of reporting (or ''phase 2a''), which commenced on June 22, 2020.[36] For example, linkages for representative order scenarios involving agency average price trades, net trades and aggregated orders will not be required until the third phase of reporting (or ''phase 2c'') is implemented in April 2021; such linkages are not required in OATS today. FINRA is proposing that there be at least a 95% pre-correction and 98% post-correction rate for order linkages that are required in phase 2a.

FINRA notes that in phase 2a, linkage is required between the representative street side order and the order being represented when the representative order was originated specifically to represent a single order (received either from a customer or another broker-dealer) and there is: (1) An existing direct electronic link in the firm's system between the order being represented and the representative order, and (2) any resulting executions are immediately and automatically applied to the represented order in the firm's system.[37] While such linkages are not required in OATS today, FINRA believes that it is appropriate to evaluate them for purposes of retiring OATS. These linkages represent a significant enhancement to the data currently available in OATS and will enhance the quality of the equity audit trail. FINRA further notes that linkages for more complex representative order scenarios, such as those involving agency average price trades, net trades and aggregated orders, will not be required until phase 2c. Accordingly, FINRA does not anticipate that the error rates for the phase 2a representative order linkages in CAT would be significantly higher than the order linkages available in OATS today. Nonetheless, in evaluating whether the standards for OATS retirement have been met, FINRA will take into consideration if the error rates for the phase 2a representative order linkages have a significant negative impact on the overall error rates for order linkages.

• *Exchange and TRF/ORF Match Rates.* The Plan requires that an order lifecycle be created to link ''[o]rders routed from broker-dealers to exchanges'' and ''[e]xecuted orders and trade reports.'' [38] FINRA is proposing at least a 95% pre-correction and 98% post-correction aggregate match rate to each equity exchange for orders routed

[24] FINRA notes that while error rates after reprocessing of error corrections are ultimately expected to be de minimis for the CAT (*see* CAT NMS Plan, Appendix C, note 102), FINRA does not believe that post-correction errors need to be de minimis before OATS can be retired and is not suggesting, with this proposal, that 2% would meet the ultimate objective of de minimis error rates for CAT.

[25] *See, e.g.,* Industry Member Technical Specifications (2a/2b) version 2.2.1 r6, dated June 22, 2020, available at *www.catnmsplan.com/sites/default/files/2020-06/CAT_Reporting_Technical_Specifications_for_Industry%20Members_v2.2.1r6_CLEAN.pdf.*

[26] *See* CAT NMS Plan, Appendix D, Section 7.2. The Plan requires the Plan Processor to confirm that file transmission and receipt are in the correct formats, including validation of header and trailers on the submitted report, confirmation of a valid SRO-Assigned Market Participant Identifier, and verification of the number of records in the file.

[27] *See supra* note 26. The Plan notes that syntax and context checks would include format checks (*i.e.,* that data is entered in the specified format); data type checks (*i.e.,* that the data type of each attribute conforms to the specifications); consistency checks (*i.e.,* that all attributes for a record of a specified type are consistent); range/logic checks (*i.e.,* that each attribute for every record has a value within specified limits and the values provided are associated with the event type they represent); data validity checks (*i.e.,* that each attribute for every record has an acceptable value); completeness checks (*i.e.,* that each mandatory attribute for every record is not null); and timeliness checks (*i.e.,* that the records were submitted within the submission timelines).

[28] *See supra* note 26.

[29] *See supra* note 26.

[30] *See* CAT NMS Plan, Appendix D, Section 3.

[31] *See supra* note 30.

[32] *See supra* note 30.

[33] This assumes linkage statistics will include both unlinked route reports and new orders where no related route report could be found.

[34] *See* CAT NMS Plan, Appendix D, Section 3.

[35] *See supra* note 34.

[36] *See* CAT Reporting Timelines at *www.catnmsplan.com/timelines/. See also* Securities Exchange Act Release No. 88702 (April 20, 2020), 85 FR 23075 (April 24, 2020) (Order Granting Conditional Exemptive Relief from Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the CAT NMS Plan) (''Phased Industry Member Reporting Exemptive Order'') and FINRA Rule 6895.

[37] *See* Industry Member Technical Specifications (2a/2b) version 2.2.1 r6, dated June 22, 2020, available at *www.catnmsplan.com/sites/default/files/2020-06/CAT_Reporting_Technical_Specifications_for_Industry%20Members_v2.2.1r6_CLEAN.pdf.*

[38] *See* CAT NMS Plan, Appendix D, Section 3.

from Industry Members to an exchange and, for over-the-counter executions, the same match rate for orders linked to trade reports.

FINRA intends to commence its review of CAT data and error rates based on phase 2a data and linkages, which would replicate the data in OATS today, and will not wait for implementation of phase 2c reporting (and the attendant linkages) to do so. As discussed in the Phased Industry Member Reporting Exemptive Order,[39] Phase 2a Industry Member Data includes all events and scenarios covered by OATS. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry Members that currently are reporting to OATS (''Small Industry OATS Reporters'') are required to submit data to the CAT for these same events and scenarios during phase 2a. Accordingly, Phase 2a Industry Member Data is the most relevant for OATS retirement purposes.

FINRA anticipates retiring OATS based solely on phase 2a reporting, assuming the threshold pre- and post-correction error rates are achieved and FINRA's use of the data confirms that the data is accurate and reliable, as discussed below. This is because, as noted above, phase 2a data and linkages will replicate what is in OATS today; the data and linkages that are not required to be reported until phase 2c are not in OATS today. OATS will not be retired prior to commencement of phase 2c reporting by Large Industry Members in April 2021, and there may be an initial increase in error rates immediately following implementation of the new phase 2c reporting requirements. FINRA does not believe that such increase would impact FINRA's ability to assess the accuracy and reliability of phase 2a data for purposes of determining OATS retirement. In addition, FINRA believes that Industry Members would gain experience with the new 2c reporting requirements over time, such that the expected increase in the error rate would dissipate. Such short-lived increase is not expected to have an impact on FINRA's ability to meet its surveillance obligations.

Even if these error rate thresholds are met, FINRA must evaluate and confirm through incorporation of CAT Data into its automated surveillance program that the data is accurate and reliable.[40] Thus, in addition to the maximum error rates and matching thresholds proposed above, FINRA's use of CAT Data must confirm that (i) there are no material issues that have not been corrected (*e.g.,* delays in the processing of data, issues with query functions, etc.), (ii) the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations and (iii) the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Industry Member Data. FINRA notes that any errors in the CAT Data may manifest themselves only after surveillance patterns and other queries have been run. Thus, while the error rate thresholds may be met over a 180-day period, additional time may be required to reliably establish that usage of the CAT has not revealed material issues that have not been corrected and allow contextual analysis of the data to take place to uncover errors in reporting or processing that may not be apparent from more standardized data validation processes.[41]

Based on the proposed accuracy and reliability standards described above, FINRA anticipates that the time period for implementation for the deletion of the OATS Rules could be significant. Thus, in order to help alert members of the status of the OATS Rules, if the Commission approves the proposed rule change, FINRA is proposing to add introductory language to Rule 4554 and the Rule 7400 Series clarifying that the SEC has approved a proposed rule change (SR–FINRA–2020–024) to remove Rule 4554 and the Rule 7400 Series from the FINRA rulebook; however, by its terms, SR–FINRA–2020–024 will not be implemented until FINRA has determined that the CAT has achieved a level of accuracy and reliability sufficient to replace OATS. Once FINRA has determined that such standards have been met, FINRA will file for immediate effectiveness a rule filing setting forth the basis for its determination and will publish a *Regulatory Notice* announcing the implementation date of SR–FINRA–2020–024. FINRA is proposing that this language be added to Rule 4554 and the Rule 7400 Series upon approval of the proposed rule change by the SEC.

(c) Small Industry Member Data Availability

The second issue the Plan requires the proposed rule change to address is ''whether the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.''[42]

As discussed in the original proposal, FINRA believes that there is no effective way to retire OATS until all current OATS reporters are reporting to the CAT. Pursuant to the phased reporting approach, Small Industry OATS Reporters and Large Industry Members were required to begin reporting to the CAT on the same date, June 22, 2020.[43] Thus, at this time, all current OATS reporters are required to report to the CAT.[44] Small Industry Members that are not currently required to record and report information to OATS are required to begin reporting to the CAT in December 2021.[45]

FINRA believes that the requirement that all current OATS reporters begin reporting to the CAT on June 22, 2020 will expedite the retirement of OATS, providing a significant cost savings for the industry.

(d) Individual Industry Member Exemptions

The final issue the Plan requires the proposed rule change to address is ''whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.''[46]

FINRA believes that a single cut-over from OATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the OATS requirements on a firm-by-firm basis. The primary benefit to a firm-by-firm exemptive approach would be to

[39] *See supra* note 36.

[40] For example, FINRA will need to transition all or substantially all of its automated surveillance patterns to CAT Data in order to evaluate the accuracy and reliability of the data.

[41] FINRA notes that the proposed criteria and anticipated timing of OATS retirement outlined in this filing are premised on and assume there are no material changes to the current CAT implementation plan, including availability and FINRA's access to CAT Data. Pursuant to amendments to the CAT NMS Plan adopted by the SEC, OATS must be retired by December 31, 2021 for the Plan Participants to meet the Period 3 Financial Accountability Milestone (Full Availability and Regulatory Utilization of Transactional Database Functionality). *See* CAT NMS Plan, Sections 1.1 and 11.6.

[42] *See* CAT NMS Plan, Appendix C, Section C.9.

[43] *See supra note 36.*

[44] The 180-day timeframes discussed above with respect to usage of the data and calculation of error rates will apply to data reported to the CAT by Small Industry OATS Reporters.

[45] *See supra note 36.*

[46] *See* CAT NMS Plan, Appendix C, Section C.9.

reduce the amount of time an individual firm is required to report to a legacy system (*e.g.,* OATS) if it is also accurately and reliably reporting to the CAT. FINRA believes that the overall accuracy and reliability thresholds for the CAT described above would need to be met under any conditions before firms could stop reporting to OATS. In addition, a firm-by-firm approach would require that OATS and CAT data be combined and integrated in order for FINRA to conduct surveillance in accordance with SEC rules and SRO obligations. This process would be technologically costly and complex and could potentially compromise the quality of the data and FINRA's surveillance. Moreover, as discussed above, Small Industry OATS Reporters are required to report to the CAT on the same timeframe as all other OATS Reporters (*i.e.,* Large Industry Members). Thus, there is no need to exempt members from OATS requirements on a firm-by-firm basis.

If the Commission approves the proposed rule change, the rule text will be effective upon approval; however, the amendments will not be implemented until FINRA has determined the accuracy and reliability standards set forth in the proposed rule change have been met. Once FINRA has determined that such standards have been met, FINRA will file for immediate effectiveness a separate rule filing setting forth the basis for its determination and will publish a *Regulatory Notice* announcing the implementation date of the amendments proposed herein.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[47] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(9) of the Act,[48] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that the proposed rule change fulfills FINRA's obligation under the CAT NMS Plan to submit a proposed rule change to eliminate or modify duplicative rules. FINRA believes that the approach set forth in the proposed rule change strikes the appropriate balance between ensuring that FINRA is able to continue to fulfill its statutory obligation to protect investors and the public interest by ensuring its surveillance of market activity remains accurate and effective while also establishing a reasonable timeframe for elimination the OATS Rules, which will be rendered duplicative after implementation of the CAT.

B. Self-Regulatory Organization's Statement on Burden on Competition Economic Impact Assessment

FINRA has undertaken an economic impact assessment to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs and benefits, and the alternatives considered in assessing how to best meet regulatory objectives. FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Regulatory Need

As mentioned above, once members are effectively reporting to the CAT and the CAT's accuracy and reliability meet certain standards, OATS reporting will be a duplicate effort. Accordingly, FINRA is proposing to add introductory language to Rule 7400 that facilitates the deletion of the Rule 7400 Series, upon announcement by FINRA that CAT has achieved the accuracy and reliability targets.

Economic Baseline

Currently all FINRA members that do business in equity securities are required to report equity audit trail information to OATS. As noted above, Small Industry OATS Reporters and Large Industry Members were required to begin reporting to CAT on the same date, June 22, 2020, as part of the broader plan to implement the CAT and retire other systems. The proposed rule change lays out a plan by which FINRA will retire OATS to eventually eliminate the need for duplicative reporting and records maintenance.

Costs and benefits associated with establishing the CAT, including the economic impacts associated with retiring existing systems, have been established as a part of the Plan approved by the SEC. The proposed framework in Appendix C, Section C.9. serves as the baseline to evaluate the economic impacts of the proposed rule change. Accordingly, the next section addresses the potential impacts stemming from:

(1) Revising the reporting timeline to require that Small Industry Members that currently report to OATS begin reporting to the CAT on the same date as Large Industry Members (June 22, 2020);

(2) implementing a single cut-over from OATS to CAT for all firms provided that average error rate thresholds over a 180-day period are met and FINRA has determined that its usage of the CAT Data has not revealed material issues; and

(3) imposing a 2% post-correction error rate, in addition to the 5% initial Error Rate as defined in the Plan, as a condition for retiring of OATS.

Economic Impacts

In creating the proposal to retire OATS, FINRA is seeking to carefully balance the additional costs incurred by member firms associated with continuing to maintain duplicate systems and records created by the CAT NMS Plan and existing rules with the risks to effective and efficient surveillance that could arise from eliminating access to existing data systems before a high-quality alternative has been tested and verified. The costs of maintaining duplicate systems and records include, among other things, system maintenance, quality control oversight and staff to maintain the systems and records. Because the CAT NMS Plan created the need to have duplicate systems and required a plan for the retirement of duplicate systems and processes, the Economic Impact Assessment will focus on the proposed choices made by FINRA in implementing the retirement plan.

The proposed rule change will impact all OATS-reporting firms. As of June 30, 2019, 616 (of 936) large FINRA member broker-dealers and 221 (of 476) small FINRA member broker-dealers report to OATS. Of the 221 Small Industry Members that report to OATS, all but nine of them currently report through other firms or service providers.[49] Of the nine that self-report, eight of them report very few orders to OATS.[50] The approximately 575 FINRA member

[47] 15 U.S.C. 78*o*–3(b)(6).

[48] 15 U.S.C. 78*o*–3(b)(9).

[49] All of the clearing firms that report to OATS on behalf of Small Industry Members were required to begin reporting to CAT on June 22, 2020. In addition, the service providers that report to OATS on behalf of Small Industry Members have a mix of small and large clients for whom they provide this service and, therefore, began CAT reporting on behalf of their clients on June 22, 2020.

[50] As noted above, FINRA has identified approximately 221 member firms that currently report to OATS and meet the definition of ''Small Industry Member;'' however, only nine of these firms submit information to OATS on their own behalf, and five of the nine firms report very few orders to OATS. For example, in one recent month, five of the nine firms submitted fewer than 25 reports during the month, with four firms submitting fewer than 10.

broker-dealers that are currently exempt or excluded from OATS reporting are not impacted by this proposed rule change because they currently incur no costs in maintaining directly or indirectly systems for OATS compliance. Accordingly, the analysis here focuses on the impact of the proposed plan for retiring OATS on OATS-reporting firms only.

First, FINRA's proposal recommends a requirement that there be a single cut-over from OATS to CAT rather than a firm-by-firm cut-over. The primary beneficiary of this proposal will be the investing public. This approach eliminates the need to merge OATS and CAT data in order to execute surveillance in accordance with SEC rules and SRO obligations. The integration process would be technologically costly and difficult and could introduce errors into the data being surveilled that did not exist prior to integration. Conducting market surveillance from a single audit trail system increases the efficiency and effectiveness of the process and improves the integrity of the markets. In addition, there are direct benefits of this approach to firms. Specifically, other than during the time period during which the accuracy and reliability of CAT data is validated, a single cut-over approach would eliminate the need for firms that report on other firms' behalf to create a technological solution for receiving and reporting on data structured for both OATS and CAT simultaneously. Such a practice would increase costs to ensure compliance with the proper reporting mechanism. These costs would likely be incorporated into the fees for the service charged to introducing firms and could eventually be borne by customers through higher fees based on the price elasticity for brokerage services.

The potential costs associated with the single cut-over approach will be borne by firms that could meet the maximum error thresholds for reporting to CAT earlier than the single cut-over approach would allow. These firms would bear the technology and compliance costs associated with dual reporting for a longer period than they might otherwise.

Another potential cost of the single cut-over method is that there will likely be firms reporting to CAT that do not meet the maximum error rate thresholds, leading to lower quality data available for surveillance. If firms were individually permitted to end OATS reporting only when meeting a maximum error rate, every firm's reporting would meet the minimum criterion. Requiring an aggregate error rate may permit individual firms to end OATS reporting even while their CAT reporting does not meet the specified error rate as long as the error rate is low enough for the industry. Thus, surveillance of market activity for those firms may not be as efficient or effective due to the higher error rates. Taken further, it is possible that a single cut-over may reduce the incentives for any one firm to put significant effort and costs into meeting or beating the threshold error rates because the benefits are shared among all firms while greater cost is borne by the firms whose compliance rates satisfy the minimum error rate thresholds. This disincentive is likely to be small for firms with significant reporting obligations, who would seek to end duplicative reporting as quickly as possible and who represent the vast majority of OATS reports, but may, at the margin, extend the time necessary to meet the error reporting threshold. However, significant error rates could constitute a rule violation and subject firms to possible disciplinary action.[51] Thus, firms that delay reducing error rates to threshold levels would over time incur higher costs through enforcement actions and be incentivized to improve their compliance rates.

With respect to the revised timeline requiring that all firms that report to OATS begin CAT reporting on June 22, 2020, this requirement means that 221 Small Industry Members were required to begin reporting to the CAT on the same timeframe as Large Industry Members. The primary benefit of this approach is that it allows the OATS system to be retired up to a year earlier, saving firms the costs of maintaining duplicate reporting systems. Of the estimated 221 firms that would be impacted by this proposal, 212 report to OATS through clearing firms or other third party providers, all of whom were required to begin CAT reporting on June 22, 2020 either by the requirement in the Plan or on behalf of clients who are required to in the Plan. Thus, there should be limited additional technical requirements or costs to facilitate reporting for these firms. In fact, requiring Small Industry OATS Reporters to report to the CAT on the same timeframe as Large Industry Members will likely allow the introducing and clearing firms to avoid the costs associated with maintaining two systems for reporting during the additional transition year. The other nine small firms will be required to incur costs associated with the changeover to CAT a year earlier. The magnitude of these costs is dependent on several factors, including the volume of trades expected to be reported to CAT as well as the technological differences between the OATS system specifications and CAT system specifications.

Third, FINRA proposes that the official retirement of OATS occurs only once CAT has met minimum accuracy and reliability standards defined as a maximum error rate of 5% on a pre-correction basis and 2% on a post-correction basis for all CAT submissions averaged over a 180-day period in applicable categories, and FINRA has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations and confirmed that the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Industry Member Data. FINRA believes that a minimum of 180 days is required to provide sufficient time to ensure that future error rates below the maximum thresholds are able to be maintained and that the CAT data can otherwise be relied upon for conducting effective market surveillance. The trade-offs of lengthening or shortening the phase-in period and raising or lowering error rate thresholds are increased costs to member firms for maintaining duplicate reporting systems and records versus reliable surveillance and effective investigations of market activity, whose benefits eventually accrues to investors. Note that the current OATS error rates are significantly lower than 2%; however, OATS reporting errors have decreased over time with additional experience by firms, and CAT reporting is anticipated to be more complex and new to some firms and therefore more likely to contain errors when initially reported.

Alternatives Considered

In considering how to best meet its regulatory objectives, FINRA considered several alternatives in the design of the proposed rule changes. Among these alternatives, FINRA assessed whether Small Industry Members should be subject to a different effective date for CAT reporting. It was determined that Small Industry OATS Reporters should begin reporting to CAT on the same date that Large Industry Members begin reporting, to enable linkages across order lifecycle events, enhancing surveillance and potentially permitting OATS to be retired more quickly.

[51] *See* CAT NMS Plan, Appendix C, Section 3(b) (discussing firm-specific compliance thresholds).

FINRA also considered a firm-by-firm approach, for exempting members from the OATS reporting requirements, as an alternative to single cut-over from OATS to CAT. FINRA determined that this approach represented a higher threshold for the industry to meet, likely increasing costs and the period where both CAT and OATS would be required simultaneously. Further, such an approach would also potentially reduce the efficacy of the audit trail, creating no substantial benefit to investor protection. Therefore, FINRA is proposing to implement a single cut-over approach for retirement of OATS.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

As discussed above, FINRA provided similar views and mechanisms for eliminating the OATS Rules in the original proposal.[52] Four comment letters were submitted in response,[53] and FINRA subsequently filed an amendment to the original proposal, which summarized and responded to the comments received.[54] Three of the four commenters filed additional comment letters in response to the amendment,[55] and FINRA filed a response to comments.[56] In addition, prior to the original proposal, FIF and SIFMA submitted letters to the Participants regarding the retirement of systems related to the CAT.[57] The comment letters, as well as FINRA's partial amendment and subsequent response to comments (which were filed with the Commission as comment letters), are available on the Commission's website.

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 (i) as the Commission may designate up to 90 days of such date 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.

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–FINRA–2020–024 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–FINRA–2020–024. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2020–024 and should be submitted on or before September 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

Jill M. Peterson,

Assistant Secretary.

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[52] *See supra* note 12.

[53] *See* Letters from Marc R. Bryant, Senior Vice President and Deputy General Counsel, Fidelity Investments, to Robert W. Errett, Deputy Secretary, SEC, dated June 22, 2017 (''Fidelity''); William H. Hebert, Managing Director, Financial Information Forum, to Robert W. Errett, Deputy Secretary, SEC, dated June 22, 2017 (''FIF''); Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, to Brent J. Fields, Secretary, SEC, dated June 22, 2017 (''Thomson Reuters''); and Ellen Greene, Managing Director & Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, SEC, dated June 23, 2017 (''SIFMA'').

[54] *See* Securities Exchange Act Release No. 81499 (August 30, 2017), 82 FR 42168 (September 6, 2017); *see also* Letter from Brant K. Brown, Associate General Counsel, FINRA, to Brent J. Fields, Secretary, SEC, dated August 28, 2017.

[55] *See* Letters from Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, to Brent J. Fields, Secretary, SEC, dated September 27, 2017; William H. Hebert, Managing Director, FIF, to Heather Seidel, Acting Director, Division of Trading and Markets, SEC, dated September 29, 2017; and Ellen Greene, Managing Director & Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC, dated September 29, 2017.

[56] *See* Letter from Brant K. Brown, Associate General Counsel, FINRA, to Brent J. Fields, Secretary, SEC, dated October 11, 2017.

[57] *See* Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor, dated April 4, 2017, at 2; Letter from William H. Hebert, FIF, to Participants re: Milestone for Participants' rule change filings to eliminate/modify duplicative rules, dated April 12, 2017.

[58] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89673; File No. SR–CboeBZX–2020–066]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule

August 26, 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 12, 2020, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] 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] The Exchange initially filed the proposed fee changes on August 3, 2020 (SR–CboeBZX–2020–064). On August 12, 2020, the Exchange withdrew that filing and submitted this proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the fee schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule applicable to its equities trading platform (''BZX Equities'') to remove certain Step-Up Tiers and update Tape B Volume and Quoting Tiers.

Proposal to Eliminate Step-Up Tiers 2 and 4

The Exchange first notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays credits to members that provide liquidity and assesses fees to those that remove liquidity. The Exchange's fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for orders priced at or above $1.00, the Exchange provides a standard rebate of $0.0025 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity. In response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

One of the tiered pricing models is set forth in Footnote 2 of the fee schedule (Step-Up Tiers), which provides Members an opportunity to qualify for an enhanced rebate on their orders that add liquidity where they increase their relative liquidity each month over a predetermined baseline. Tier 2 of the Step-Up Tiers provides an enhanced rebate of $0.0031 per share for Members with Step-Up Add TCV [4] from December 2018 equal to or greater than 0.20%, or has a Step-Up Add TCV [5] from April 2020 equal to or greater than 0.15%. Similarly, Tier 4 of the Step-Up Tiers provides an enhanced rebate of $0.0032 per share for Members with Step-Up Add TCV from December 2018 equal to or greater than 0.50%. The Exchange adopted Tiers 2 and 4 of the Step-Up Tiers to encourage Members to grow their ADAV on the Exchange on a monthly basis from a December 2018 or April 2020 baseline. The Exchange now proposes to eliminate the Tiers 2 and 4 of the Step-Up Tiers. Particularly, no Member has reached Tiers 2 or 4 of the Step-Up Tiers in several months and the Exchange therefore no longer wishes to, nor is it required to, maintain such tiers. The Exchange no longer believes Tiers 2 and 4 are necessary and notes the Exchange is not required to maintain such an incentive program. Additionally, the Exchange proposes to re-number Step-Up Tiers 3 and 5 to reflect the elimination of Step-Up Tiers 2 and 4.

[4] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[5] ''Step-Up Add TCV'' means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV. ''ADAV'' means average daily added volume calculated as the number of shares added per day.

Proposal To Amend Tape B Volume and Quoting Tiers

The Exchange notes that its listing business operates in a highly-competitive market in which market participants, which includes issuers of securities, Lead Market Makers (''LMMs''), and other liquidity providers, can readily transfer their listings, opt not to participate, or direct order flow to competing venues if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to enroll in LMP Securities,[6] which the Exchange believes will enhance market quality in all securities listed on the Exchange and encourage issuers to list new products and transfer existing products to the Exchange.

The Exchange currently offers two Tape B Volume and Quoting Tiers under Footnote 13, which provide an additional rebate of $0.0001 (Tier 1) and $0.0002 (Tier 2) per share for orders that meet certain criteria. Specifically, Tier 1 provides an additional rebate if (i) the Member is enrolled in at least 50 BZX-listed LMP Securities, for which it meets the following criteria for at least 50% of the trading days in the applicable month: (1) The Member has a NBBO Time [7] of equal to or greater than 15% or a NBBO Size Time [8] of equal to or greater than 25%; and (2) the Member has a Displayed Size Time [9] of equal to or greater than 90%; and (ii) the

[6] ''LMP Securities'' means a list of securities included in the Liquidity Management Program, the universe of which will be determined by the Exchange and published in a circular distributed to Members and on the Exchange's website. Such LMP Securities will include all Cboe-listed ETPs and certain non-Cboe-listed ETPs for which the Exchange wants to incentivize Members to provide enhanced market quality. All Cboe-listed securities will be LMP Securities immediately upon listing on the Exchange. The Exchange will not remove a security from the list of LMP Securities without 30 days prior notice. *See* Cboe BZX U.S. Equities Exchange Fee Schedule.

[7] ''NBBO Time'' means the average of the percentage of time during regular trading hours during which the Member maintains at least 100 shares at each of the NBB and NBO.

[8] ''NBBO Size Time'' means the percentage of time during regular trading hours during which there are size-setting quotes at the NBBO on the Exchange.

[9] ''Displayed Size Time'' means the percentage of time during regular trading hours during which the Member maintains at least 2,500 displayed shares on the bid and separately maintains at least 2,500 displayed shares on the offer that are priced no more than 2% away from the NBB and NBO, respectively.

Member adds a Tape B ADV [10] of equal to or greater than 0.15% of the TCV. Alternatively, Tier 2 provides an additional rebate if (i) the Member is enrolled in at least 100 BZX-listed LMP Securities for which it meets the following criteria for at least 50% of the trading days in the applicable month: (1) The Member has a NBBO Time of equal to or greater than 15% or a NBBO Size Time of equal to or greater than 25%; and (2) the Member has a Displayed Size Time of equal to or greater than 90%; and (ii) the Member adds a Tape B ADV of equal to or greater than 0.30% of the TCV. All Members are eligible to enroll in LMP Securities and are eligible for the current Tape B Volume and Quoting Tier. Such rebates are applicable to orders that add liquidity which are appended with fee code B.[11]

LMP incentives are designed to apply to Tape B trades as BZX-listed securities are Tape B securities. The Exchange has observed that Tape B volume can vary as a percentage of TCV. Thus, a Member may be trading heavily in Tape B securities but may not qualify for the Tape B Volume and Quoting Tiers because of the low Tape B volume as a percentage of TCV. Given this, the Exchange now proposes to make changes to the second (ii) criteria of both Tape B Volume and Quoting Tiers noted above. Specifically, for Tier 1 the Exchange proposes to amend criteria two (ii) to provide that a Member must add Tape B ADV equal than or greater than 0.50% of Tape B TCV. Similarly, the Exchange proposes to amend criteria two (ii) of Tier 2 to provide that a Member must add Tape B ADV equal than or greater than 1.50% of Tape B TCV. The proposed changes are designed to allow Members who meet the Tape B volume criteria to meet the Volume and Quoting Tiers even if Tape B volume is a low percentage of TCV.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities. The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed amendment to remove existing Tiers 2 and 4 of the Step-Up Tiers is reasonable because the Exchange is not required to maintain these tiers and Members still have a number of other opportunities and a variety of ways to receive enhanced rebates, including the proposed enhanced standard rebate to orders yielding fee code ''B'' ''V'' [14] or ''Y''.[15] Moreover, as noted above, no Member has achieved these tiers in several months. The Exchange believes the proposal to eliminate these tiers is also equitable and not unfairly discriminatory because it applies to all Members.

The Exchange also notes that its listing business operates in a highly-competitive market in which market participants, which includes issuers of securities, LMMs, and other liquidity providers, can readily transfer their listings, opt not to participate, or direct order flow to competing venues if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to enroll in LMP Securities, which the Exchange believes will enhance market quality in all securities listed on the Exchange and encourage issuers to list new products and transfer existing products to the Exchange.

The Exchange believes that the proposed changes to the Tape B Volume and Quoting Tiers are consistent with the Act and represent a reasonable, equitable, and not unfairly discriminatory means to incentivize liquidity provision in Exchange-Traded Products (''ETPs'') listed on the Exchange. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer ETP listings. Transfers between listing venues occur frequently for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as an ETP listing venue. LMP incentives are designed to apply to Tape B trades as BZX-listed securities are Tape B securities. The Exchange has observed that Tape B volume can vary as a percentage of TCV. Thus, a Member may be trading heavily in Tape B securities but may not qualify for the Tape B Volume and Quoting Tiers because of the low Tape B volume as a percentage of TCV. The proposed changes are designed to allow Members who meet the Tape B volume criteria to meet the Volume and Quoting Tiers even if Tape B volume is a low percentage of TCV.

The Exchange believes that the proposals to amend Tape B Volume and Quoting Tiers represents an equitable allocation of fees and other charges because the Tape B Volume and Quoting Tiers are available equally to all Members and all Members are eligible to enroll in LMP Securities. The Exchange anticipates at least four Members will meet the amended Tape B Volume and Quoting Tiers 1 and 2. Further, the Exchange believes that the proposal represents an equitable allocation of fees and other charges and is not unreasonably discriminatory because enrolling in LMP Securities is open to all Members and any Member that wishes to receive the Tape B Volume and Quoting Tiers must meet the proposed quoting and execution standards in order to receive the additional rebates, as outlined above. Where a Member does not meet the requirements, they will not receive the additional rebates. Further and as noted throughout, the Tape B Volume and Quoting Tiers are designed to enhance market quality in BZX-listed securities and to make the Exchange more competitive as an ETP listing venue.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX both among Members by incentivizing Members to enroll in LMP Securities and as a listing venue by enhancing market quality in BZX-listed securities. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer listings. Transfers between listing venues occur frequently for numerous reasons, including market

[10] ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day.

[11] Fee code B represents a displayed order that adds liquidity to BZX (Tape B).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] Fee code V represents a displayed order that adds liquidity to BZX (Tape A).

[15] Fee code Y represents a displayed order that adds liquidity to BZX (Tape C).

quality. This proposal is intended to help the Exchange compete as a listing venue. Accordingly, the Exchange does not believe that the proposed change will impair the ability of issuers, LMMs, other Members, or competing listing venues to maintain their competitive standing. The Exchange also notes that the proposed change is intended to enhance market quality in BZX-listed securities and other listed securities, to the benefit of all investors in such BZX-listed securities. The Exchange does not believe the proposed amendment would burden intramarket competition as it would be available to all Members uniformly.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and paragraph (f) of Rule 19b–4 [17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2020–066 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR-CboeBZX–2020–066. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–066 and should be submitted on or before September 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–19190 Filed 8–31–20; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11191]

Notice of Department of State Sanctions Actions Pursuant to Executive Order 13894 of October 14, 2019, Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Syria

SUMMARY: The Secretary of State has imposed sanctions on three individuals and one entity pursuant to E.O. 13894, Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Syria.

DATES: The Secretary of State's determination and selection of certain sanctions to be imposed upon the one individual identified in the **SUPPLEMENTARY INFORMATION** section were effective on July 29, 2020.

FOR FURTHER INFORMATION CONTACT: Taylor Ruggles, Director, Office of Economic Sanctions Policy and Implementation, Bureau of Economic and Business Affairs, Department of State, Washington, DC 20520, tel.: (202) 647 7677, email: *RugglesTV@state.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2(a) of E.O. 13894, the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Homeland Security, and the United States Trade Representative, and with the President of the Export-Import Bank, the Chairman of the Board of Governors of the Federal Reserve System, and other agencies and officials as appropriate, is authorized to impose on a person any of the sanctions described in section 2(c) of E.O. 13894 upon determining that the person met any criteria set forth in section 2(a)(i)(A) or section 2(a)(ii) of E.O. 13894.

The Secretary of State has determined, pursuant to Section 2(a)(i)(A) of E.O. 13894, that the First Division of the Syrian Arab Army and Zuhair Tawfiq al-Assad are responsible for or complicit in, have directly or indirectly engaged in, attempted to engage in, or financed, the obstruction, disruption, or prevention of a ceasefire in northern Syria.

The Secretary of State has determined, pursuant to Section 2(a)(ii) of E.O. 13894, that Karam al-Assad and Hafez al-Assad are adult family members of persons designated under subsection (a)(i) of E.O. 13894.

Pursuant to Sections 2(b) and 2(c) of E.O. 13894, the Secretary of State has selected the following sanctions to be imposed upon the First Division of the Syrian Arab Army, Zuhair Tawfiq al-Assad, Karam al-Assad, and Hafez al-Assad:

- Agencies shall not procure, or enter into a contract for the procurement of, any goods or services from the First Division of the Syrian Arab Army, Zuhair Tawfiq al-Assad, Karam al-Assad, or Hafez al-Assad (Section 2(b)(i) of E.O. 13894);
- prohibit any United States financial institution that is a U.S. person from making loans or providing credits to the First Division of the Syrian Arab Army, Zuhair Tawfiq al-Assad, Karam al-Assad, or Hafez al-Assad totaling more

than $10,000,000 in any 12-month period, unless the First Division of the Syrian Arab Army, Zuhair Tawfiq al-Assad, Karam al-Assad, or Hafez al-Assad are engaged in activities to relieve human suffering and the loans or credits are provided for such activities (Section 2(c)(i) of E.O. 13894);

• prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the First Division of the Syrian Arab Army, Zuhair Tawfiq al-Assad, Karam al-Assad, or Hafez al-Assad have any interest (Section 2(c)(ii) of E.O. 13894);

• prohibit any transfers of credit or payments between banking institutions or by, through, or to any banking institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the First Division of the Syrian Arab Army, Zuhair Tawfiq al-Assad, Karam al-Assad, or Hafez al-Assad (Section 2(c)(iii) of E.O. 13894);

• block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the First Division of the Syrian Arab Army, Zuhair Tawfiq al-Assad, Karam al-Assad, or Hafez al-Assad, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in (Section 2(c)(iv) of E.O. 13894);

• prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of the First Division of the Syrian Arab Army, Zuhair Tawfiq al-Assad, Karam al-Assad, or Hafez al-Assad (Section 2(c)(v) of E.O. 13894);

• restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from the First Division of the Syrian Arab Army, Zuhair Tawfiq al-Assad, Karam al-Assad, or Hafez al-Assad (Section 2(c)(vi) of E.O. 13894).

Manisha Singh,

Assistant Secretary, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2020–19234 Filed 8–31–20; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–60]

Petition for Exemption; Summary of Petition Received; National Air Transportation Association (NATA)

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before September 8, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0695 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *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 or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brenda Robeson, 202 267–9677, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

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

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0695.

Petitioner: National Air Transportation Association (NATA).

Section(s) of 14 CFR Affected: § 135.340(a)(2).

Description of Relief Sought: Petitioner requests relief, on behalf of its members authorized to conduct operations under part 135. The requested relief would extend the deadline for an instructor to undergo an observation check by an FAA inspector, operator check airman or aircrew designated examinier from 24 to 36 months, subject to certain risk mitigations. This petition is directly related to the circumstances associated with the COVID–19 pandemic.

[FR Doc. 2020–19226 Filed 8–31–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0115]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aviation Research Grants Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 17,

2020. The collection involves information to be collected will be used to and/or is necessary for the purpose of the review, and administration of grants in accordance with applicable Government-wide, and Agency regulations, policies, and procedures.

DATES: Written comments should be submitted by October 1, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Trina M. Bellamy by email at: *trina.bellamy@faa.gov;* phone: 609–485–7483.

SUPPLEMENTARY INFORMATION: *Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0559.

Title: Aviation Research Grants Program.

Form Numbers: SF–272, 9550–5, SF–424, SF–3881, SF–269, SF–270.

Type of Review: Renewal.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 17, 2020 (85 FR 21499). The Aviation Research Grants Program utilizes grant awards to support advanced research in areas of potential benefit to the long-term growth of civil aviation, and in areas related to the prevention of catastrophic failure of an aircraft. The objective of this program is to encourage and support innovative, advanced, and applied research and development in areas of potential benefit to the long-term growth of civil aviation. This program implements 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Federal Aviation Administration Research, Engineering and Development Authorization Act of 1990, Public Law 101–508; 49 U.S.C. 44511: Aviation research grants. Submission requirements, instructions, and a list of documentation required for applying for a grant is outlined in the Aviation Research Grant Program Notice of Funding Opportunity (NOFO) number FAA–12–01, posted on *www.grants.gov.* Eligible benefactors include colleges, universities, and non-profit research institutions. This collection removes common forms SF–424 and SF–425.

Respondents: Colleges, Universities, Non-profit research institutions.

Frequency: On occasion.

Estimated Average Burden per Response: 5 Hours.

Estimated Total Annual Burden: 5 hours per respondent.

Issued in Fort Worth, TX on August 27, 2020.

Barbara Hall,

FAA Information Collection Officer, Performance, Policy & Records Management Branch, ASP–110.

[FR Doc. 2020–19243 Filed 8–31–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–59]

Petition for Exemption; Summary of Petition Received; National Air Transportation Association (NATA)

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before September 8, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0694 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *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 or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brenda Robeson, 202 267–9677, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

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

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0694.

Petitioner: National Air Transportation Association (NATA).

Section(s) of 14 CFR Affected: § 135.339(a)(2).

Description of Relief Sought: Petitioner requests relief, on behalf of its members authorized to operate under part 135, an interim 365 day exemption from 14 CFR 135.339(a)(2). The requested relief would extend the deadline for a check airman to undergo an observation check by an FAA inspector or aircrew designated examiner from 24 to 36 months, subject to certain risk mitigations. This petition is directly related to the circumstances

associated with the COVID–19 pandemic.

[FR Doc. 2020–19224 Filed 8–31–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–46]

Petition for Exemption; Summary of Petition Received; Soaring Society of America

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before September 21, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0453 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *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 or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brittany Newton, 202–267–6691, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

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

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0453.

Petitioner: Soaring Society of America.

Section(s) of 14 CFR Affected: §§ 61.56(c)(1).

Description of Relief Sought: Soaring Society of America requests relief from Title 14 of the Code of Federal Regulations (14 CFR) § 61.56(c)(1) for the purpose of training under §§ 61.109(f)(1) or (f)(2) and 61.129(f)(1) or (f)(2). This exemption would permit an applicant who seeks to add a glider category rating to a pilot certificate to conduct solo flight operations as required by § 61.63(b) without meeting the flight review requirements of § 61.56(c)(1) while under the supervision of a certified flight instructor (CFI).

[FR Doc. 2020–19225 Filed 8–31–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–68]

Petition for Exemption; Summary of Petition Received; Bald Mountain Air Service

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before September 21, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0607 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *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 or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michelle Ross (202) 267–9836, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

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

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0607.

Petitioner: Bald Mountain Air Service.

Section(s) of 14 CFR Affected: §§ 110.2, 119.2, 119.21 and part 135.

Description of Relief Sought: The petitioner requests an exemption to allow Scheduled Service within the State of Alaska utilizing a 19 passenger Viking, DHC–6–400 Twin Otter. Petitioner states that due to the COVID–19 pandemic, they are unable to apply for, and receive, part 121 authority to provide critically needed service to the Alaskan communities within a reasonable timeframe and therefore request to conduct those operations with part 135 operating authority.

[FR Doc. 2020–19223 Filed 8–31–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No 2020–0260]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Verification of Authenticity of Foreign License, Rating, and Medical Certification

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on 04/15/2020. The information is used to identify foreign airmen in order to allow the agency to verify their foreign license when used to qualify for a US certificate. Respondents are holders of foreign licenses wishing to obtain US Certificates.

DATES: Written comments should be submitted by October 1, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Margaret A Hawkins by email at: *Margaret.A.Hawkins@faa.gov;* phone: 405–954–7045.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0724.

Title: Verification of Foreign License, Rating and Medical Certification.

Form Numbers: Form 8060–71.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on 04/15/2020 (85 FR 21061). The information collected is used to properly identify airmen to allow the agency to verify their foreign license being used to qualify for a U.S. certificate. The respondents are holders of foreign license wishing to obtain a U.S. certificate. A person who is applying for a U.S. pilot certificate or rating on the basis of a foreign pilot license must apply for verification of that license at least 90 days before arriving at the designated FAA FSDO where the applicant intends to receive the U.S. pilot certificate.

Respondents: Approximately 8,700 foreign applicants for U.S. certificates annually.

Frequency: On occasion.

Estimated Average Burden per Response: 10 Minutes.

Estimated Total Annual Burden: 1450 Hours.

Margaret A Hawkins,

Compliance Specialist, Forms Manager, Airmen Certification Branch, AFB–720.

[FR Doc. 2020–19187 Filed 8–31–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final State Agency Actions Under 23 U.S.C. 327 on the West Kingman Traffic Interchange in Mohave County, AZ

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The FHWA, on behalf of the Arizona Department of Transportation (ADOT), is issuing this notice to announce actions taken by ADOT and other relevant Federal agencies that are final. The actions relate to the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the proposed project West Kingman Traffic Interchange in Mohave County, AZ. The actions grant licenses, permits, and approvals for the project.

DATES: By this notice, FHWA, on behalf of ADOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions with authority on the highway project will be barred unless the claim is filed on or before January 29, 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 still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Olmsted, NEPA Assignment Manager, Environment Planning, Arizona Department of Transportation, 1611 W Jackson, MD EM02, Phoenix, Arizona 85007; telephone: (602) 712–6421, fax: (602) 712–3066, email: *solmsted@azdot.gov.* The Arizona Department of Transportation normal business hours are 8:00 a.m. to 4:30 p.m. (Mountain Standard Time).

You may also contact: Mr. Paul O'Brien, Environmental Planning Administrator, Arizona Department of Transportation, 1611 W Jackson, MD EM02, Phoenix, Arizona 85007; telephone: (602) 712–8669, fax: (602) 712–3066, email: *POBrien@azdot.gov.*

SUPPLEMENTARY INFORMATION: Effective April 16, 2019, the FHWA assigned and ADOT assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327 and a Memorandum of Understanding executed by FHWA and ADOT.

Notice is hereby given that ADOT and other relevant Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following project in the State of

Arizona: West Kingman Traffic Interchange in Mohave County, AZ. The actions by ADOT and other relevant Federal agencies and the laws under which such actions were taken, are described in the Draft EA approved on May 06, 2020, Final EA approved within the Finding of No Significant Impact issued on July 24, 2020, and in other documents in the administrative record. The FEA, FONSI, and other project records are available by contacting ADOT at the addresses provided above. Project decision documents are also available online at: *https://azdot.gov/planning/transportation-studies/interstate-10-and-state-route-210-study.*

This notice applies to all ADOT and other relevant 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. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].

3. Land: Section 4(f) of the US Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. Water: Clean Water Act 33 U.S.C. 1251–1387.

9. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: August 25, 2020.

Karla S. Petty,

Arizona Division Administrator, Phoenix, Arizona.

[FR Doc. 2020–19040 Filed 8–31–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final State Agency Actions on Interstate 10—State Route 210 in Pima County, AZ

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The FHWA, on behalf of the Arizona Department of Transportation (ADOT), is issuing this notice to announce actions taken by ADOT and other relevant Federal agencies that are final. The actions relate to the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the proposed project Interstate 10—State Route 210 in Pima County, AZ. The actions grant licenses, permits, and approvals for the project.

DATES: By this notice, FHWA, on behalf of ADOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions with authority on the highway project will be barred unless the claim is filed on or before January 29, 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 still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Olmsted, NEPA Assignment Manager, Environment Planning, Arizona Department of Transportation, 1611 W Jackson, MD EM02, Phoenix, Arizona 85007; telephone: (602) 712–6421, fax: (602) 712–3066, email: *solmsted@azdot.gov.* The Arizona Department of Transportation normal business hours are 8:00 a.m. to 4:30 p.m. (Mountain Standard Time).

You may also contact: Mr. Paul O'Brien, Environmental Planning Administrator, Arizona Department of Transportation, 1611 W Jackson, MD EM02, Phoenix, Arizona 85007; telephone: (602) 712–8669, fax: (602) 712–3066, email: *POBrien@azdot.gov.*

SUPPLEMENTARY INFORMATION: Effective April 16, 2019, the FHWA assigned and ADOT assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327 and a Memorandum of Understanding executed by FHWA and ADOT.

Notice is hereby given that ADOT and other relevant Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following project in the State of Arizona: Interstate 10—State Route 210 in Pima County, AZ. The actions by ADOT and other relevant Federal agencies and the laws under which such actions were taken, are described in the Draft EA approved on October 24, 2019, Final EA approved within the Finding of No Significant Impact issued on August 06, 2020, and in other documents in the administrative record. The FEA, FONSI, and other project records are available by contacting ADOT at the addresses provided above. Project decision documents are also available online at: *https://azdot.gov/planning/transportation-studies/interstate-10-and-state-route-210-study.*

This notice applies to all ADOT and other relevant 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. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].

3. Land: Section 4(f) of the US Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. Water: Clean Water Act 33 U.S.C. 1251–1387.

9. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

(Authority: 23 U.S.C. 139(l)(1))

Issued on: August 25, 2020.

Karla S. Petty,

Arizona Division Administrator, Phoenix, Arizona.

[FR Doc. 2020–19039 Filed 8–31–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final State Agency Actions on I–25/I–80 Interchange Project in Laramie County, Wyoming

AGENCY: Federal Highway Administration (FHWA), Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final. The actions relate to the I–25/I–80 Interchange Project in the City of Cheyenne in Laramie County, Wyoming. These actions grant licenses, permits, and approval of the project.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the listed highway project will be barred unless the claim is filed on or before January 29, 2021. Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or approval issued by a Federal agency for a highway or public transportation capital project shall be barred unless it is filed within 150 days after publication of a notice in the **Federal Register** announcing that the permit, license, or approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law pursuant to which judicial review is allowed.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Bob Bonds, Area Engineer, Federal Highway Administration, 2617 E. Lincolnway, Suite D, Cheyenne, WY 82001–5671; telephone: 307.771.2951; email: *Bob.bonds@dot.gov.* The FHWA Wyoming Division Office's normal business hours are 7:30 a.m. to 4:00 p.m. (Mountain Time). For the Wyoming Department of Transportation (WYDOT): Mr. Scott Gamo, Ph.D., Environmental Services Manager, 5300 Bishop Blvd., Cheyenne, WY 82002; telephone: 307–777–4379; email: *scott.gamo@wyo.gov.* The WYDOT office's regular business hours are 8 a.m. to 5 p.m. (Mountain Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following project in the State of Wyoming: the I–25/I–80 Interchange Project in Laramie County, Wyoming. The project includes full replacement of both the Interstate I–25/I–80 and I–25/U.S. Highway 30 (Lincolnway) interchanges, lengthened merge and diverge areas, flyover ramps, auxiliary lanes, braided ramps, widening the curve along eastbound I–80 approaching the interchange, expanding the radius of remaining cloverleaf ramps, and variable message and new static signage.

The actions by FHWA, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) and the Finding of No Significant Impact (FONSI). The EA was signed on May 18th, 2020. The FONSI was issued on August 24, 2020. The EA and FONSI can be viewed on the project's internet site at *http://www.i25i80.com.* These documents are available by contacting FHWA or WYDOT at the phone numbers and addresses provided above.

This notice applies to all Federal agency decisions on the project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act of 1969 [42 U.S.C. 4321]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]; MAP–21, the Moving Ahead for Progress in the 21st Century Act [Pub. L. 112–141].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712]; The Bald and Golden Eagle Protection Act [16 U.S.C. 668].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 306108]; Archeological Resources Protection Act of 1979 [16 U.S.C. 470(aa)]; Archeological and Historic Preservation Act [54 U.S.C. 312501 *et seq.*].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d) *et seq.*]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201 *et seq.*].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251 *et seq.*]; Safe Drinking Water Act (SDWA), as amended [42 U.S.C. 300(f) *et seq.*]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(M, 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act

of 1986; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. *Noise:* Federal-Aid Highway Act of 1970, Public Law 91–605 [84 Stat. 1713]; 23 U.S.C. 109(h) & (i).

10. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, 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(l)(1).

Issued on: August 27, 2020.

Bryan Cawley,

Division Administrator, Federal Highway Administration.

[FR Doc. 2020–19277 Filed 8–31–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0069]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that on August 19, 2020, OmniTRAX Inc., on behalf of the Illinois Railway, LLC (IR), petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 229, Railroad Locomotive Safety Standards. FRA assigned the petition Docket Number FRA–2020–0069.

Specifically, OmniTRAX seeks relief from 49 CFR 229.23(a), *Periodic inspections,* which requires periodic inspections be made where adequate facilities are available, and at each periodic inspection, a locomotive must be positioned so that a person may safely inspect the entire underneath portion of the locomotive. OmniTRAX contends that although two of IR's three operational sections do not have access to a shop or pit, all tests have been performed within the required time periods through other means to thoroughly and safely inspect the underneath portion of locomotives.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 1, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2020–19271 Filed 8–31–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2020–0036]

Mutual Savings Association Advisory Committee

AGENCY: Department of the Treasury, Office of the Comptroller of the Currency (OCC).

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The OCC announces a meeting of the Mutual Savings Association Advisory Committee (MSAAC).

DATES: A public meeting of the MSAAC will be held on Tuesday, September 22, 2020, via webinar, beginning at 8:30 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The OCC will hold the September 22, 2020 meeting of the MSAAC via webinar.

FOR FURTHER INFORMATION CONTACT: Michael R. Brickman, Deputy Comptroller for Thrift Supervision, (202) 649–5420, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the authority of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the regulations implementing the Act at 41 CFR part 102–3, the OCC is announcing that the MSAAC will convene a meeting on Tuesday, September 22, 2020, via webinar. The meeting is open to the public and will begin at 8:30 a.m. EDT. The purpose of the meeting is for the MSAAC to advise the OCC on regulatory or other changes the OCC may make to ensure the health and viability of mutual savings associations. The agenda includes a discussion of current topics of interest to the industry.

Members of the public may submit written statements to the MSAAC. The OCC must receive written statements no later than 5:00 p.m. EDT on Tuesday, September 15, 2020. Members of the public may submit written statements to *MSAAC@occ.treas.gov.*

Members of the public who plan to attend the meeting via webinar should contact the OCC by 5:00 p.m. EDT on Tuesday, September 15, 2020, to inform the OCC of their desire to attend the

meeting and to obtain information about participating in the meeting. Members of the public may contact the OCC via email at *MSAAC@OCC.treas.gov* or by telephone at (202) 649–5420. Members of the public who are hearing impaired should call (202) 649–5597 (TTY) by 5:00 p.m. EDT on Tuesday, September 15, 2020, to arrange auxiliary aids for this meeting.

Attendees should provide their full name, email address, and organization, if any.

Brian P. Brooks,

Acting Comptroller of the Currency.

[FR Doc. 2020–19199 Filed 8–31–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee, Notice of Meetings

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App.2, that the Executive Committee of the VA Voluntary Service (VAVS) National Advisory Committee (NAC) will meet virtually on September 22, 2020. The meeting will begin at 1:00 p.m. Eastern Standard Time (EST) and end at 3:00 p.m. EST. You may call into the meeting by dialing 1–404–397–1596 and enter Access Code 199 856 5542#. The meeting is open to the public.

The Committee, comprised of 53 major Veteran, civic, and service organizations, advises the Secretary, through the Under Secretary for Health, on the coordination and promotion of volunteer activities and strategic partnerships within VA health care facilities, in the community, and on matters related to volunteerism and charitable giving. The Executive Committee consists of 20 representatives from the NAC member organizations.

Agenda topics will include: NAC goals and objectives; review of minutes from the October 17, 2019, Executive Committee meeting; VAVS update on the Voluntary Service program's activities; Veterans Health Administration update, subcommittee reports; review of standard operating procedures; review of organization data; 2021 NAC annual meeting plans; and any new business.

No time will be allocated at this meeting for receiving oral presentations from the public. However, the public may submit written statements for the Committee's review to Mrs. Sabrina C. Clark, Designated Federal Officer, Voluntary Service Office (10B2A), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, or email at *Sabrina.Clark@VA.gov*. Any member of the public wishing to attend the meeting or seeking additional information should contact Mrs. Clark at 202–461–7300.

Dated: August 27, 2020.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–19272 Filed 8–31–20; 8:45 am]

BILLING CODE 8320–01–P

Reader Aids

Federal Register

Vol. 85, No. 170

Tuesday, September 1, 2020

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CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—SEPTEMBER 2020

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
September 1	Sep 16	Sep 22	Oct 1	Oct 6	Oct 16	Nov 2	Nov 30
September 2	Sep 17	Sep 23	Oct 2	Oct 7	Oct 19	Nov 2	Dec 1
September 3	Sep 18	Sep 24	Oct 5	Oct 8	Oct 19	Nov 2	Dec 2
September 4	Sep 21	Sep 25	Oct 5	Oct 9	Oct 19	Nov 3	Dec 3
September 8	Sep 23	Sep 29	Oct 8	Oct 13	Oct 23	Nov 9	Dec 7
September 9	Sep 24	Sep 30	Oct 9	Oct 14	Oct 26	Nov 9	Dec 8
September 10	Sep 25	Oct 1	Oct 13	Oct 15	Oct 26	Nov 9	Dec 9
September 11	Sep 28	Oct 2	Oct 13	Oct 16	Oct 26	Nov 10	Dec 10
September 14	Sep 29	Oct 5	Oct 14	Oct 19	Oct 29	Nov 13	Dec 14
September 15	Sep 30	Oct 6	Oct 15	Oct 20	Oct 30	Nov 16	Dec 14
September 16	Oct 1	Oct 7	Oct 16	Oct 21	Nov 2	Nov 16	Dec 15
September 17	Oct 2	Oct 8	Oct 19	Oct 22	Nov 2	Nov 16	Dec 16
September 18	Oct 5	Oct 9	Oct 19	Oct 23	Nov 2	Nov 17	Dec 17
September 21	Oct 6	Oct 13	Oct 21	Oct 26	Nov 5	Nov 20	Dec 21
September 22	Oct 7	Oct 13	Oct 22	Oct 27	Nov 6	Nov 23	Dec 21
September 23	Oct 8	Oct 14	Oct 23	Oct 28	Nov 9	Nov 23	Dec 22
September 24	Oct 9	Oct 15	Oct 26	Oct 29	Nov 9	Nov 23	Dec 23
September 25	Oct 13	Oct 16	Oct 26	Oct 30	Nov 9	Nov 24	Dec 24
September 28	Oct 13	Oct 19	Oct 28	Nov 2	Nov 12	Nov 27	Dec 28
September 29	Oct 14	Oct 20	Oct 29	Nov 3	Nov 13	Nov 30	Dec 28
September 30	Oct 15	Oct 21	Oct 30	Nov 4	Nov 16	Nov 30	Dec 29