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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AO05

General Schedule Locality Pay Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: On behalf of the President's Pay Agent, the Office of Personnel Management (OPM) is issuing final regulations to establish a new Des Moines-Ames-West Des Moines, IA, locality pay area and to include Imperial County, CA, in the Los Angeles-Long Beach, CA, locality pay area as an area of application. Those changes in locality pay area definitions are applicable on the first day of the first pay period beginning on or after January 1, 2021. Locality pay rates for the new Des Moines-Ames-West Des Moines, IA, locality pay area will be set by the President.

DATES: The regulations are effective November 16, 2020. The regulations are applicable on the first day of the first pay period beginning on or after January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Joe Ratcliffe by email at *pay-leave-policy@opm.gov* or by telephone at (202) 606–2838.

SUPPLEMENTARY INFORMATION: Section 5304 of title 5, United States Code (U.S.C.), authorizes locality pay for General Schedule (GS) employees with duty stations in the United States and its territories and possessions. Section 5304(f) authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to determine locality pay areas. The boundaries of locality pay areas must be based on appropriate factors, which may include local labor market patterns, commuting patterns, and the practices of other employers. The Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Federal Salary Council, which submits annual recommendations on the locality pay program to the Pay Agent. The establishment or modification of locality pay area boundaries must conform to the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553).

On July 10, 2020, OPM published a proposed rule in the **Federal Register** on behalf of the Pay Agent. (See 85 FR 41439.) The proposed rule proposed establishing a new Des Moines-Ames-West Des Moines, IA, locality pay area and including Imperial County, CA, in the Los Angeles-Long Beach, CA, locality pay area as an area of application.

The proposed rule provided a 30-day comment period. Accordingly, the Pay Agent reviewed comments received through August 10, 2020. After considering those comments, the Pay Agent has decided to implement the locality pay area definitions in the proposed rule.

Impact and Implementation

Establishing a new Des Moines-Ames-West Des Moines, IA, locality pay area will impact about 3,100 GS employees. Locality pay rates now applicable in that area will not change automatically because locality pay percentages are established by Executive order under the President's authority in 5 U.S.C. 5304 or 5304a, and the President decides each year whether to adjust locality pay percentages. When locality pay percentages are adjusted, past practice has been to allocate a percent of the total GS payroll for locality pay raises and to have the overall dollar cost for such pay raises be the same, regardless of the number of locality pay areas. If a percent of the total GS payroll is allocated for locality pay increases, the addition of a new locality pay area results in a somewhat smaller amount to allocate for locality pay increases in existing areas. Implementing higher locality pay rates in the new Des Moines-Ames-West Des Moines, IA, locality pay area could thus result in relatively lower pay increases for employees in existing locality pay areas than they would otherwise receive.

Including Imperial County, CA, in the Los Angeles-Long Beach, CA, locality pay area as an area of application will impact about 1,860 GS employees.

Comments on the Proposed Rule

OPM received 28 comments on the proposed rule. Most of those comments supported the proposed changes in the definitions of locality pay areas.

Some commenters who opposed the creation of the Des Moines-Ames-West Des Moines, IA, locality pay area commented that indicators of living costs should be considered in defining locality pay areas or in setting locality pay. Living costs are not directly considered in the locality pay program. Under 5 U.S.C. 5304, locality pay rates are based on comparisons of GS pay and non-Federal pay at the same work levels in a locality pay area, and as explained in the proposed rule the Des Moines-Ames-West Des Moines, IA, locality pay area is being established based on such pay comparisons. While relative living costs may indirectly affect non-Federal pay levels, living costs are just one of many factors that affect the supply of and demand for labor, and therefore labor costs, in a locality pay area.

Some commenters suggested that Imperial County, CA, be established as an area of application to the San Diego-Carlsbad, CA, locality pay area rather than the Los Angeles-Long Beach, CA, locality pay area. One commenter suggested that, in addition to considering overall employment interchange rates, the Pay Agent should consider how much of the employment interchange is between Imperial County and outlying portions of the basic locality pay area as opposed to its core. As explained in the proposed rule, we agree with the Federal Salary Council that when a location is to be established as an area of application and is adjacent to two locality pay areas, the location should be included in the locality pay area with which it has the higher employment interchange rate. Imperial County has a greater rate of employment interchange with the Los Angeles-Long Beach, CA, basic locality pay area than with the San Diego-Carlsbad, CA, basic locality pay area. Individuals concerned about the criteria by which locality pay

areas are defined may provide testimony to the Federal Salary Council.

Some commenters objected that certain locations were to remain in the ''Rest of U.S.'' (RUS) locality pay area under the proposed rule. Locations that will remain in the RUS locality pay area do not meet approved criteria for being established as a new locality pay area or an area of application. Some commenters expressed concern about possible recruitment and retention difficulties the commenters believe agencies may have in such locations. The Pay Agent has no evidence that the changes these final regulations will make in locality pay area definitions will create recruitment and retention challenges for Federal employers. However, should recruitment and retention challenges exist in a location, Federal agencies have considerable administrative authority to address those challenges through the use of current pay flexibilities. Information on these flexibilities is posted on the OPM website at *http://www.opm.gov/policy-data-oversight/pay-leave/pay-and-leave-flexibilities-for-recruitment-and-retention.*

One commenter appeared to believe that two counties in the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA, Combined Statistical Area defined in OMB Bulletin No. 18-03 would not be included in the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA, locality pay area, which is not the case. As explained in the proposed rule, locality pay areas consist of (1) the metropolitan statistical area (MSA) or combined statistical area (CSA) comprising the basic locality pay area and, where criteria recommended by the Federal Salary Council and approved by the Pay Agent are met, (2) areas of application. Regarding the MSAs and CSAs comprising basic locality pay areas, these final regulations define MSA as the geographic scope of an MSA as defined in OMB Bulletin No. 18–03 and define CSA as the geographic scope of a CSA as defined in OMB Bulletin No. 18–03. (OMB Bulletin No. 18–03 is posted at *https://www.whitehouse.gov/wp-content/uploads/2018/04/OMB-BULLETIN-NO.-18-03-Final.pdf.*) Where a locality pay area defined in these regulations lists one or more locations in addition to the MSA or CSA comprising the basic locality pay area, those additional locations are areas of application that meet criteria recommended by the Federal Salary Council and approved by the President's Pay Agent. OPM plans to post the definitions of locality pay areas on its website soon after these final regulations are issued.

One commenter appeared to believe that a Des Moines-Ames-West Des Moines, IA, locality pay area had already been established prior to publication of the proposed rule. That is not the case.

One commenter suggested that each GS employee's total basic pay remain the same but be redistributed to provide more for the base GS pay rate and less for the locality payment. Such a change would require a change in law and is outside the scope of these regulations.

Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which 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 must be prepared for major rules with economically significant effects of $100 million or more in any 1 year. This rule has been designated as a ''not significant regulatory action,'' under Executive Order 12866, and it is not ''economically significant'' as measured by the $100 million threshold.

Reducing Regulation and Controlling Regulatory Costs

This rule is not an Executive Order 13771 regulatory action because this rule is not subject to Executive Order 12866.

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

OPM has examined this rule in accordance with Executive Order 13132, Federalism, and has determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

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

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM is amending 5 CFR part 531 as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

■ 1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Public Law 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335 and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304, 5305, and 5941(a); E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

Subpart F—Locality-Based Comparability Payments

■ 2. In § 531.603, paragraph (b) is revised to read as follows:

§ 531.603 Locality pay areas.

* * * * *

(b) The following are locality pay areas for the purposes of this subpart:

(1) Alaska—consisting of the State of Alaska;

(2) Albany-Schenectady, NY-MA—consisting of the Albany-Schenectady, NY CSA and also including Berkshire County, MA;

(3) Albuquerque-Santa Fe-Las Vegas, NM—consisting of the Albuquerque-

Santa Fe-Las Vegas, NM CSA and also including McKinley County, NM;

(4) Atlanta—Athens-Clarke County—Sandy Springs, GA-AL—consisting of the Atlanta—Athens-Clarke County—Sandy Springs, GA CSA and also including Chambers County, AL;

(5) Austin-Round Rock, TX—consisting of the Austin-Round Rock, TX MSA;

(6) Birmingham-Hoover-Talladega, AL—consisting of the Birmingham-Hoover-Talladega, AL CSA and also including Calhoun County, AL;

(7) Boston-Worcester-Providence, MA-RI-NH-ME—consisting of the Boston-Worcester-Providence, MA-RI-NH-CT CSA, except for Windham County, CT, and also including Androscoggin County, ME, Cumberland County, ME, Sagadahoc County, ME, and York County, ME;

(8) Buffalo-Cheektowaga, NY—consisting of the Buffalo-Cheektowaga, NY CSA;

(9) Burlington-South Burlington, VT—consisting of the Burlington-South Burlington, VT MSA;

(10) Charlotte-Concord, NC-SC—consisting of the Charlotte-Concord, NC-SC CSA;

(11) Chicago-Naperville, IL-IN-WI—consisting of the Chicago-Naperville, IL-IN-WI CSA;

(12) Cincinnati-Wilmington-Maysville, OH-KY-IN—consisting of the Cincinnati-Wilmington-Maysville, OH-KY-IN CSA and also including Franklin County, IN;

(13) Cleveland-Akron-Canton, OH—consisting of the Cleveland-Akron-Canton, OH CSA and also including Harrison County, OH;

(14) Colorado Springs, CO—consisting of the Colorado Springs, CO MSA and also including Fremont County, CO, and Pueblo County, CO;

(15) Columbus-Marion-Zanesville, OH—consisting of the Columbus-Marion-Zanesville, OH CSA;

(16) Corpus Christi-Kingsville-Alice, TX—consisting of the Corpus Christi-Kingsville-Alice, TX CSA;

(17) Dallas-Fort Worth, TX-OK—consisting of the Dallas-Fort Worth, TX-OK CSA and also including Delta County, TX;

(18) Davenport-Moline, IA-IL—consisting of the Davenport-Moline, IA-IL CSA;

(19) Dayton-Springfield-Sidney, OH—consisting of the Dayton-Springfield-Sidney, OH CSA and also including Preble County, OH;

(20) Denver-Aurora, CO—consisting of the Denver-Aurora, CO CSA and also including Larimer County, CO;

(21) Des Moines-Ames-West Des Moines, IA—consisting of the Des Moines-Ames-West Des Moines, IA CSA;

(22) Detroit-Warren-Ann Arbor, MI—consisting of the Detroit-Warren-Ann Arbor, MI CSA;

(23) Harrisburg-Lebanon, PA—consisting of the Harrisburg-York-Lebanon, PA CSA, except for Adams County, PA, and York County, PA, and also including Lancaster County, PA;

(24) Hartford-West Hartford, CT-MA—consisting of the Hartford-West Hartford, CT CSA and also including Windham County, CT, Franklin County, MA, Hampden County, MA, and Hampshire County, MA;

(25) Hawaii—consisting of the State of Hawaii;

(26) Houston-The Woodlands, TX—consisting of the Houston-The Woodlands, TX CSA and also including San Jacinto County, TX;

(27) Huntsville-Decatur-Albertville, AL—consisting of the Huntsville-Decatur-Albertville, AL CSA;

(28) Indianapolis-Carmel-Muncie, IN—consisting of the Indianapolis-Carmel-Muncie, IN CSA and also including Grant County, IN;

(29) Kansas City-Overland Park-Kansas City, MO-KS—consisting of the Kansas City-Overland Park-Kansas City, MO-KS CSA and also including Jackson County, KS, Jefferson County, KS, Osage County, KS, Shawnee County, KS, and Wabaunsee County, KS;

(30) Laredo, TX—consisting of the Laredo, TX MSA;

(31) Las Vegas-Henderson, NV-AZ—consisting of the Las Vegas-Henderson, NV-AZ CSA;

(32) Los Angeles-Long Beach, CA—consisting of the Los Angeles-Long Beach, CA CSA and also including Imperial County, CA, Kern County, CA, San Luis Obispo County, CA, and Santa Barbara County, CA;

(33) Miami-Fort Lauderdale-Port St. Lucie, FL—consisting of the Miami-Fort Lauderdale-Port St. Lucie, FL CSA and also including Monroe County, FL;

(34) Milwaukee-Racine-Waukesha, WI—consisting of the Milwaukee-Racine-Waukesha, WI CSA;

(35) Minneapolis-St. Paul, MN-WI—consisting of the Minneapolis-St. Paul, MN-WI CSA;

(36) New York-Newark, NY-NJ-CT-PA—consisting of the New York-Newark, NY-NJ-CT-PA CSA and also including all of Joint Base McGuire-Dix-Lakehurst;

(37) Omaha-Council Bluffs-Fremont, NE-IA—consisting of the Omaha-Council Bluffs-Fremont, NE-IA CSA;

(38) Palm Bay-Melbourne-Titusville, FL—consisting of the Palm Bay-Melbourne-Titusville, FL MSA;

(39) Philadelphia-Reading-Camden, PA-NJ-DE-MD—consisting of the Philadelphia-Reading-Camden, PA-NJ-DE-MD CSA, except for Joint Base McGuire-Dix-Lakehurst;

(40) Phoenix-Mesa-Scottsdale, AZ—consisting of the Phoenix-Mesa-Scottsdale, AZ MSA;

(41) Pittsburgh-New Castle-Weirton, PA-OH-WV—consisting of the Pittsburgh-New Castle-Weirton, PA-OH-WV CSA;

(42) Portland-Vancouver-Salem, OR-WA—consisting of the Portland-Vancouver-Salem, OR-WA CSA;

(43) Raleigh-Durham-Chapel Hill, NC—consisting of the Raleigh-Durham-Chapel Hill, NC CSA and also including Cumberland County, NC, Hoke County, NC, Robeson County, NC, Scotland County, NC, and Wayne County, NC;

(44) Richmond, VA—consisting of the Richmond, VA MSA and also including Cumberland County, VA, King and Queen County, VA, and Louisa County, VA;

(45) Sacramento-Roseville, CA-NV—consisting of the Sacramento-Roseville, CA CSA and also including Carson City, NV, and Douglas County, NV;

(46) San Antonio-New Braunfels-Pearsall, TX—consisting of the San Antonio-New Braunfels-Pearsall, TX CSA;

(47) San Diego-Carlsbad, CA—consisting of the San Diego-Carlsbad, CA MSA;

(48) San Jose-San Francisco-Oakland, CA—consisting of the San Jose-San Francisco-Oakland, CA CSA and also including Monterey County, CA;

(49) Seattle-Tacoma, WA—consisting of the Seattle-Tacoma, WA CSA and also including Whatcom County, WA;

(50) St. Louis-St. Charles-Farmington, MO-IL—consisting of the St. Louis-St. Charles-Farmington, MO-IL CSA;

(51) Tucson-Nogales, AZ—consisting of the Tucson-Nogales, AZ CSA and also including Cochise County, AZ;

(52) Virginia Beach-Norfolk, VA-NC—consisting of the Virginia Beach-Norfolk, VA-NC CSA;

(53) Washington-Baltimore-Arlington, DC-MD-VA-WV-PA—consisting of the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA CSA and also including Kent County, MD, Adams County, PA, York County, PA, King George County, VA, and Morgan County, WV; and

(54) Rest of U.S.—consisting of those portions of the United States and its territories and possessions as listed in 5 CFR 591.205 not located within another locality pay area.

[FR Doc. 2020–22320 Filed 10–14–20; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 201

[Doc. No. AMS–ST–19–0039]

RIN 0581–AD91

Revisions to the Federal Seed Act Regulations; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendment.

SUMMARY: On July 7, 2020, the Agricultural Marketing Service amended regulations under the Federal Seed Act. The document incorrectly revised the entries for ''Oat'' and ''Brussels Sprouts'' in the table that specifies directions for germination and hard seed testing. This document corrects those entries.

DATES: Effective October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Ernest Allen, Director, Seed Regulatory and Testing Division, Science and Technology Program, AMS, USDA; 801 Summit Crossing Place, Suite C, Gastonia, NC 28054, USA; telephone: 704–810–8884; email *Ernest.Allen@usda.gov.*

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Service recently amended regulations under the Federal Seed Act (7 U.S.C. 1551–1611). *See* 85 FR 40571; July 7, 2020. The amendments updated regulations related to seed quality, germination and purity standards, and acceptable seed testing methods, and aligned Federal Seed Act regulations with current industry practices. This document corrects the entries for ''Oat'' and ''Brussels Sprouts'' in the table that specifies directions for germination and hard seed testing to specify that the prechill requirements for oat and Brussels sprouts apply to fresh and dormant seed.

List of Subjects in 7 CFR Part 201

Certified seed, Definitions, Inspections, Labeling, Purity analysis, Sampling.

For the reasons set forth in the preamble, 7 CFR part 201 is amended as follows:

PART 201—FEDERAL SEED ACT REQUIREMENTS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 1592.

■ 2. In § 201.58, amend Table 2 in paragraph (c)(3) by revising the entries for ''Oat'' and ''Brussels Sprouts'' to read as follows:

§ 201.58 Substrata, temperature, duration of test, and certain other specific directions for testing for germination and hard seed.

* * * * *

(c) * * *

(3) * * *

TABLE 2—GERMINATION REQUIREMENTS FOR INDICATED KINDS

Name of seed	Substrata	Temperature (°C)	First count days	Final count days	Additional directions	
					Specific requirements	Fresh and dormant seed
AGRICULTURAL SEED						
*	*	*	*	*	*	*
Oat	B, T, S	20; 15	5	10		Prechill at 5 or 10° C for 5 days and test for 7 days or predry and test for 10 days.
*	*	*	*	*	*	*
VEGETABLE SEED						
*	*	*	*	*	*	*
Brussels Sprouts	B, P, T	20–30	3	10		Prechill 5 days at 5 or 10 °C for 3 days; KNO_3 and Light.
*	*	*	*	*	*	*

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–20397 Filed 10–14–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0449; Product Identifier 2020–NM–038–AD; Amendment 39–21283; AD 2020–21–10]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–19–24, which applies to Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The FAA is also superseding AD 2018–16–04, which applies to Airbus SAS Model A320–216, –251N, and –271N airplanes; and Model A321–251N, –253N, and –271N airplanes; as well as the models in AD 2017–19–24. Those ADs required revising the existing maintenance or inspection program, as applicable, to incorporate new or more

restrictive maintenance requirements and airworthiness limitations. Since AD 2018–16–04 was issued, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 19, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 19, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of September 14, 2018 (83 FR 39581, August 10, 2018).

ADDRESSES: For the EASA material 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.*

For the Airbus SAS material incorporated by reference (IBR) in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *https://www.airbus.com.*

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–2020–0449.

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–2020–0102; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0034, dated February 25, 2020 (''EASA AD 2020–0034'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318 series airplanes; Model A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A319–151N, and A319–153N airplanes; Model A320–211, A320–212, A320–214, A320–215, A320–216, A320–231, A320–232, A320–233, A320–251N, A320–252N, A320–253N, A320–271N, A320–272N, and A320–273N airplanes; and Model A321 series airplanes. EASA AD 2020–0034 superseded EASA AD 2017–0170 (which corresponds to FAA AD 2018–16–04 (AD 2018–16–04, Amendment 39 19344 (83 FR 39581, August 10, 2018) (''AD 2018–16–04'')). Model A320–215 airplanes are not certified by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after November 7, 2019, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–19–24, Amendment 39–19054 (82 FR 44900, September 27, 2017) (''AD 2017–19–24''); and 2018–16–04; for all Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes; Model A320 series airplanes; and Model A321 series airplanes. The NPRM published in the **Federal Register** on May 7, 2020 (85 FR 27167). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to address the risks associated with the effects of aging on airplane systems. Such effects could change system characteristics, leading to an increased potential for failure of certain life-limited parts, and reduced structural integrity or controllability of the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the Proposed AD

United Airlines and an anonymous commenter expressed support for the proposed AD.

Request To Confirm Intent To Allow Use of Later ALS Revisions

Delta Air Lines (Delta) requested confirmation that the FAA intended to allow the use of later ALS revisions to comply with the proposed AD. The commenter noted that previous ADs required an alternative method of compliance (AMOC) to use a later ALS revision.

The FAA confirms that it intends to allow the use of applicable later ALS variations or revisions in their entirety to comply with the requirements of this AD, as long as they follow the requirements of paragraph (k) of this AD—that they are approved in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0034.

Request To Allow AMOC Approval for Alternative Actions or Intervals After Revision of Maintenance or Inspection Program

Delta requested that paragraph (k) of the proposed AD be changed to also allow alternative actions and intervals after the maintenance and inspection program has been revised, provided that the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of the proposed AD. Delta provided no reason or justification for the request.

The FAA agrees to clarify. The previous format of the FAA's airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance

(AMOC) in accordance with the procedures specified in the AMOCs paragraph under ''Other FAA Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action, interval, or CDCCL. This AD has not been changed regarding this request.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

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

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0034 describes airworthiness limitations for system equipment maintenance requirements.

This AD also requires Airbus SAS A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 4, ''System Equipment Maintenance Requirements (SEMR),'' Revision 05, dated April 6, 2017, which the Director of the Federal Register approved for incorporation by reference as of September 14, 2018 (83 FR 39581, August 10, 2018).

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.

Costs of Compliance

The FAA estimates that this AD affects 1,553 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2018–16–04 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. In the past, the agency has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2017–19–24 Amendment 39–19054 (82 FR 44900, September 27, 2017); and AD 2018–16–04, Amendment 39–19344 (83 FR 39581, August 10, 2018); and

■ b. Adding the following new AD:

2020–21–10 Airbus SAS: Amendment 39–21283; Docket No. FAA–2020–0449; Product Identifier 2020–NM–038–AD.

(a) Effective Date

This AD is effective November 19, 2020.

(b) Affected ADs

This AD replaces AD 2017–19–24, Amendment 39–19054 (82 FR 44900, September 27, 2017) (''AD 2017–19–24''); and 2018–16–04, Amendment 39–19344 (83 FR 39581, August 10, 2018) (''AD 2018–16–04'').

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 7, 2019.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the risks associated with the effects of aging on airplane systems. Such effects could change system characteristics, leading to an increased potential for failure of certain life-limited parts, and reduced structural integrity or controllability of the airplane.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2018–16–04, with no changes. Within 90 days after September 14, 2018 (the effective date of AD 2018–16–04),

revise the existing maintenance or inspection program, as applicable, to incorporate Airbus SAS A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 4, ''System Equipment Maintenance Requirements (SEMR),'' Revision 05, dated April 6, 2017. The initial compliance time for doing the revised actions is at the applicable time specified in Airbus SAS A318/A319/A320/A321 ALS Part 4, ''System Equipment Maintenance Requirements (SEMR),'' Revision 05, dated April 6, 2017. Accomplishing the maintenance or inspection program revision required by paragraph (i) of this AD terminates the requirements of this paragraph.

(h) Retained No Alternative Actions or Intervals, With a New Exception

This paragraph restates the requirements of paragraph (h) of AD 2018–16–04, with a new exception. Except as required by paragraph (i) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(i) New Maintenance or Inspection Program Revision

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0034, dated February 25, 2020 (''EASA AD 2020–0034''). Accomplishing the maintenance or inspection program revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) Exceptions to EASA AD 2020–0034

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0034 do not apply to this AD.

(2) Paragraph (3) of EASA 2020–0034 specifies revising ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA 2020–0034 within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2020–0034 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2020–0034, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0034 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2020–0034 does not apply to this AD.

(k) New Provisions for Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0034.

(l) 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 (m) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(i) 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.

(ii) AMOCs approved previously for AD 2018–16–04 are approved as AMOCs for the corresponding provisions of EASA AD 2020–0034 that are required by paragraph (g) of this AD.

(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 2020–0034 that contains RC procedures and tests: Except as required by paragraph (l)(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.

(m) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on November 19, 2020.

(i) European Union Aviation Safety Agency (EASA) AD 2020–0034, dated February 25, 2020 (''EASA AD 2020–0034'').

(ii) [Reserved]

(4) The following service information was approved for IBR on September 14, 2018 (83 FR 39581, August 10, 2018).

(i) Airbus SAS A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 4, ''System Equipment Maintenance Requirements (SEMR),'' Revision 05, dated April 6, 2017.

(ii) [Reserved]

(5) For EASA AD 2019–0256, 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.*

(6) For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *https://www.airbus.com.*

(7) 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–2020–0102.

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

Issued on October 2, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–22758 Filed 10–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0209; Product Identifier 2020–NM–004–AD; Amendment 39–21275; AD 2020–21–02]

RIN 2120–AA64

Airworthiness Directives; Kidde Aerospace & Defense

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Kidde Aerospace & Defense cargo fire extinguisher halon bottles installed on various transport category airplanes. This AD was prompted by a report indicating that certain cargo fire extinguisher halon bottles installed in the cargo compartment had low charge pressure. This AD requires an inspection to determine the part number and serial number of the cargo fire extinguisher halon bottles and replacement of affected parts with serviceable parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 19, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 19, 2020.

ADDRESSES: For Boeing service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* For Kidde Aerospace & Defense service information identified in this final rule contact Kidde Aerospace & Defense, 4200 Airport Drive NW, Building B, Wilson, NC 27896–8630; telephone 319–295–5000; *http://kiddetechnologies.com/aviation/.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0209.

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–2020–0209; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Samuel Belete, Aerospace Engineer, Systems and Equipment Section, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5580; fax: 404–474–5606; email: *Samuel.Belete@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Kidde Aerospace & Defense cargo fire extinguisher halon bottles installed on various transport category airplanes. The NPRM published in the **Federal Register** on March 30, 2020 (85 FR 17507). The NPRM was prompted by a report indicating that certain cargo fire extinguisher halon bottles installed in the cargo compartment had low charge pressure. The NPRM proposed to require an inspection to determine the part number and serial number of the cargo fire extinguisher halon bottles and replacement of affected parts with serviceable parts.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

Boeing concurred with the content of the NPRM. United Airlines agreed with the intent of the NPRM.

Request To Reduce the Compliance Time

The Air Line Pilots Association, International (ALPA) requested that the compliance time specified in the proposed AD be reduced from 24 months to 12 months. The commenter stated that a compliance time of 12 months was specified in the Kidde Aerospace service information.

The FAA disagrees with the commenter's request. The preamble of the NPRM included an explanation regarding the compliance time. As stated in the NPRM, the Kidde Aerospace & Defense service information specifies a compliance time of 12 months to do the inspection and accomplish the replacement, and the Boeing service information specifies a compliance time of 24 months to accomplish the replacement. In developing an appropriate compliance time for this action, the FAA considered the urgency associated with the subject unsafe condition, the availability of required parts, and the practical aspects of accomplishing the required replacement within a period of time that corresponds to the normal scheduled maintenance for most affected operators. In light of these items, the FAA determined that a 24-month compliance time is appropriate and adequate to address the unsafe condition. The FAA has not revised this AD in regard to this issue.

Request To Provide Detailed Information for Bottle Test and Refill

Southwest Airlines requested that paragraphs (g), (h), and (i) of the proposed AD be revised to provide, or refer to, detailed instructions on how to test and refill cargo fire extinguisher halon bottles prior to marking them with a ''G'' stamp and returning them to service. The commenter stated that it understood the intent of the NPRM was to have the unsafe condition removed from operational airplanes by having affected cargo fire extinguisher halon bottles removed and not reinstalled until the halon bottles had been tested, refilled, and marked with a ''G'' stamp. The commenter suggested that these actions could be accomplished via standard airplane maintenance manual (AMM) processes instead of using the procedures in the Boeing service information that was specified in the proposed AD.

The FAA does not agree with the commenter's request. The information provided in paragraphs (g), (h), and (i) of this AD is specific and complete enough to address the unsafe condition. The affected cargo fire extinguisher halon bottles are installed on various transport category airplanes, and as such, referring to specific AMMs is not practical. Furthermore, the FAA notes that only halon bottles having certain serial numbers are affected and need to be replaced. There are a significant number of cargo fire extinguisher halon bottles with serial numbers that are not affected by the requirements of this AD and that do not need to be removed and tested. Operators have the option of installing a halon bottle with a serial number that is not affected by the requirements of this AD, or installing a halon bottle that has been refurbished by an authorized party. If operators establish a different procedure to refurbish affected cargo fire extinguisher halon bottles, they can apply for an alternative method of compliance by using the procedures described in paragraph (l) of this AD. The FAA has not revised this AD in regard to this issue.

Explanation of Change to Manufacturer's Name Specified in This Final Rule

The FAA has revised paragraph (c)(2)(iv) of this AD to identify the

manufacturer name as MHI RJ Aviation UL (instead of Bombardier, Inc.), as published in the most recent type certificate data sheet for the affected models.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the change described previously and minor editorial changes. The FAA has determined that these minor changes:

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

Related IBR Material Under 1 CFR Part 51

The FAA reviewed the following Boeing Alert Requirements Bulletins. This service information describes procedures for an inspection to determine the serial number of the cargo fire extinguisher halon bottle having a certain part number and replacing affected parts with serviceable parts. These documents are distinct since they apply to different airplane models.

- Alert Requirements Bulletin 737–26A1150 RB, dated September 27, 2019.
- Alert Requirements Bulletin 737–26A1151 RB, dated September 27, 2019.

The FAA reviewed the following Kidde Aerospace & Defense service information. This service information describes, among other actions, procedures for replacing affected fire extinguishers (referred to as ''cargo fire extinguisher halon bottles'' in this AD) with serviceable parts. These documents are distinct since they apply to different airplane models.

- Service Bulletin 473919–26–521, Rev 02, dated November 7, 2019.
- Service Bulletin 473957–26–518, Rev 02, dated November 4, 2019.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 3,308 appliances installed on, but not limited to, the transport category airplanes identified in paragraphs (c)(2)(i) through (vii) of this AD. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	2 work-hours × $85 per hour = $170	$0	$170	$562,360

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection. The FAA has no way of determining the number of aircraft that might need replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	4 work-hours × $85 per hour = $340	$25,305	$25,645

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–21–02 Transport Category Airplanes: Amendment 39–21275; Docket No. FAA–2020–0209; Product Identifier 2020–NM–004–AD.

(a) Effective Date

This AD is effective November 19, 2020.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to the Kidde Aerospace & Defense cargo fire extinguisher halon bottles having part numbers and serial numbers identified in Table 1 of the service information identified in paragraphs (c)(1)(i) and (ii) of this AD.

(i) Kidde Aerospace & Defense Service Bulletin 473957–26–518, Rev 02, dated November 4, 2019.

(ii) Kidde Aerospace & Defense Service Bulletin 473919–26–521, Rev 02, dated November 7, 2019.

(2) These affected cargo fire extinguisher halon bottles are installed on various transport category airplanes including, but not limited to, the airplanes identified in paragraphs (c)(2)(i) through (vii) of this AD, certificated in any category.

(i) Airbus Canada Limited Partnership (type certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes.

(ii) Airbus SAS Model A330–200 and A330–300 series airplanes.

(iii) The Boeing Company Model DC–9–81 (MD–81) airplanes, and Model 737 series airplanes.

(iv) MHI RJ Aviation ULC (type certificate previously held by Bombardier, Inc.) Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, and Model CL–600–2C11 (Regional Jet Series 550) airplanes.

(v) De Havilland Aircraft of Canada Limited (type certificate previously held by Bombardier, Inc.) Model DHC–8–400 series airplanes.

(vi) Embraer S.A. Model ERJ 170–100 STD airplanes, and Model ERJ 190–100 STD, –300, and –400 airplanes.

(vii) Saab AB, Saab Aeronautics (formerly known as Saab AB, Saab Aeronautics) Model SAAB 2000 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection.

(e) Unsafe Condition

This AD was prompted by a report indicating that certain cargo fire extinguisher halon bottles had low charge pressure. Low charge pressure of a cargo fire extinguisher halon bottle installed in the cargo compartment, if not addressed, could result in insufficient halon concentrations to extinguish a fire in the cargo compartment.

(f) Compliance

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

(g) Definitions

For this AD, the definitions specified in paragraphs (g)(1) through (3) of this AD apply.

(1) *Group 1:* Boeing Model 737–8 and 737–9 airplanes, and Model 737–700, 737–800, and 737–900ER series airplanes.

(2) *Group 2:* Transport category airplanes other than those identified as group 1. (3) Affected part: A cargo fire extinguisher halon bottle, manufactured by Kidde Aerospace & Defense, having a part number and serial number that is identified in the service information identified in paragraphs (c)(1)(i) and (ii) of this AD.

Note 1 to paragraph (g)(3): The terms ''cargo fire extinguisher halon bottles'' and ''fire extinguishers'' are used interchangeably in this AD and the service information identified in paragraphs (c)(1)(i) and (ii) of this AD, and in paragraphs (i)(1)(i) and (ii) of this AD.

(h) Inspection

Within 24 months after the effective date of this AD, do an inspection to determine the part number and serial number of the cargo fire extinguisher halon bottles installed in the cargo compartment. A review of maintenance records can be done in lieu of the inspection provided the part number and serial number of the cargo fire extinguisher halon bottles can be conclusively determined from that review.

(i) Replacement

If, during the inspection or records review required by paragraph (h) of this AD, it is determined that an affected part, as identified in paragraph (g)(3) of this AD, is installed, before further flight, replace the part with a serviceable part in accordance with the applicable service information identified in paragraph (i)(1) and (2) of this AD.

(1) For group 1 airplanes as identified in paragraph (g)(1) of this AD: The Accomplishment Instructions of the service information identified in paragraph (c)(1)(i) of this AD, or the service information identified in paragraph (i)(1)(i) or (ii) of this AD, as applicable.

(i) Boeing Alert Requirements Bulletin 737–26A1150 RB, dated September 27, 2019.

(ii) Boeing Alert Requirements Bulletin 737–26A1151 RB, dated September 27, 2019.

(2) For group 2 airplanes as identified in paragraph (g)(2) of this AD: The Accomplishment Instructions of the service information identified in paragraph (c)(1)(i) or (ii) of this AD, as applicable.

(j) Parts Installation Limitation

As of the effective date of this AD, no person may install on any airplane an affected part as identified in paragraph (g)(3) of this AD unless that part has a circled letter ''G'' stamped at a distance of approximately one inch from the left edge of the placard, indicating that the cargo fire extinguisher halon bottle has been tested and refilled.

(k) Special Flight Permit

If low pressure is detected or a warning is displayed in the flight deck, special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the cargo fire extinguisher halon bottles can be replaced or modified.

(l) Alternative Methods of Compliance (AMOCs)

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

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

(3) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (l)(3)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled 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 RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(m) Related Information

For more information about this AD, contact Samuel Belete, Aerospace Engineer, Systems and Equipment Section, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5580; fax: 404–474–5606; email: *Samuel.Belete@faa.gov.*

(n) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 737–26A1150 RB, dated September 27, 2019.

(ii) Boeing Alert Requirements Bulletin 737–26A1151 RB, dated September 27, 2019.

(iii) Kidde Aerospace & Defense Service Bulletin 473919–26–521, Rev 02, dated November 7, 2019.

(iv) Kidde Aerospace & Defense Service Bulletin 473957–26–518, Rev 02, dated November 4, 2019.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal

Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

(4) For Kidde Aerospace & Defense service information identified in this AD, contact Kidde Aerospace & Defense, 4200 Airport Drive NW, Building B, Wilson, NC 27896–8630; telephone 319–295–5000; *http://kiddetechnologies.com/aviation/.*

(5) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on October 1, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–22725 Filed 10–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0457; Product Identifier 2020–NM–039–AD; Amendment 39–21261; AD 2020–20–05]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2018–25–02 and AD 2019–23–01, which applied to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, and –271N airplanes; and Model A321 series airplanes. Those ADs require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and/or airworthiness limitations. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary and models need to be added to the applicability. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 19, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 19, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of January 9, 2020 (84 FR 66579, December 5, 2019).

ADDRESSES: For the EASA material identified in this AD that will be incorporated by reference (IBR), 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.*

For the Airbus material that is incorporated by reference, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.*

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–2020–0457.

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–2020–0457; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0036R1, dated June 24, 2020 (''EASA AD 2020–0036R1'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321 series airplanes. EASA AD 2020–0036R1 revised EASA AD 2020–0036, dated February 26, 2020 (''EASA AD 2020–0036'') (which the FAA referred to as the appropriate source of service information for accomplishing the actions specified in the notice of proposed rulemaking (NPRM)), and superseded EASA AD 2018–0288 (which corresponds to FAA AD 2019–23–01 (AD 2019–23–01, Amendment 39–19794 (84 FR 66579, December 5, 2019) (''AD 2019–23–01'')). Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a NPRM to amend 14 CFR part 39 to supersede AD 2019–23–01, for certain Airbus SAS Model A318 series airplanes; A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, and –271N airplanes; and A321 series airplanes. AD 2019–23–01 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. AD 2019–23–01 required airworthiness limitations that are newer or more restrictive than those specified in AD 2018–25–02, Amendment 39–19513 (83 FR 62690, December 6, 2018) (''AD 2018–25–02''). AD 2019–23–01 specified that accomplishing the revision required by paragraph (i) of AD 2019–23–01 terminated all requirements of AD 2018–25–02. The NPRM published in the **Federal Register** on June 1, 2020 (85 FR 33046). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary and models need to be added

to the applicability. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

The FAA is issuing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Use Revised EASA AD

United Airlines (UAL) and American Airlines (AAL) supported the NPRM and asked that the proposed AD refer to EASA AD 2020–0036R1 for accomplishing the required actions (EASA AD 2020–0036, dated February 26, 2020, was referred to in the proposed AD). UAL stated that EASA AD 2020–0036R1 will allow operators to use current requirements and prevent issuing a revised AD to require compliance with the revised EASA AD. AAL also noted that operators should be allowed to use the revised EASA AD.

The FAA agrees with the commenters' requests. EASA AD 2020–0036R1 does not substantively change the requirements of EASA AD 2020–0036. Instead, EASA AD 2020–0036R1 adds credit for EASA AMOC approval 10071736 to EASA AD 2018–0288, and notes that Issue 02 of the ALS has been released. The FAA has changed all references in this AD from EASA AD 2020–0036 to EASA AD 2020–0036R1, added paragraph (l) to this AD to provide credit for Rev 0, and changed subsequent paragraphs of this AD accordingly.

Request To Confirm Intent To Allow Use of Later ALS Revisions

Delta Air Lines (DAL) requested confirmation that the FAA intended to allow the use of later ALS revisions to comply with the proposed AD. The commenter noted that previous ADs required an alternative method of compliance (AMOC) to use a later ALS revision.

The FAA confirms that it intends to allow the use of applicable later ALS revisions to comply with the requirements of this AD. This AD refers to EASA AD 2020–0036R1 as the appropriate source of service information for accomplishing the required actions. EASA AD 2020–0036R1 includes the Ref. Publications section, which accepts the use of later approved variations or revisions of the referenced ALS document for compliance. Therefore, applicable later approved ALS revisions are acceptable.

Request To Allow AMOC Approval for Alternative Actions or Intervals After Revision of Maintenance or Inspection Program

DAL requested that paragraph (k) of the proposed AD be changed to also allow alternative actions and intervals after the maintenance and inspection program has been revised, provided that the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (n)(1) of the proposed AD. Delta provided no reason or justification for the request.

The FAA acknowledges the commenter's request and provides clarification that, if applicable, requesting an AMOC is always an option; therefore, it is not necessary to revise paragraph (k) of this AD. This AD has not been changed regarding this request.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the change described previously and minor editorial changes. The FAA has determined that these minor changes:

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

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0036R1 describes new or more restrictive airworthiness limitations for damage tolerance of airplane structures.

This AD also requires Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 2–Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 07, dated June 13, 2018, which the Director of the Federal Register approved for incorporation by reference as of January 9, 2020 (84 FR 66579, December 5, 2019).

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.

Costs of Compliance

The FAA estimates that this AD affects 1,553 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2019–23–01 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. In the past, the agency has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2018–25–02, Amendment 39–19513 (83 FR 62690, December 6, 2018), and AD 2019–23–01, Amendment 39–19794 (84 FR 66579, December 5, 2019); and

■ b. Adding the following new AD:

2020–20–05 Airbus SAS: Amendment 39–21261; Docket No. FAA–2020–0457; Product Identifier 2020–NM–039–AD.

(a) Effective Date

This AD is effective November 19, 2020.

(b) Affected ADs

This AD replaces AD 2018–25–02, Amendment 39–19513 (83 FR 62690, December 6, 2018) (''AD 2018–25–02''), and AD 2019–23–01, Amendment 39–19794 (84 FR 66579, December 5, 2019) (''AD 2019–23–01'').

(c) Applicability

This AD applies to Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before October 11, 2019.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2019–23–01, with no changes. Accomplishing the maintenance or inspection program revision required by paragraph (i) of this AD terminates the requirements of this paragraph.

(1) For airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued on or before June 13, 2018, except for Model A319–151N and –153N airplanes and Model A320–253N, –272N, and –273N airplanes: Within 90 days after January 9, 2020 (the effective date of AD 2019–23–01), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 2—Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 07, dated June 13, 2018.

(2) The initial compliance time for doing the tasks is at the time specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 2—Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 07, dated June 13, 2018, or within 90 days after January 9, 2020, whichever occurs later.

(h) Retained Restriction on Alternative Actions and Intervals With a New Exception

This paragraph restates the requirements of paragraph (h) of AD 2019–23–01, with a new exception. Except as required by paragraph (i) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (m)(1) of this AD.

(i) New Maintenance or Inspection Program Revision

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0036R1, dated June 24, 2020 (''EASA AD 2020–0036R1''). Accomplishing the maintenance or inspection program revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) Exceptions to EASA AD 2020–0036R1

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0036R1 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020–0036R1 specifies revising ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2020–0036R1 within 90 days after the effective date of this AD.

(3) The initial compliance times for doing the tasks specified in paragraph (3) of EASA AD 2020–0036R1 are at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2020–0036R1, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4), (5), and (6) of EASA AD 2020–0036R1 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2020–0036R1 does not apply to this AD.

(k) New Provisions for Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0036R1.

(l) Credit for Original EASA AD

This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using EASA AD 2020–0036, dated February 26, 2020.

(m) 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 International Section, send it to the attention of the person identified in paragraph (n) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(i) 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.

(ii) AMOCs approved previously for AD 2019–23–01 are approved as AMOCs for the corresponding provisions of EASA AD 2020–0036R1 that are required by paragraph (g) of this AD.

(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.

(n) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on November 19, 2020.

(i) European Union Aviation Safety Agency (EASA) AD 2020–0036R1, dated June 24, 2020.

(ii) [Reserved]

(4) The following service information was approved for IBR on January 9, 2020 (84 FR 66579, December 5, 2019).

(i) Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 2—Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 07, dated June 13, 2018.

(ii) [Reserved]

(5) For information about EASA AD 2020–0036R1, 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.*

(6) For information about the Airbus material that is incorporated by reference, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.*

(7) 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–2020–0457.

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

Issued on September 18, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–22760 Filed 10–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0908; Project Identifier MCAI–2020–01256–T; Amendment 39–21282; AD 2020–21–09]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A318 series airplanes; Model A319 series airplanes; Model A320 series airplanes; and Model A321 series airplanes. This AD was prompted by reports of cracks on the main landing gear (MLG) sliding tubes. This AD requires a general visual inspection of the MLG sliding tubes for cracks, and replacement, if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD 2020–0193, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective October 30, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 30, 2020.

The FAA must receive comments on this AD by November 30, 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 incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +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–2020–0908.

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–2020–0908; 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 AD, 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: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3223; email: *sanjay.ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0193, dated September 7, 2020 (''EASA AD 2020–0193'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318 series airplanes; Model A319 series airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321 series airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

EASA AD 2010–0193 states that it issued EASA AD 2018–0136, dated June

26, 2018 (which corresponds to FAA AD 2019–03–18, Amendment 39–19570 (84 FR 7804, March 5, 2019)) to address a related unsafe condition for parts overhauled and/or repaired by specific maintenance organizations.

This AD was prompted by reports of cracks found during second overhaul of two MLG on the sliding tubes. The FAA is issuing this AD to address cracks on the MLG sliding tubes, which could cause MLG sliding tube fracture, and could possibly result in the MLG collapsing, damaging the airplane, and injuring occupants. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0193 describes procedures for a general visual inspection of the MLG sliding tubes for cracks, and replacement, if necessary. 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

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's 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 issuing this AD because the FAA evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2020–0193 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0193 is incorporated by reference in this final rule. This AD, therefore, requires compliance with EASA AD 2020–0193 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this 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 2020–0193 that is required for compliance with EASA AD 2020–0193 is available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0908.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because cracks on the MLG sliding tubes, if not detected and corrected, could lead to MLG sliding tube fracture, possibly resulting in MLG collapse with consequent damage to the airplane and injury to occupants. In addition, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. Therefore this rule must be issued immediately, to ensure the safety of the flight crews conducting such flights. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not precede it by notice and opportunity for public comment. The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0908; Project Identifier MCAI–2020–01256–T'' 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. 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 consider all comments received by the closing date and may amend this AD based on those comments.

The FAA will post all comments the FAA 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 AD.

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 AD 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 AD, 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 AD. 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.

Interim Action

The FAA considers this AD interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe

condition. Once final action has been identified, the FAA might consider further rulemaking.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 1,630 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170	$0	$170	$277,100

* Table does not include estimated costs for reporting.

The FAA estimates that it takes about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $138,550, or $85 per product.

The FAA estimates the following costs to do any necessary on-condition replacements that would be required based on the results of any required inspections. The FAA has no way of determining the number of aircraft that might need these on-condition replacements:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
6 work-hours × $85 per hour = $510	(*)	$510

* The FAA has received no definitive data on which to base the parts cost estimates for the on-condition replacements specified in this AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–21–09 Airbus SAS: Amendment 39–21282; Docket No. FAA–2020–0908; Project Identifier MCAI–2020–01256–T.

(a) Effective Date

This AD becomes effective October 30, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all the Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Airbus SAS Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by reports of cracks on the main landing gear (MLG) sliding tubes. The FAA is issuing this AD to address cracks on the MLG sliding tubes, which could cause MLG sliding tube fracture, and could possibly result in the MLG collapsing, damaging the airplane, and injuring occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0193, dated September 7, 2020 (''EASA AD 2020–0193'').

(h) Exceptions to EASA AD 2020–0193

(1) Where EASA AD 2020–0193 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0193 does not apply to this AD.

(3) Paragraph (4) of EASA AD 2020–0193 specifies to report inspection results to Airbus within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(3)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 15 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 15 days after the effective date of 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 responsible Flight Standards 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) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards 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):* Except as required by paragraphs (h)(3) and (i)(2) of this AD, if any service information referenced in EASA AD 2020–0193 contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, 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 instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(4) *Paperwork Reduction Act Burden Statement:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory as required by this AD. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(j) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3223; email: *sanjay.ralhan@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0193, dated September 7, 2020.

(ii) [Reserved]

(3) For EASA AD 2020–0193, 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.*

(4) 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–2020–0908.

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

Issued on October 1, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–22763 Filed 10–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

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

RIN 2120–AA66

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Aviation Administration (FAA) is correcting a final rule that appeared in the **Federal Register** on October 5, 2020. The rule modified Class D and Class E airspace at Yakima Air Terminal/McAllister Field Airport, Yakima, WA. However, the subject heading incorrectly listed the location as ''Yakima, OR.'' This action corrects the Final Rule subject heading to list the location as ''Yakima, WA.''

DATES: Effective 0901 UTC, February 25, 2021. 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.

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

SUPPLEMENTARY INFORMATION: History

The FAA published a final rule in the **Federal Register** (85 FR 62573; October 5, 2020) for Docket FAA–2020–0606 modifying Class D and Class E airspace at Yakima, WA. Subsequent to publication, the FAA identified an error in the document's subject heading, which incorrectly listed the airport location as ''Yakima, OR.'' This action corrects that error.

Class D, E2, E4, and E5 airspace designations are published in paragraphs 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in the Order.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, Amendment of Class D and Class E Airspace; Yakima, WA, published in the **Federal Register** of October 5, 2020 (85 FR 62573), FR Doc. 2020–21905, is corrected as follows:

§ 71.1 [Corrected]

■ 1. On page 62573, in the second column, the subject heading, is corrected to read as follows: Amendment of Class D and Class E Airspace; Yakima, WA

Issued in Seattle, Washington, on October 8, 2020.

B.G. Chew,

Acting Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2020–22743 Filed 10–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31334; Amdt. No. 3925]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective October 15, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 15, 2020.

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

For Examination

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

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

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

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

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

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

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on October 2, 2020.

Wade Terrell,

Aviation Safety Manager, Flight Procedures & Airspace Group Flight Technologies and Procedures Division.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

** * * Effective 5 November 2020*

Cold Bay, AK, PACD, VOR RWY 15, Amdt 16
Los Angeles, CA, KLAX, ILS OR LOC RWY 7L, Amdt 9A
San Martin, CA, San Martin, RNAV (GPS) RWY 32, Amdt 1
San Martin, CA, San Martin, Takeoff Minimums and Obstacle DP, Amdt 2
Atlanta, GA, KRYY, RNAV (GPS) RWY 9, Amdt 3B
Crisfield, MD, Crisfield-Somerset County, RNAV (GPS)-B, Orig-B
Asheville, NC, KAVL, ILS OR LOC RWY 35, Orig
Asheville, NC, KAVL, LOC RWY 17, Orig
Asheville, NC, KAVL, RNAV (GPS) RWY 17, Orig
Asheville, NC, KAVL, RNAV (GPS) RWY 35, Orig
Asheville, NC, Asheville Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Dickinson, ND, Dickinson—Theodore Roosevelt Rgnl, RNAV (GPS) RWY 15, Orig
Dickinson, ND, KDIK, RNAV (GPS) RWY 33, Orig
Dickinson, ND, Dickinson—Theodore Roosevelt Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Albuquerque, NM, Albuquerque Intl Sunport, ILS OR LOC RWY 8, Amdt 6B
Martinsville, VA, Blue Ridge, LOC RWY 31, Amdt 2
Martinsville, VA, Blue Ridge, RNAV (GPS) RWY 13, Amdt 2
Martinsville, VA, Blue Ridge, RNAV (GPS) RWY 31, Amdt 3
Lone Rock, WI, KLNR, LOC RWY 27, Amdt 1

[FR Doc. 2020–22731 Filed 10–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31335; Amdt. No. 3926]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective October 15, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 15, 2020.

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

For Examination

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

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

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

4. The National Archives and Records Administration (NARA).

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

Availability

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

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on October 2, 2020.

Wade Terrell,

Aviation Safety Manager, Flight Procedures & Airspace Group, Flight Technologies and Procedures Division.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

**** Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
5-Nov-20	FL	Williston	Williston Muni	0/3378	9/21/20	RNAV (GPS) RWY 23, Orig-B.
5-Nov-20	FL	Williston	Williston Muni	0/3379	9/21/20	RNAV (GPS) RWY 5, Orig-B.
5-Nov-20	FL	Williston	Williston Muni	0/3381	9/21/20	Takeoff Minimums and Obstacle DP, Amdt 2A.
5-Nov-20	WA	Seattle	Boeing Field/King County Intl	0/4645	9/16/20	ILS OR LOC RWY 14R, Amdt 31A.

[FR Doc. 2020–22732 Filed 10–14–20; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket Nos. RM19–16–000 and RM19–17–000; Order No. 873]

Electric Reliability Organization Proposal To Retire Requirements in Reliability Standards Under the NERC Standards Efficiency Review

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) approves the retirement of 18 Reliability Standard requirements identified by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization. The Commission also remands proposed Reliability Standard FAC–008–4 for further consideration by NERC. The Commission takes no action at this time on the proposed retirement of 56 MOD A Reliability Standard requirements.

DATES: This rule is effective December 14, 2020.

FOR FURTHER INFORMATION CONTACT:
Michael Gandolfo (Technical Information), Office of Electric Reliability, Division of Reliability Standards and Security, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, Telephone: (202) 502–6817
Mark Bennett (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, Telephone: (202) 502–8524

SUPPLEMENTARY INFORMATION:

1. Pursuant to section 215(d)(2) of the Federal Power Act (FPA),[1] the Commission approves 18 of the 76 Reliability Standard requirements requested for retirement by the North American Electric Reliability Corporation (NERC).[2] For the reasons discussed below, we determine that the retirement of the 18 Reliability Standard requirements through the retirement of four Reliability Standards and the modification of five Reliability Standards is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[3] The Commission also approves the associated violation risk factors, violation severity levels, implementation plan, and effective dates proposed by NERC.

2. As set forth in the petitions, we conclude that the 18 Reliability Standard requirements: (1) Provide little or no reliability benefit; (2) are administrative in nature or relate expressly to commercial or business practices; or (3) are redundant with other Reliability Standards. These justifications are consistent with the Commission-approved rationale for retiring Reliability Standard requirements articulated in prior proceedings.[4]

3. The approved retirements will enhance the efficiency of the Reliability Standards program by reducing duplicative or otherwise unnecessary regulatory burdens.

4. In the Notice of Proposed Rulemaking (NOPR), the Commission also proposed to approve the retirement of 56 requirements constituting the so-called MOD A Reliability Standards.[5] The NOPR indicated that, if approved, the Commission intends to coordinate the effective dates for the retirement of the MOD A Reliability Standards with successor North American Energy Standards Board (NAESB) business practice standards.[6] On March 30, 2020, NAESB submitted Version 003.3 of the Standards for Business Practices and Communication Protocols for Public Utilities that, inter alia, include Modeling business practices. On July 16, 2020, the Commission issued a NOPR in Docket Nos. RM05–5–029 and RM05–5–030 proposing to amend its regulations to incorporate by reference, with certain enumerated exceptions, NAESB's Version 003.3 Business Practices.[7] Comments on the NAESB NOPR are due on November 3, 2020.[8] In light of these developments, this final rule does not address the retirement of the MOD A Reliability Standards. The Commission will determine the appropriate action regarding the proposed retirement of the MOD A Reliability Standards at a later time.

5. While the Commission approves the 18 retirements, pursuant to FPA section 215(d)(4), we remand proposed Reliability Standard FAC–008–4.[9] As discussed below, we are satisfied with NERC's justification for retiring Reliability Standard FAC–008–3, Requirement R7. However, for the reasons discussed below, we are not persuaded that it is appropriate to retire Reliability Standard FAC–008–3, Requirement R8. Because the Commission, pursuant to FPA section 215(d)(4), must remand to NERC for further consideration a proposed modification to a Reliability Standard that the Commission disapproves in whole or in part, we remand proposed Reliability Standard FAC–008–4 to address our concerns with the retirement of Requirement R8.

I. Background

A. Section 215 of the FPA

6. Section 215 of the FPA requires the Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Once approved, the Reliability Standards may be enforced in the United States by the ERO subject to Commission oversight, or by the Commission independently.[10] Pursuant to the requirements of FPA section 215, the Commission established

[1] 16 U.S.C. 824o(d)(2).

[2] NERC withdrew the originally requested retirement of Reliability Standard VAR–001–6, Requirement R2 on May 14, 2020.

[3] The four Reliability Standards being eliminated in their entirety are Reliability Standards FAC–013–2 (Assessment of Transfer Capability for the Near-term Transmission Planning Horizon), INT–004–3.1 (Dynamic Transfers), INT–010–2.1 (Interchange Initiation and Modification for Reliability), MOD–020–0 (Providing Interruptible Demands and Direct Control Load Management Data to System Operations and Reliability Coordinators). The five modified Reliability Standards approved herein are Reliability Standards INT–006–5 (Evaluation of Interchange Transactions), INT–009–3 (Implementation of Interchange) and PRC–004–6 (Protection System Misoperation Identification and Correction), IRO–002–7 (Reliability Coordination—Monitoring and Analysis), TOP–001–5 (Transmission Operations).

[4] *North American Electric Reliability Corp.,* 138 FERC ¶ 61,193, at P 81 (March 2012 Order), *order on reh'g and clarification,* 139 FERC ¶ 61,168 (2012); *Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards,* Order No. 788, 145 FERC ¶ 61,147, at P 1 (2013) (stating that the proposed retirements ''meet the benchmarks set forth in the Commission's March 15, 2012 Order'').

[5] *Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards Under the NERC Standards Efficiency* Review, 170 FERC ¶ 61,032 (2020) (NOPR). The MOD A Reliability Standards proposed for retirement are MOD–001–1a (Available Transmission System Capability), MOD–004–1 (Capacity Benefit Margin), MOD–008–1 (Transmission Reliability Margin Calculation Methodology), MOD–028–2 (Area Interchange Methodology), MOD–029–2a (Rated System Path Methodology), and MOD–030–3 (Flowgate Methodology).

[6] NOPR, 170 FERC ¶ 61,032, at P 21, n.35.

[7] *Standards for Business Practices and Communication Protocols for Public Utilities,* Notice of Proposed Rulemaking, Order No. 676, 85 FR 10571, 172 FERC ¶ 61,047 (2020).

[8] *Standards for Business Practices and Communication Protocols for Public Utilities,* 85 FR 55201 (September 4, 2020).

[9] 16 U.S.C. 824o(d)(4).

[10] 16 U.S.C. 824o(e)(3).

a process to select and certify an ERO [11] and, subsequently, certified NERC as the ERO.[12]

B. Prior Retirements of Reliability Standard Requirements

7. In the March 2012 Order, the Commission observed that NERC's compliance program could be made more efficient by removing existing requirements deemed unnecessary for reliability.[13] The Commission stated that if NERC believes certain Reliability Standards or requirements should be revised or removed, ''we invite NERC to make specific proposals to the Commission identifying the Standards or requirements and setting forth in detail the technical basis for its belief.'' [14] Further, the Commission encouraged NERC ''to propose appropriate mechanisms to identify and remove from the Commission-approved Reliability Standards unnecessary or redundant requirements.'' [15]

8. In response, in February 2013, NERC proposed to retire 34 requirements within 19 Reliability Standards based on the justification that the requirements ''are redundant or otherwise unnecessary'' and that ''violations of these requirements . . . pose a lesser risk to the reliability of the Bulk-Power System.'' [16] NERC explained that the proposed retirements were based upon three major criteria: (1) Whether a proposed retirement would create a reliability gap; (2) whether the requirement in question is administrative; involves data collection, retention, documentation, periodic updates or reporting; is a commercial or business practice; or is redundant; and (3) consideration of responses to seven questions regarding the proposed retirement, including whether the requirement was part of a ''find, fix and track'' filing, the requirement's violation risk factor level, and whether the requirement is part of on-going standards development project.[17]

9. On November 21, 2013, the Commission approved the retirements that NERC proposed, and determined that the retirements ''meet the benchmarks'' set forth in the March 2012 Order that ''requirements proposed for retirement either: (1) Provide little protection for Bulk-Power System reliability; or (2) are redundant with other aspects of the Reliability Standards.'' [18]

C. NERC Standards Efficiency Review Project and Petitions

1. NERC Standards Efficiency Review Project

10. NERC states that the proposed retirements are the product of its Standards Efficiency Review (SER) Project. NERC explains that the SER Project began in 2017 ''to achieve [NERC's] long-term strategic goal of establishing risk-based controls to minimize [Bulk-Power System] reliability risk while also driving operational efficiencies and effectiveness.'' [19] NERC states that in Phase 1 of the SER Project, teams of industry experts conducted a risk-based analysis of non-CIP Reliability Standards.[20] The purpose of this review, according to NERC, was ''to identify Reliability Standard requirements that provide little or no benefit to reliability and should be retired.'' [21] NERC maintains that, unlike the periodic reviews [22] of Reliability Standards performed by NERC pursuant to the NERC Rules of Procedure, the SER Project involved ''exploring the relationships between the different Reliability Standards in a deeper way than would be feasible during a targeted periodic review . . . [and] allowed NERC to identify requirements that are not necessary for reliability or that are redundant to other requirements.'' [23]

11. NERC contends that the SER Project ''was conducted in an open and transparent manner, with broad industry participation.'' [24] NERC states that it initiated the standards development process to consider the retirement recommendations generated by the SER Project.

2. IRO, TOP and VAR Petition (Docket No. RM19–16–000)

12. On June 7, 2019, in Docket No. RM19–16–000, NERC submitted for Commission approval new versions of three Reliability Standards: IRO–002–7 (Reliability Coordination—Monitoring and Analysis), TOP–001–5 (Transmission Operations), and VAR–001–6 (Voltage and Reactive Control).[25] NERC explains that approval of the new versions would result in the retirement of four requirements from the currently-effective versions of the Reliability Standards.[26] NERC proposes to retire three of the existing requirements in Reliability Standards IRO–002 and TOP–001 that require the reliability coordinator, transmission operator, and balancing authority to have data exchange capabilities with entities having data needed to perform operational planning analyses and to develop operating plans for next-day operations. NERC contends that these requirements are redundant and not necessary ''because the performance required by these requirements is inherent to the performance of other Reliability Standard requirements.'' [27]

13. In particular, NERC maintains that the data exchange capability requirement in Reliability Standard IRO–002–5, Requirement R1 is covered by Reliability Standard IRO–008–2, Requirement R1, which obligates the reliability coordinator to perform operational planning analyses to assess whether the planned operations for the next-day will exceed System Operating Limits and Interconnection Reliability Operating Limits within its Wide Area. NERC asserts that ''to perform the required operational planning analyses, the Reliability Coordinator must have the data it deems necessary from those entities that possess it.'' [28]

[11] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, 114 FERC ¶ 61,104, *order on reh'g,* Order No. 672–A, 114 FERC ¶ 61,328 (2006).

[12] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa Inc.* v. *FERC,* 564 F.3d 1342 (DC Cir. 2009).

[13] March 2012 Order, 138 FERC ¶ 61,193 at P 81.

[14] *Id.*

[15] *Id.*

[16] NERC, Petition, Docket No. RM13–8–000, at 2 (filed Feb. 28, 2013).

[17] *Id.* at 4.

[18] *Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards,* Order No. 788, 145 FERC ¶ 61,147 (2013).

[19] Docket No. RM19–16–000 Petition at 3; Docket No. RM19–17–000 Petition at 4.

[20] NERC states that Phase 2 of the SER Project will ''consider recommendations for Reliability Standard revisions that would further improve the efficiency of the body of NERC Reliability Standards, such as through consolidation of Reliability Standard requirements . . . [and will] consider recommendations for standards-based improvements that would further reduce inefficiencies and promote effectiveness.'' Docket No. RM19–16–000 Petition at 6–7; Docket No. RM19–17–000 Petition at 7.

[21] Docket No. RM19–16–000 Petition at 5; Docket No. RM19–17–000 Petition at 6.

[22] The NERC Rules of Procedure require a periodic review of each Reliability Standard; and they provide for a five-year cyclical review of Reliability Standards approved by the American National Standards Institute (ANSI) and 10-year cyclical review for Reliability Standards not approved by ANSI. *See* NERC Rules of Procedure, Section 317 and Appendix 3A (Standards Process Manual), section 13.0.

[23] Docket No. RM19–16–000 Petition at 5; Docket No. RM19–17–000 Petition at 6.

[24] Docket No. RM19–16–000 Petition at 5–6; Docket No. RM19–17–000 Petition at 7.

[25] On May 14, 2020, NERC withdrew its request to retire Reliability Standard VAR–001–6, Requirement R2.

[26] The revised versions of the IRO and TOP Reliability Standards are not attached to this final rule. The complete text of the Reliability Standards is available on the Commission's eLibrary document retrieval system in Docket No. RM19–16–000 and is posted on the ERO's website, *http://www.nerc.com.*

[27] Docket No. RM19–16–000 Petition at 7.

[28] *Id.* at 14–15.

14. Additionally, regarding data exchange, NERC cites Reliability Standard IRO–010–2 (Reliability Coordinator Data Specification and Collection) and its stated purpose of preventing instability, uncontrolled separation, or cascading outages ''by ensuring the Reliability Coordinator has the data it needs to monitor and assess the operation of its Reliability Coordinator Area.'' [29] NERC states that under Reliability Standard IRO–010–2, Requirements R1, R2 and R3, the reliability coordinator must specify the data necessary for it to perform its operational planning analyses and provide the specifications to the entities from which it needs data who then must comply with the data request using a mutually agreeable format and security protocols.

15. NERC states that the performance of Reliability Standard IRO–010–2, Requirements R1, R2 and R3 is premised on the existence of data exchange capabilities, ''regardless of whether a separate requirement expressly requires the Reliability Coordinator to have data exchange capabilities in place.'' [30] NERC therefore asserts that Reliability Standard IRO–002–5, Requirement R1 provides no additional reliability benefit and ''is therefore unnecessary and redundant and should be retired.'' [31]

16. NERC also proposes to retire Reliability Standards TOP–001–4, Requirements R19 and R22. NERC explains that Requirements R19 and R22 of Reliability Standard TOP–001–4 require transmission operators and balancing authorities respectively to have data exchange capabilities with entities from which they need data to perform operational planning analyses (transmission operators) and next-day Operating Plans (balancing authorities). NERC notes, however, that Reliability Standard TOP–002–4, Requirement R1 requires a transmission operator to perform an operational planning analyses to determine whether next-day operations within its area will exceed System Operating Limits. NERC also states that TOP–002–4, Requirement R4 requires each balancing authority to have a next-day Operating Plan addressing expected generation resource commitment and dispatch, Interchange scheduling and related matters. NERC asserts that to satisfy these requirements, ''each Transmission Operator and Balancing Authority must have the data it deems necessary from those entities that possess it.'' [32]

17. NERC also points to Reliability Standard TOP–003–3 (Operational Reliability Data) whose purpose is ''to ensure that the Transmission Operator and Balancing Authority have data needed to fulfill their operational and planning responsibilities.'' NERC contends that the requirements in Reliability Standard TOP–003–3 largely mirror the requirements in Reliability Standard IRO–010–2 discussed above, and thus, as with Reliability Standard IRO–010–2, transmission operators and balancing authorities must have data exchange capabilities with its reporting entities to satisfy the requirements of Reliability TOP–003–3. For these reasons, NERC contends that Reliability Standards TOP–001–4, Requirements R19 and R22 are unnecessary and redundant and should be retired.

18. NERC requests that the Commission approve the implementation plan, attached to NERC's petition as Exhibit B, and the associated violation risk factors and violation severity levels described in Exhibit D. The implementation plan provides that proposed Reliability Standards IRO–002–7 and TOP–001–5 would become effective on the first day of the first calendar quarter that is three months after regulatory approval. The currently effective versions of the Reliability Standards would be retired immediately prior to the effective date of the revised Reliability Standards. NERC explains that the requested timeline accounts for the time entities will need to update their systems and related documentation.

3. FAC, INT, MOD and PRC Petition (Docket No. RM19–17–000)

19. On June 7, 2019, in Docket No. RM19–17–000, NERC submitted for Commission approval the proposed retirement of 10 currently-effective FAC, INT, MOD and PRC Reliability Standards in their entirety without replacement.[33] Additionally, NERC proposed modifications to four Reliability Standards reflecting the retirement of certain requirements from the currently-effective versions: FAC–008–4 (Facility Ratings), INT–006–5 (Evaluation of Interchange Transactions), INT–009–3 (Implementation of Interchange) and PRC–004–6 (Protection System Misoperation Identification and Correction).[34] NERC asserts that its proposals would not adversely impact reliability, but rather they ''would benefit reliability by allowing entities to focus their resources on those Reliability Standard requirements that promote the reliable operation and planning of the BPS [Bulk-Power System] and avoid unnecessary regulatory burden.'' [35]

20. Regarding the full FAC, INT, MOD and PRC Reliability Standards proposed for retirement, NERC contends that they are not necessary and that removing them would not adversely affect reliability. NERC states that retirement of the ten full Reliability Standards is justified because they are primarily administrative in nature or largely related to commercial or business practices, and therefore no longer serve a reliability purpose.[36] For example, NERC states that the transfer capability assessment required under Reliability Standard FAC–013–2 ''serves only a market function'' and ''is not an indicator of [bulk electric system] reliability.'' [37] In supporting its conclusion that Reliability Standard INT–010–2.1 primarily relates to commercial and business practices, NERC notes that in 2013 the NERC Independent Experts Review Panel recommended retiring the previous version of the Reliability Standard ''due to overlap with the NAESB Electronic Tagging Functional Specification.'' [38]

21. Similarly, regarding the MOD Reliability Standards, NERC states that ''[Available Transfer Capability] and [Available Flowgate Methodology], as well as e-Tags, are commercially-focused elements facilitating interchange and balancing of interchange,'' and that system operators maintain reliability by monitoring Real-time flows based on System Operating Limits and Interconnection Reliability Operating Limits.[39] In particular, NERC

[29] *Id.* at 15.

[30] *Id.*

[31] *Id.*

[32] *Id.* at 16.

[33] Reliability Standards FAC–013–2 (Assessment of Transfer Capability for the Near-term Transmission Planning Horizon), INT–004–3.1 (Dynamic Transfers), INT–010–2.1 (Interchange Initiation and Modification for Reliability), MOD–001–1a (Available Transmission System Capability), MOD–004–1 (Capacity Benefit Margin), MOD–008–1 (Transmission Reliability Margin Calculation Methodology), MOD–020–0 (Providing Interruptible Demands and Direct Control Load Management Data to System Operations and Reliability Coordinators), MOD–028–2 (Area Interchange Methodology), MOD–029–2a (Rated System Path Methodology), and MOD–030–3 (Flowgate Methodology).

[34] The revised versions of the FAC, INT and PRC Reliability Standards are not attached to this final rule. The complete text of the Reliability Standards is available on the Commission's eLibrary document retrieval system in Docket No. RM19–17–000 and is posted on the ERO's website, *http://www.nerc.com.*

[35] Docket No. RM19–17–000 Petition at 7.

[36] Docket No. RM19–17–000 Petition at 13–24.

[37] *Id.* at 13.

[38] *Id.* at 16–19.

[39] *Id.* at 21.

explains that information on Interruptible Demands and Direct Control Load Management required under Reliability Standard MOD–020–0 is not useful for transmission operators and reliability coordinators, ''who must plan and operate the [Bulk-Power System] within System Operating Limits and Interconnection Reliability Operating Limits under the TOP and IRO Reliability Standards.'' [40]

22. Regarding NERC's proposed modified Reliability Standards, NERC states that the data provision obligations of currently effective Reliability Standard FAC–008–3, Requirements R7 and R8 are redundant with Reliability Standards MOD–032–1, IRO–010–2 and TOP–003–3. NERC asserts that Requirements R3.1, R4 and R5 of currently-effective Reliability Standard INT–006–4 ''provide little, if any, benefit or protection to the reliability operation of the [Bulk-Power System]'' [41] and that the substance of Requirements R4 and R5 in particular relate to commercial or business practices and are better addressed through the balancing authority's e-Tag Authority Service.[42] Also, NERC states that Requirement R1 of currently-effective Reliability Standard INT–009–2.1 is being revised to remove the reference to Reliability Standard INT–010, which is also proposed for retirement, and Requirement R2 is redundant with Reliability Standard BAL–005–1, Requirement R7.[43] Finally, NERC states that it has determined that rather than the ''specific, recurring and inflexible timeframe'' set forth in Requirement R4 of currently-effective Reliability Standard PRC–004–5 for identifying the cause of a protection system misoperation, ''it would be more effective to have entities investigate the causes of misoperations according to their own internal control policies and procedures.'' [44]

23. NERC requests that the Commission approve the implementation plan, attached to NERC's petition as Exhibit B, and the associated violation risk factors and violation severity levels, attached to NERC's petition as Exhibit D, which are generally unchanged from the currently effective versions. For the Reliability Standards retired in their entirety, NERC proposes an effective date that is immediately upon regulatory approval of the retirement. NERC also seeks to retire the currently effective Reliability Standards FAC–008–3, INT–006–4, INT–009–2.1, and PRC–004–5(i) immediately prior to the effective date of their new versions.

D. Notice of Proposed Rulemaking

24. On January 23, 2020, the Commission issued a NOPR proposing to approve the retirement of 74 of the 77 Reliability Standard requirements requested by NERC. However, while proposing to approve the majority of Reliability Standard requirement retirements NERC proposed, the Commission expressed concern with NERC's justification for retirement of Reliability Standard FAC–008–3, Requirement R7 and R8 because those requirements did not appear to be entirely redundant of other existing Reliability Standards. Accordingly, the Commission sought more information from NERC regarding how other existing Reliability Standards render Reliability Standard FAC–008–3, Requirements R7 and R8 redundant, and how retiring those requirements would not create a reliability gap.

25. In response to the NOPR, the Commission received comments from NERC, Trade Associations (*i.e.,* American Public Power Association, Edison Electric Institute, Large Public Power Council, National Rural Electric Cooperative Association, Transmission Access Policy Study Group), Bonneville Power Administration, Western Area Power Administration, and Jonathan Appelbaum. We address below the issues raised in the NOPR and comments.

II. Discussion

A. Approved Retirement of 18 Reliability Standard Requirements

26. Pursuant to section 215(d)(2) of the FPA, the Commission approves NERC's request to retire 18 Reliability Standard requirements as just, reasonable, not unduly discriminatory or preferential, and in the public interest. NERC's petitions provide an adequate basis to conclude that the requirements proposed for retirement: (1) Provide little or no reliability benefit; (2) are administrative in nature or relate expressly to commercial or business practices; or (3) are redundant with other Reliability Standards. NERC's justifications for retiring the 18 requirements are consistent with the retirement guidelines set forth by the Commission in Order No. 788 and with the determination that ''requirements proposed for retirement can be removed from the Reliability Standards with little effect on reliability and an increase in efficiency of the ERO compliance program.'' [45]

27. While the Commission approves the retirement of the 18 Reliability Standard requirements, pursuant to FPA section 215(d)(4), we remand proposed Reliability Standard FAC–008–4. As discussed below, we are satisfied with the justification for retiring Reliability Standard FAC–008–3, Requirement R7 contained in NERC's comments. However, for the reasons discussed below, we are not persuaded that it is appropriate to retire Reliability Standard FAC–008–3, Requirement R8. Because the Commission, pursuant to FPA section 215(d)(4), must remand to NERC for further consideration a proposed modification to a Reliability Standard that the Commission disapproves in whole or in part, we remand proposed Reliability Standard FAC–008–4 to address our concerns with the retirement of Requirement R8.

B. Reliability Standard FAC–008–3, Requirements R7 and R8

1. NERC Petition

28. Reliability Standard FAC–008–3, Requirements R7 and R8 require generator owners and transmission owners, respectively, to provide facility ratings and related information to requesting reliability coordinators, planning coordinators, transmission planners, transmission owners and transmission operators. NERC contends that requirements in Reliability Standards MOD–032–1, IRO–010–2, and TOP–003–3 render the data provision obligations of Requirements R7 and R8 in Reliability Standard FAC–008–3 redundant and, therefore, unnecessary for reliability.[46]

29. To support its redundancy claim, NERC explains that Reliability Standard MOD–032–1 requires generator owners and transmission owners to provide information on power capabilities and facility ratings (Requirement R2) to enable planning coordinators and transmission planners to ''jointly develop steady-state, dynamics, and short circuit modeling data requirements and reporting procedures for the Planning Coordinator's planning area'' (Requirement R1). NERC further explains that Reliability Standard IRO–010–2 requires reliability coordinators to maintain ''a documented specification for the data necessary to perform its Operational Planning Analyses, Real-time monitoring, and Real-time Assessments. This data necessarily includes Facility Ratings as

[40] *Id.* at 23.
[41] *Id.* at 29.
[42] *Id.* at 29–31.
[43] *Id.* at 31–32.
[44] *Id.* at 34.
[45] Order No. 788, 145 FERC ¶ 61,147 at P 1.
[46] Docket No. RM19–17–000 Petition at 15.

inputs to System Operating Limit monitoring.'' [47] NERC notes that under Requirement R3 of IRO–010–2, the transmission owner and generator owner must provide such data. Finally, NERC points out that Reliability Standard TOP–003–3 requires the transmission operator to maintain data specifications (Requirement R1) and the transmission owner and generation owner to provide the requested data (Requirement R5). Relying on this framework of data specification and provision, NERC concludes that Reliability Standard FAC–008–3, Requirements R7 and R8 ''are now redundant to other more robust Reliability Standards and are no longer needed for reliability.'' [48]

2. NOPR

30. While agreeing with NERC that Reliability Standards MOD–032–1, IRO–010–2 and TOP–003–3 provide a basis for retiring certain elements of Reliability Standard FAC–008–3, Requirements R7 and R8, the Commission stated that NERC's petition ''does not address other elements of Requirements R7 and R8 that do not appear to be redundant.'' [49] The NOPR explained that Reliability Standard FAC–008–3, Requirements R7 and R8 require generation owners and transmission owners to provide facility ratings to several functional entity types, including transmission owners. The Commission observed that the three Reliability Standards NERC claims to render Requirements R7 and R8 redundant require generator owners and transmission owners to provide facility ratings to other functional entities, including reliability coordinators, planning coordinators, transmission planners, and transmission operators, they do not require the provision of facility ratings to transmission owners. The Commission expressed concern that eliminating the mandatory exchange of facility-related information with transmission owners could ''impact reliability since these requirements ensure that all transmission owners have accurate facility-related information in the models that they use to plan and operate the bulk electric system.'' [50]

31. The Commission also noted that Reliability Standards MOD–032–1, IRO–010–2, and TOP–003–3 do not address sub-requirement R8.1.2 of Reliability Standard FAC–008–3, relating to the identity of the next most limiting equipment of a requested facility. Further, the Commission observed that the Reliability Standards NERC claims are redundant also do not account for sub-requirement R8.2, which requires the identification and thermal rating of the existing next most limiting equipment of facilities with a thermal rating that limits the use of that facility by causing either an Interconnection Reliability Operating Limit, a limitation of Total Transfer Capability, an impediment to generator deliverability, or an impediment to service to a major load center as specified in FAC–008–3 (Requirement R8.2).[51]

32. Therefore, the Commission stated that Reliability Standard FAC–008–3, Requirements R7 and R8 do not appear to be entirely redundant of the Reliability Standards cited by NERC and, if retired, could create reliability gaps. The Commission sought clarification from NERC because the petition does not address these non-redundant elements of Requirements R7 and R8.

3. Comments

33. NERC, Trade Associations and Appelbaum support the retirement of Reliability Standard FAC–008–3, Requirements R7 and R8, maintaining that transmission owners do not need facility ratings and related information to perform their responsibilities.[52] In their view, transmission owners play a more limited role than the planning and operation function of the other applicable entities in Reliability Standard FAC–008–3. NERC notes that the NERC Glossary describes transmission owner as an ''entity that owns and maintains transmission facilities'' and that a transmission owner is ''not the functional entity directly responsible for complying with Reliability Standards for planning and operating the Bulk Power System.'' [53] Additionally, Appelbaum notes that ''in many cases'' transmission owner and generation owner interconnection agreements exist and contain provisions governing how facilities are operated and maintained, including the methodology and responsibility for rating facilities.[54] By contrast Bonneville commented, without elaboration, that it agrees that Reliability Standards FAC–008, Requirements R7 and R8 should be retained.[55]

34. NERC and Trade Associations assert that entities with the responsibility to plan and operate the Bulk-Power System (*i.e.,* transmission operators and transmission planners) obtain the information they need under Reliability Standards MOD–032–1 and TOP–003–3, and thus they do not require Reliability Standard FAC–008–3, Requirements R7 and R8.[56] Trade Associations state that ''from a grid reliability perspective, it is the responsible Transmission Planner and Transmission Operator that need the facility ratings because they are accountable for the reliable planning and operation of the bulk electric system, not the Transmission Owner.'' [57] Further, Trade Associations note that the Commission previously approved the retirement of Reliability Standard FAC–008–3, Requirement R4, which had similar obligations to Requirements R7 and R8, based on the Commission's conclusion that the requirement to make available such facility ratings information was an administrative task that provides little protection for bulk electric system reliability.[58]

35. In response to the Commission's concerns regarding Reliability Standard FAC–008–3, sub-requirements 8.1.2 and 8.2, NERC and Trade Associations assert that the ''catch-all'' provision in Reliability Standard MOD–032–1, Attachment 1 Data Reporting Requirements, requires transmission owners and generation owners to provide ''other information requested by the planning coordinator or transmission provider necessary for modeling purposes,'' which includes data described in sub-requirements 8.1.2 and 8.2.[59] Further, NERC and Trade

[47] *Id.* at 28.

[48] *Id.*

[49] NOPR, 170 FERC ¶ 61,032 at P 31.

[50] *Id.*

[51] This requirement was developed in response to a directive in Order No. 693. *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, 118 FERC ¶ 61,218, at P 756, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007); *see also* NERC, Petition, Docket No. RD11–10–000, at 11–13, 20–21 (filed Jun. 15, 2011).

[52] As discussed below, Appelbaum supports retaining sub-requirement R8.2.

[53] NERC Comments at 8 (citing NERC Glossary of Terms Used in NERC Reliability Standards).

[54] Appelbaum Comments at 3.

[55] Bonneville Comments at 2.

[56] NERC Comments at 8; Trade Association Comments at 6.

[57] Trade Association Comments at 7.

[58] *Id.* (citing Order No. 788, 145 FERC ¶ 61,147 at P 19).

[59] NERC Comments at 8–9; Trade Association Comments at 9.

Associations assert that reliability coordinators and transmission system operators obtain this information under the data specification requirements in Reliability Standards IRO–010–2 and TOP–003–3.[60] NERC concludes that ''[n]ow that these broader data specification standards are in place, NERC has identified no reliability need to maintain additional requirements expressly requiring the provision of this data in the FAC–008 standards.''[61]

36. Appelbaum contends that sub-requirement 8.2 should be retained, however, because it ''support[s] reliable operations under very limited circumstances and very limited locations, yet it is important enough to retain.''[62] He explains that sub-requirement 8.2 focuses on specific circumstances, wherein having knowledge of the increase in facility rating based on the next most limiting equipment improves system operations, and therefore reliability, and ''adds resilience to the operation of the Bulk Power System.''[63]

4. Commission Determination

37. Pursuant to FPA section 215(d)(4), we remand proposed Reliability Standard FAC–008–4. As discussed below, we are satisfied with NERC's justification for retiring Reliability Standard FAC–008–3, Requirement R7. However, for the reasons discussed below, we are not persuaded that it is appropriate to retire Reliability Standard FAC–008–3, Requirement R8. Because the Commission, pursuant to FPA section 215(d)(4), must remand to NERC for further consideration a proposed modification to a Reliability Standard that the Commission disapproves in whole or in part, we remand proposed Reliability Standard FAC–008–4 to address our concerns with the retirement of Requirement R8.

38. Regarding Reliability Standard FAC–008–3, Requirement R7, we are persuaded that retiring Requirement R7 will not result in a reliability gap because Requirement R7 is redundant or otherwise provides little or no reliability benefit. We agree with NERC that, unlike transmission operators and transmission planners that need and will continue to receive facility ratings information under other Reliability Standards, transmission owners do not need to exchange facility ratings because they have a more limited functional role that does not involve planning and operating the Bulk-Power System. Only Bonneville, a registered transmission owner, supported retaining Requirement R7, and no transmission owner submitted comments indicating that it needed the facility ratings information required under Requirement R7.[64] Moreover, the Commission did not direct the inclusion of transmission owners in Requirement R7. Reliability Standard FAC–008–3, Requirement R7 was formerly designated Reliability Standard FAC–009–1, Requirement R2. The Commission approved Reliability Standard FAC–009–1, Requirement R2 in Order No. 693 and did so without requiring the sharing of facility ratings information with transmission owners.[65]

39. While we determine that the retirement of Requirement R7 is appropriate, we are not convinced that the retirement of sub-requirements R8.1.2 and 8.2 will not result in a reliability gap. By retiring sub-requirements R8.1.2 and 8.2, transmission owners will no longer be required to communicate ratings information for solely owned limiting and next most limiting equipment present on jointly-owned facilities. Without ratings information on limiting and next most limiting equipment, transmission owners could lack the necessary information to correctly calculate the ratings for their jointly-owned facilities. The Commission recognized the importance of this type of information exchange in Order No. 693 by directing NERC to require the sharing of information regarding the most limiting and next most limiting equipment when requested.[66]

40. The transmission owner's obligation under Reliability Standard FAC–008–3, Requirement R3 is also impacted by the proposed retirement of Requirement R8. Reliability Standard FAC–008–3, Requirement R3 requires transmission owners to have a documented facility ratings methodology for solely and jointly owned facilities that, pursuant to Requirement R3.3, includes a ''statement that a Facility Rating shall respect the most limiting applicable Equipment Rating of the individual equipment that comprises that Facility.'' In order to rate equipment accurately to avoid mis-ratings of jointly-owned transmission lines, the transmission owner needs information about the co-owner's most limiting equipment on shared facilities. Therefore, under these circumstances, we conclude that Requirement R8 is needed to ensure that limiting and next limiting equipment is identified and communicated.

III. Information Collection Statement

41. The information collection requirements contained in this final rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[67] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[68] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

42. The Commission estimates that the final rule, which would retire 18 requirements of Reliability Standards without adding any new obligations on registered entities, would result in a total reduction in burden for industry of 42,907.44 hours. The Commission based the burden reduction estimates on staff experience, knowledge, and expertise.

[60] NERC Comments at 9; Trade Associations Comments at 8–9 (''Reliability Standard TOP–003–3 (Operational Reliability Data) Requirements R3 and R5 require the provision of such information through data specifications that are issued by Transmission Operators.'')

[61] NERC Comments at 9.

[62] Appelbaum Comments at 7 (referring to load pockets that contain critical infrastructure, dense populations, or have large financial impacts).

[63] *Id.* at 6–7.

[64] While Bonneville submitted comments supporting the retention of Requirement R7, Bonneville did not elaborate on its position.

[65] Order No. 693, 118 FERC ¶ 61,218 at PP 772–774. NERC subsequently added transmission owners as recipients, without elaboration, when NERC revised Reliability Standard FAC–008 and retired Reliability Standard FAC–009.

[66] Order No. 693, 118 FERC ¶ 61,218 at PP 755–762.

[67] 44 U.S.C. 3507(d).

[68] 5 CFR 1320.

REDUCTIONS DUE TO FINAL RULE IN DOCKET NOS. RM19–16 & RM19–17

Reliability standard & requirement	Type [69] and number of entity (1)	Number of annual responses per entity (2)	Total number of responses (1) * (2) = (3)	Average number of burden hours per response (4)	Total burden hours (3) * (4) = (5)
FERC–725A					
FAC–013–2	RC (12)	8.33	100	26.67	2,667
INT–006–4 R3.1, R4, R5, R5.1, R5.2, R5.3, R5.4, R5.5.	BA/TSP (169)	1	169	56.3	9,514.7
INT–004–3.1	BA (97)	1	97	56.3	5,461.1
INT–010–2.1	BA(97)	1	97	56.3	5,461.1
INT–009–2.1 R2	BA (97)	1	97	56.3	5,461.1
MOD–020–0	TP/RP/DP/BA (767)	1	767	14.4	11,044.8
Sub-Total for FERC–725A	1,239		1,327		39,609.8
FERC–725A(1C)					
TOP–001–4 R19 & R22	BA/TO/GO/DP (1,704)	.25	426	0.8	340.8
Sub-Total for FERC–725A(1C)	1,704		426		340.8
FERC–725G1					
PRC–004–5(i) R4	TO/GO/DP (1,607)	.41	659	4.36	2,873.24
Sub-Total for FERC–725G1	1,607		659		2,873.24
FERC–725Z					
IRO–002–6 R1	RC (12)	1.17	14	5.97	83.6
Sub-Total for FERC–725Z	12		14		83.6
Total Reductions Due to Final Rule in RM19–16 & RM19–17.			2,426		42,907.44

Titles: FERC–725A, Mandatory Reliability Standards for the Bulk Power System; FERC–725A(1C), Mandatory Reliability Standards for Bulk-Power System: Reliability Standard TOP–001–4; FERC–725G1, Mandatory Reliability Standards for the Bulk-Power System: Reliability Standard PRC–004–5(i); FERC–725Z, Mandatory Reliability Standards: IRO Reliability Standards.

Action: Reductions to Existing Collections of Information FERC–725A, FERC–725A(1C), and FERC–725Z; and Elimination of Collections of Information, and FERC–725G1.

OMB Control Nos: 1902–0244 (FERC–725A); 1902–0298 (FERC–725A(1C));1902–0284 (FERC–725G1); and 1902–0276 (FERC–725Z).

Respondents: Business or other for profit, and not for profit institutions.

Frequency of Responses: On occasion (and proposed for deletion).

43. *Necessity of the Information:* This proceeding approves the retirement of four Reliability Standards in their entirety and five revised Reliability Standards, reflecting a total of 18 retired requirements identified by NERC. The approved retirements either: (1) Provide little or no reliability benefit; (2) are administrative in nature or relate expressly to commercial or business practices; or (3) are redundant with other Reliability Standards.

44. *Internal review:* The Commission has reviewed NERC's proposal and determined that its action is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden reduction estimates associated with the information requirements approved for retirement.

45. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

46. Comments concerning the information collections and requirements approved for retirement in this final rule and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.* Please refer to the appropriate OMB Control Number(s) and Docket Nos. RM19–16–000 and RM19–17–000 in your submission.

[69] RC=Reliability Coordinator; BA=Balancing Authority; TSP=Transmission Service Provider; TO=Transmission Owner; GO=Generator Owner; DP=Distribution Provider; TP=Transmission Provider; and RP=Resource Planner. Our estimates are based on the NERC Compliance Registry of July 17, 2020, which indicates there are 974 entities registered as GOs, 321 entities registered as TOs, 97 entities registered as BAs, 72 entities registered as TSPs, 198 entities registered as TPs312 entities registered as DPs, 160 entities registered as RPs, and 12 entities registered as RCs within the United States.

IV. Regulatory Flexibility Act Certification

47. The Regulatory Flexibility Act of 1980 (RFA) [70] generally requires a description and analysis of rulemakings that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business.[71] The Small Business Administration has established size standards, for the types of affected entities (noted in the table above), that range from a maximum of 250–1,000 employees for an entity and its affiliates to be considered small.

48. The Commission estimates the total industry reduction in burden for all entities (large and small) to be 42,907.44 hours (or approximately 18 hours (rounded) per response). The Commission believes that this will reduce burden and cost for all affected entities.

49. Based on the information above, the Commission certifies that the reductions will not have a significant impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis is required.

V. Environmental Analysis

50. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[72] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[73] The actions approved here fall within this categorical exclusion in the Commission's regulations.

VI. Document Availability

51. 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*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

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

53. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

54. This final rule is effective December 14, 2020. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule is being submitted to the Senate, House, and Government Accountability Office.

By direction of the Commission.

Issued: September 17, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Note: the following Appendix will not appear in the *Code of Federal Regulations.*

Appendix

Commenters

Abbreviation	Commenter
NERC	North American Electric Reliability Corporation.
Trade Associations	American Public Power Association, Edison Electric Institute, Large Public Power Council, National Rural Electric Cooperative Association, Transmission Policy Study Group.
Bonneville	Bonneville Power Administration.
WAPA	Western Area Power Administration.
Appelbaum	Jonathan Appelbaum.

[FR Doc. 2020–20972 Filed 10–14–20; 8:45 am]

BILLING CODE 6717–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1601 and 1626

RIN 3046–AB07

Procedural Regulations Under Title VII, ADA, and GINA; Procedures—Age Discrimination in Employment Act

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (EEOC or Commission) is amending its procedural regulations to explicitly provide for digital transmissions of documents, to clarify the process for deferral to state and local agencies, to update no cause determination procedures, and to correct typographical and textual errors.

DATES: This final rule is effective on November 16, 2020.

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Assistant Legal Counsel, (202) 663–4681 (voice) or *kathleen.oram@eeoc.gov;* Erin Norris, Senior Attorney, Office of Legal Counsel, (980) 296–1286 or *erin.norris@eeoc.gov.*

SUPPLEMENTARY INFORMATION: On February 22, 2019 (84 FR 5624), the Equal Employment Opportunity Commission (EEOC) published a notice of proposed rulemaking (NPRM) in the **Federal Register** seeking public comment on proposed revisions to the EEOC's procedural regulations for charges of employment discrimination. The revisions are intended to serve several purposes: First, they recognize

[70] 5 U.S.C. 601–612.

[71] 13 CFR 121.101.

[72] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[73] 18 CFR 380.4(a)(2)(ii).

the increased reliance upon technology by the EEOC and its stakeholders by explicitly providing for digital transmission of documents; second, they clarify procedures for deferral to state fair employment practices agencies in particular circumstances to alleviate confusion regarding filing deadlines; and third, they streamline the process for issuing dismissals of charges by providing for delegation of the authority to issue such dismissals, as well as clarifying the import of the dismissal determinations. The revisions also serve to correct errors and update terminology. Public comments were due in response to the NPRM on or before April 23, 2019.

The EEOC received 19 comments in response to the NPRM from individuals, stakeholder groups, and a union. The comments are available for review at the Federal eRulemaking Portal at *http://www.regulations.gov.* Some comments expressed general support for the proposed revisions. Others offered specific feedback on one or more of the proposed regulatory changes or suggested further revisions. A few were off-topic. Upon review and consideration of the comments, the EEOC has made some revisions to what was proposed and/or discussed in the NPRM, as discussed below.

Digital Submissions of Charge Documents

The revisions to the EEOC's procedural regulations are not creating a new system of digital transmission of charge-related documents. The system is already operational and is representative of the Commission's commitment to expanding its use of technology and improving its service to the public. This digital charge system was piloted in 2015, initially allowing respondents to submit certain documents and communicate with the EEOC through the online system. Since that time, additional functionality was gradually included in the digital system, through which parties are now able to communicate with the agency and submit documents. In November 2019, the EEOC was awarded $4.4 million by the government's Technology Modernization Fund to further modernize the agency's charge and case management system.

Several commenters expressed support for the revisions explicitly providing for digital submission of charge documents, noting benefits including ease of access, ease of communication, increased efficiency, and reduction of paper. Another commenter noted that the revisions merely update the regulations to reflect the EEOC's current practice with respect to digital exchange of documents. While the remaining commenters also generally supported the use of digital technology, they expressed some concerns about implementation of the system and how it works in practice. A few of those concerns are addressed below.

Commenters raised concerns about the confidentiality and/or data security of the information transmitted to the EEOC through digital means. One commenter questioned the manner in which the EEOC may use such information, and another stressed the need for information received digitally to be kept confidential and protected from breach. The EEOC is committed to preserving the confidentiality of charge-related information, and is bound by the strict confidentiality requirements of Title VII of the Civil Rights Act of 1964 (Title VII), which make it unlawful for Commission employees to make public any charge-related information prior to the institution of a lawsuit involving the information.[1] Further, the EEOC ensures that its data security practices are in compliance with the Federal Information Security Modernization Act.[2] Information received through digital means in connection with an investigation of a charge of discrimination gets the same stringent confidentiality protections as does paper-based information, and the EEOC will continue to ensure that its digital charge system meets all federal data security standards.

The EEOC received a comment requesting information on whether the EEOC maintains records of when documents housed in the digital charge system are transmitted or accessed by the parties or EEOC staff. Documents are not transmitted via email. A charging party will receive an email notifying him or her that an important document is available in the digital charge system, and the charging party must access the system using his or her unique login information to retrieve that document. The system maintains a record of when a document is accessed, and the EEOC is able to identify whether a charging party has downloaded a particular document. If a charging party or respondent does not log in and access critical documents, such as notice of the charge within a reasonable period of time, the EEOC will mail a hard copy of the notice to the parties.

In response to a concern that not all charging parties have access to the technology necessary to avail themselves of the digital charge system, or that the access they may have is limited to resources available at libraries or other public spaces, the agency notes that use of the digital charge system by charging parties is not compulsory. While the EEOC encourages parties to take advantage of the benefits of a digital charge system, we recognize that some may not be able to use a digital system. Potential charging parties may continue to file charges through the mail or in person at an EEOC office, even though the online system is the preferred and primary method for charge filing.

This final rule makes no changes to the above practice itself, but amends portions of the EEOC's regulations in parts 1601 and 1626 to account for the practice by explicitly providing for digital transmission of charge-related documents.

Clarity of the Communication Closing an Investigation and Delegation

The EEOC amends §§ 1601.18(a) and 1601.19(a) to serve two purposes: (1) To more clearly communicate to charging parties and respondents the import of the EEOC's decision to close a charge investigation; and (2) to bring greater efficiencies to charge closures by permitting further delegation. The agency received comments on both points.

Clarity of Communication

The EEOC received positive feedback on the proposed clarifications to the regulatory language on dismissals. Therefore, this final rule amends § 1601.18(a) to add language clearly communicating that a dismissal includes notice of the charging party's statutory right to file a lawsuit. This final rule also amends § 1601.19(a) to add language clarifying the meaning and import of the EEOC's issuance of a ''no cause'' determination that such a dismissal does not mean the claims have no merit.

To be clear, the regulation at § 1601.19 is titled: No cause determinations: Procedure and authority. The regulation at § 1601.19(a) refers to the Commission issuing a ''letter of determination'' after the Commission has found ''that there is not reasonable cause to believe that an unlawful employment practice has occurred or is occurring . . . .''. Further, the regulation provides that the letter of determination ''shall inform the person claiming to be aggrieved . . . of the right to sue in Federal district court within 90 days of receipt of the letter of determination. To effectuate this ''letter of determination'' the EEOC uses a

[1] *See* 42 U.S.C. 2000e–8(e).

[2] *See* 44 U.S.C. 3541, *et seq.*

document called the ''Dismissal and Notice of Rights,'' also informally known as a Notice of Right to Sue. The complete language of the Dismissal and Notice of Rights document is not part of the regulation at § 1601.19(a).

The current Dismissal and Notice of Rights document contains the following reason (among others) for dismissal:

''The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.''

In common parlance, this reason for closure of an investigation is referred to as a ''no cause determination.''

In the NPRM, in addition to the amendment of the regulation at § 1601.19(a), the EEOC specifically sought comment on a proposed change to the above language of the Notice. The EEOC proposed to revise the reason for dismissal in the Notice as follows:

''The EEOC issues the following determination: Based on its investigation, the EEOC has sufficient information to conclude that further investigation is not likely to result in a cause finding. This does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any issues that might be construed as having been raised by this charge.''

Several commenters criticized the current and proposed language that said ''Based on its investigation'' as ''misleading'' given the wide variation in the extent of EEOC investigations prior to closure. Others criticized the statement that the EEOC ''has sufficient information'' and asserted that many investigations are closed based only on review of a charge. One commenter noted that the proposed changes would cause charging parties not to seek legal assistance because of the EEOC's conclusion that further investigation would be futile. Commenters recommended clearer language to communicate that the EEOC had decided not to proceed further with its investigation and was dismissing the charge without commenting on the merits of the charge or on what further investigation could reveal. One commenter favored the proposed language, viewing it as clarification that the dismissal does not mean that the Commission has made a determination in favor of the employer.

The EEOC appreciates these thoughtful comments and has decided to revise its Dismissal and Notice of Rights to address these concerns. The revised notice will say:

''The EEOC issues the following determination: The EEOC will not proceed further with its investigation, and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.''

These revisions make the language of the Dismissal and Notice of Rights consistent with the amendment to § 1601.19(a). These revisions to the rule and the Dismissal and Notice of Rights are intended to ensure that charging parties, respondents, and courts understand that even after the EEOC has decided not to proceed further with its investigation, private proceedings or litigation may lead to court findings of discrimination or settlements for the charging parties.

Following the publication of this rule, the EEOC's Office of Field Programs will implement the changes to the Dismissal and Notice of Rights.

Delegation of Authority To Issue ''Dismissal and Notice of Rights''

The EEOC received several comments expressing concern or seeking clarification as to what EEOC employees could serve as designees under the new delegation authority for issuance of the ''Dismissal and Notice of Rights.'' Commenters suggested that allowing investigators to issue Dismissal notices may eliminate independent review of a charge by more senior officials. The EEOC is mindful of this concern and will maintain internal controls to ensure that EEOC personnel selected as designees for this purpose have the requisite experience to perform this function. Following publication of this rule, the EEOC's Office of Field Programs expects to issue guidance to the field offices on this issue.

Miscellaneous Updates

Two commenters questioned the revisions proposed in section 1626.8, asking for an explanation of the rationale behind the changes. The EEOC notes that the changes, which describe the required contents for a charge to be made on behalf of another person provide that the aggrieved individual on whose behalf the charge is made may request that his or her identity remain confidential, do not deviate from established Commission policy. Section 1626.3 of the EEOC's regulations have expressly defined ''charge'' to include a statement filed with the EEOC ''on behalf of an aggrieved person'' since that section of the regulations were originally adopted in 1983. Section 2–V.B. of the Threshold Issues section of the EEOC's Compliance Manual also notes that charges under the statutes the EEOC enforces, including the ADEA, may be made on behalf of another person, which allows the aggrieved individual to remain anonymous while the EEOC is investigating the charge.[3] The revisions to section 1626.8 are meant to reflect this longstanding policy and to make the EEOC's procedural regulations in parts 1601 and 1626 consistent with each other.

While no changes were made to the proposed revisions based upon the public comments received in response to the NPRM, the final rule does reflect a few additional corrections, minor wording changes, and terminology updates that do not affect the substantive requirements of the regulation. These changes are located in the following sections: § 1601.3(a) and (b) Other definitions; § 1601.8 Where to make a charge; § 1601.16(b)(1) Access to and production of evidence; testimony of witnesses; procedure and authority; § 1601.18(b) Dismissal: Procedure and authority; § 1601.19(b) No cause determinations: Procedure and authority; § 1601.20(a) Negotiated settlement; § 1601.21(b) and (d) Reasonable cause determination: Procedure and authority; § 1601.24(b) Conciliation: Procedure and authority; § 1601.28(d) Notice of right to sue: Procedure and authority; § 1601.30(a) Notices to be posted; § 1601.70(b) and (e) FEP agency qualifications; § 1601.71(c) FEP agency notification; § 1601.75(b)(2) Certification of designated FEP agencies; § 1601.92 Contents of request; where to file; § 1626.5 Where to submit complaints and charges; § 1626.20(a) and (c) Procedure for requesting an opinion letter; and § 1626.21 Effect of opinions and interpretations of the Commission.

Regulatory Procedures

Executive Orders 12866 and 13771

This is not a ''significant regulatory action'' within the meaning of section 3 of Executive Order 12866. This proposed rule is also not subject to Executive Order 13771, Reducing Regulation and Controlling Regulatory Cost. Pursuant to guidance issued by the

[3] *See EEOC Compliance Manual Section II, Threshold Issues* Sec. 2–V.B. and FN 226. Threshold Issues is available at *https://www.eeoc.gov/policy/docs/threshold.html#2-V-B.*

Office of Management and Budget's Office of Information and Regulatory Affairs (April 5, 2017), an ''E.O. 13771 regulatory action'' is defined as ''[a] significant regulatory action as defined in Section 3(f) of E.O. 12866 . . . .''

Paperwork Reduction Act

This regulation contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because it primarily affects the EEOC. To the extent that it affects small entities by allowing for electronic transmission of documents, it will save resources of those entities.

Unfunded Mandates Reform Act of 1995

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

Congressional Review Act

This action concerns agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 29 CFR Parts 1601 and 1626

Administrative practice and procedure, Equal Employment Opportunity.

For the Commission.

Janet Dhillon,

Chair.

Accordingly, for the reasons set forth in the preamble, the Equal Employment Opportunity Commission amends 29 CFR parts 1601 and 1626 as follows:

PART 1601—PROCEDURAL REGULATIONS

■ 1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117; 42 U.S.C. 2000ff to 2000ff–11.

■ 2. Amend § 1601.2 by revising the second sentence to read as follows:

§ 1601.2 Terms defined in title VII of the Civil Rights Act, the Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act.

* * * The term *disability* shall have the meaning set forth in section 3 of the Americans with Disabilities Act, as amended. * * *

■ 3. Amend § 1601.3

■ a. In paragraph (a) by removing the words ''term *Commission*'' and adding in their place ''terms *EEOC* or *Commission*'' and by removing the words ''and surrounding Maryland'';

■ b. By redesignating paragraph (b) as paragraph (c); and

■ c. By adding a new paragraph (b).

The addition reads as follows:

§ 1601.3 Other definitions.

* * * * *

(b) For the purposes of this part, the terms *file, serve, submit, receive, transmit, present, send, issue,* and *notify* shall include all forms of digital transmission.

* * * * *

■ 4. Revise § 1601.4 to read as follows:

§ 1601.4 Vice Chair's functions.

The member of the Commission designated by the President to serve as Vice Chair shall act as Chair in the absence or incapacity of the Chair or in the event of a vacancy in that office.

■ 5. Amend § 1601.5 by revising the section heading and the sixth and eighth sentences to read as follows:

§ 1601.5 District; field; area; local authority.

* * * The term ''field director'' shall refer to that person designated as the Commission's chief officer in each field office. * * * The term ''area director'' shall refer to that person designated as the Commission's chief officer in each area office. * * *

■ 6. Amend § 1601.7 by revising the fourth sentence of paragraph (a) and revising paragraph (b) to read as follows:

§ 1601.7 Charges by or on behalf of persons claiming to be aggrieved.

(a) * * * The person making the charge, however, must provide the Commission with the name and contact information of the person on whose behalf the charge is made. * * *

(b) The person claiming to be aggrieved has the responsibility to provide the Commission with notice of any change in contact information so that the Commission may communicate with him or her during the Commission's consideration of the charge.

■ 7. Revise § 1601.8 to read as follows:

§ 1601.8 Where to make a charge.

A charge may be made using the EEOC's designated digital systems, in person, by facsimile, or by mail to any EEOC office or to any designated representative of the Commission. The addresses of the EEOC's offices appear at *www.eeoc.gov.*

■ 8. Amend § 1601.12 by revising paragraphs (a)(1) and (2) to read as follows:

§ 1601.12 Contents of charge; amendment of charge.

(a) * * *

(1) The full name and contact information of the person making the charge except as provided in § 1601.7;

(2) The full name and contact information of the person against whom the charge is made, if known (hereinafter referred to as the respondent);

* * * * *

■ 9. Amend § 1601.13:

■ a. By revising paragraphs (a)(2), (a)(3) introductory text, (a)(4) introductory text, and (a)(4)(i)(A) and (B);

■ b. In the second sentence of paragraph (a)(4)(ii)(B) by removing the word ''filing'' and adding in its place the word ''filed''; and

■ c. In paragraph (b)(2)(iii) by removing the word ''certified'' and adding in its place the word ''registered''.

The revisions read as follows:

§ 1601.13 Filing; deferrals to State and local agencies.

(a) * * *

(2) A jurisdiction having a FEP agency without jurisdiction over the statutory basis alleged in the charge (*e.g.,* an agency that does not have enforcement authority over sex discrimination) is equivalent to a jurisdiction having no FEP agency. Charges over which a FEP agency has no jurisdiction over the statutory basis alleged are filed with the Commission upon receipt and are timely filed if received by the Commission within 180 days from the date of the alleged violation.

(3) Charges arising in jurisdictions having a FEP agency with jurisdiction over the statutory basis alleged in the charge are to be processed in accordance with the Commission's deferral policy set in paragraphs (a)(3)(i) through (iii) and the procedures in paragraph (a)(4) of this section.

* * * * *

(4) The following procedures shall be followed with respect to charges which arise in jurisdictions having a FEP agency with jurisdiction over the statutory basis alleged in the charge:

(i) * * *

(A) The document shall reflect the date and time it was received by the EEOC.

(B) The original document shall be transmitted by registered mail, return receipt requested, to the appropriate FEP agency, or by any other means acceptable to the FEP agency. State or local proceedings are deemed to have commenced on the date such document is transmitted.

* * * * *

■ 10. Amend § 1601.14 by revising the first two sentences of paragraph (a) to read as follows:

§ 1601.14 Service of charge or notice of charge.

(a) Within ten days after the filing of a charge in the appropriate Commission office, the Commission shall serve respondent the charge by digital transmission, by mail, or in person, except when it is determined that providing the charge would impede the law enforcement functions of the Commission. Where the charge is not provided, the respondent will be served with a notice of the charge within ten days after the filing of the charge. * * *

* * * * *

■ 11. Amend § 1601.16:

■ a. By revising paragraph (b)(1); and

■ b. In paragraph (d) by removing the word ''Council'' wherever it appears and adding in its place the word ''Counsel''.

The revision reads as follows:

§ 1601.16 Access to and production of evidence; testimony of witnesses; procedure and authority.

* * * * *

(b)(1) Any person served with a district director-issued subpoena who intends not to comply shall petition the issuing director to seek its revocation or modification. Any person served with a Commissioner-issued subpoena who intends not to comply shall petition the General Counsel to seek its revocation or modification. Petitions must be transmitted digitally or mailed to the issuing director at the address stated on the subpoena (or, if the subpoena was issued by a Commissioner, to the General Counsel) within five days (excluding Saturdays, Sundays, and Federal legal holidays) after service of the subpoena. Petitions to the General Counsel pertaining to subpoenas issued by a Commissioner may be transmitted digitally or mailed to 131 M Street NE, Washington, DC 20507 and a copy of the petition shall also be served upon the issuing Commissioner.

* * * * *

■ 12. Amend § 1601.18:

■ a. In the first sentence of paragraph (b) by removing ''§ 1601.28(b)(2)'' and adding in its place ''§ 1601.28(b)(3)(ii)'';

■ b. By adding a sentence after the first sentence in paragraph (b); and

■ c. In the second sentence of paragraph (c) by adding '', or their designees,'' after ''Local Directors''.

The addition reads as follows:

§ 1601.18 Dismissal: Procedure and authority.

* * * * *

(b) * * * The dismissal shall include a notice of rights informing the person claiming to be aggrieved or the person on whose behalf a charge was filed of the right to sue in Federal district court within 90 days of receipt of the determination. * * *

* * * * *

■ 13. Revise § 1601.19 to read as follows:

§ 1601.19 No cause determinations: Procedure and authority.

(a) Where the Commission completes its investigation of a charge and finds that there is not reasonable cause to believe that an unlawful employment practice has occurred or is occurring as to all issues addressed in the determination, the Commission shall issue a determination to all parties to the charge indicating the finding. This determination does not mean the claims in the charge have no merit. The Commission's determination shall be the final determination of the Commission, unless a final determination of no reasonable cause is vacated pursuant to § 1601.19(b). The determination shall inform the person claiming to be aggrieved or the person on whose behalf a charge was filed of the right to sue in Federal district court within 90 days of receipt of the determination. The Commission hereby delegates authority to the Director of the Office of Field Programs, or upon delegation to the Director of Field Management Programs, and District Directors or upon delegation to Field Directors, Area Directors, or Local Directors, or their designees, except in those cases involving issues currently designated by the Commission for priority review, to issue no cause determinations.

(b) The Commission may on its own initiative reconsider a final determination of no reasonable cause and a director of the issuing office may, on his or her own initiative, reconsider a final determination of no reasonable cause. If the Commission or the director of the issuing office decides to reconsider a final no cause determination, a notice of intent to reconsider shall promptly issue to all parties to the charge. If such notice of intent to reconsider is issued within 90 days of receipt of the final no cause determination, and the person claiming to be aggrieved or the person on whose behalf a charge was filed has not filed suit and did not request and receive a notice of right to sue pursuant to § 1601.28(a)(1) or (2), the notice of intent to reconsider shall vacate the determination and shall revoke the charging party's right to bring suit within 90 days. If the 90-day suit period has expired, the charging party has filed suit, or the charging party has requested a notice of right to sue pursuant to § 1601.28(a)(1) or (2), the notice of intent to reconsider shall vacate the determination but shall not revoke the charging party's right to sue within 90 days. After reconsideration, the Commission or a director of the issuing office shall issue a new determination. In those circumstances where the charging party's right to bring suit within 90 days was revoked, the determination shall include notice that a new 90-day suit period shall begin upon the charging party's receipt of the determination. Where a member of the Commission has filed a Commissioner charge, he or she shall abstain from making a determination in that case.

§ 1601.20 [Amended]

■ 14. Amend § 1601.20 by removing the word ''theother'' in paragraph (a) and adding in its place the words ''the other''.

§ 1601.21 [Amended]

■ 15. Amend § 1601.21:

■ a. In paragraph (b) introductory text by removing the word ''Except'' and adding in its place the word ''except'';

■ b. In the third sentence of paragraph (b)(1) by removing the words ''had requested'' and adding in their place the words ''has requested'';

■ c. In paragraph (b)(1) by removing the words ''90 day period'' and adding in their place the words ''90-day period'';

■ d. In paragraph (d) introductory text by removing the words ''a copy of the determination'' and adding in their place the words ''the determination''; and

■ e. In paragraph (d)(1) by removing the words ''90 day period'' and adding in their place the words ''90-day period'' and by removing the words ''had

received'' and adding in their place the words ''has received''.

§ 1601.24 [Amended]

■ 16. Amend § 1601.24 by removing the word ''processings'' in paragraph (b) and adding in its place the word ''proceedings''.

■ 17. Amend section 1601.28:

■ a. By removing footnote 1 from paragraph (c);

■ b. In the paragraph (d) subject heading by removing the words ''right-of-sue'' and adding in their place the words ''right to sue'' and in paragraph (d) introductory text by removing the word ''subivision'' and adding in its place the word ''subdivision''; and

■ c. By revising paragraph (e)(3).

The revision reads as follows:

§ 1601.28 Notice of right to sue: Procedure and authority.

* * * * *

(e) * * *

(3) The charge;

* * * * *

§ 1601.30 [Amended]

■ 18. Amend § 1601.30 by removing the word ''cusomarily'' in paragraph (a) and adding in its place the word ''customarily.''

■ 19. Amend § 1601.70:

■ a. By revising paragraph (a)(1); and

■ b. In paragraphs (b) and (e) by removing the word ''Chairman'' and adding in its place the word ''Chair''.

§ 1601.70 FEP agency qualifications.

(a) * * *

(1) That the state or political subdivision has a fair employment practice law which makes unlawful employment practices based upon race, color, religion, sex, national origin, disability, or genetic information; and

* * * * *

§ 1601.71 [Amended]

■ 20. Amend § 1601.71 by removing the word ''Chairman'' wherever it appears in paragraph (c) and adding in its place the word ''Chair''.

■ 21. Amend § 1601.75:

■ a. By revising paragraph (b)(2); and

■ b. In paragraph (c) by removing the word ''cetification'' and adding in its place the word ''certification''.

The revision reads as follows:

§ 1601.75 Certification of designated FEP agencies.

* * * * *

(b) * * *

(2) That the State or local designated FEP agency's work product has been evaluated within the past 12 months by State, Local, and Tribal Programs, Office of Field Programs, and found to be in conformance with the Commission's Substantial Weight Review Procedures; and

* * * * *

§ 1601.76 [Amended]

■ 22. Amend § 1601.76 by removing the words ''(EEOC Order 916)''.

§ 1601.78 [Amended]

■ 23. Amend § 1601.78 in the introductory text by removing the words ''(EEOC Order 916)''.

§ 1601.92 [Amended]

■ 24. Amend § 1601.92 in the introductory text by removing the word ''Chairman'' and adding in its place the word ''Chair''.

PART 1626—PROCEDURES—AGE DISCRIMINATION IN EMPLOYMENT ACT

■ 25. The authority citation for part 1626 continues to read as follows:

Authority: Sec. 9, 81 Stat. 605, 29 U.S.C. 628; sec. 2, Reorg. Plan No. 1 of 1978, 3 CFR 1978 Comp., p. 321.

■ 26. Amend § 1626.3:

■ a. By designating the text as paragraph (a);

■ b. In newly designated paragraph (a) by removing the words ''For purpose of this part'' and adding in their place the words ''For the purposes of this part'' and by removing the words ''the *Commission*'' and adding in their place the words ''*EEOC* or *Commission*'';* and

■ c. By adding paragraph (b).

The addition reads as follows:

§ 1626.3 Other definitions.

* * * * *

(b) For the purposes of this part, the terms *file, serve, submit, receive, transmit, present, send, issue,* and *notify* shall include all forms of digital transmission.

■ 27. Revise § 1626.5 to read as follows:

§ 1626.5 Where to submit complaints and charges.

Complaints and charges may be made through the EEOC's designated digital systems, in person, by telephone, by facsimile, or by mail to any EEOC office or any designated representative of the Commission. The current addresses of the EEOC's offices appear at *www.eeoc.gov.*

■ 28. Amend § 1626.7 by redesignating paragraphs (b)(1) through (3) as paragraphs (b)(2) through (4) and adding a new paragraph (b)(1) to read as follows:

§ 1626.7 Timeliness of charge.

* * * * *

(b) * * *

(1) Charges filed digitally: Date of transmission;

* * * * *

■ 29. Amend § 1626.8 by revising paragraphs (a)(1) and (2) and adding paragraphs (d) and (e) to read as follows:

§ 1626.8 Contents of charge; amendment of charge.

(a) * * *

(1) The full name and contact information of the person making the charge except as provided in § 1626.8(d) below;

(2) The full name and contact information of the person against whom the charge is made, if known (hereinafter referred to as the respondent);

* * * * *

(d) A charge that any person has engaged in or is engaging in an unlawful employment practice within the meaning of the ADEA may be made by or on behalf of any person claiming to be aggrieved. A charge on behalf of a person claiming to be aggrieved may be made by any person, agency, or organization. The written charge need not identify by name the person on whose behalf it is made. The person making the charge, however, must provide the Commission with the name and contact information of the person on whose behalf the charge is made. During the Commission investigation, Commission personnel shall verify the authorization of such charge by the person on whose behalf the charge is made. Any such person may request that the Commission shall keep his or her identity confidential. However, such request for confidentiality shall not prevent the Commission from disclosing the identity to Federal, State or local agencies that have agreed to keep such information confidential. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests for such information.

(e) The person claiming to be aggrieved has the responsibility to provide the Commission with notice of a change in contact information so that he or she can be contacted when necessary during the Commission's consideration of the charge.

■ 30. Amend § 1626.15:

■ a. By revising the last sentence of paragraph (c); and

■ b. In paragraph (e) by removing the words ''the Field Directors'' and adding in their place the words ''Field

Directors, Area Directors, and Local Directors''.

The revision reads as follows:

§ 1626.15 Commission enforcement.

* * * * *

(c) * * * The signed agreement shall be sent to all the signatories thereto.

* * * * *

§ 1626.16 [Amended]

■ 31. Amend § 1626.16 by removing the words ''the Field Directors'' in paragraph (b) and adding in their place the words ''Field Directors, Area Directors, and Local Directors''.

§ 1626.17 [Amended]

■ 32. Amend § 1626.17 by removing the words ''Title VII or the Americans with Disabilities Act (ADA),'' in paragraph (a)(2) and adding in their place the words ''title VII, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA)'' and by removing the words ''Title VII or the ADA'' and adding in their place the words ''title VII, the ADA, or GINA''.

§ 1626.20 [Amended]

■ 33. Amend § 1626.20:

■ a. In paragraph (a) introductory text by removing the word ''Chairman'' and adding in its place the word ''Chair''; an

■ b. In paragraph (c) by removing ''§ 1626.18'' and adding in its place ''§ 1626.21'' and by removing ''§ 1626.18(a)(1)'' and adding in its place ''§ 1626.21(a)(1)''.

§ 1626.21 [Amended]

■ 34. Amend section 1626.21 by removing ''§ 1626.17'' in paragraph (c) and adding in its place ''§ 1626.20''.

[FR Doc. 2020–21070 Filed 10–14–20; 8:45 am]

BILLING CODE 6570–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Technical amendments.

SUMMARY: This document makes technical amendments to the final rule published by the Occupational Safety and Health Review Commission in the **Federal Register** on April 10, 2019, and corrected on August 30, 2019, and on October 4, 2019. That rule revised the procedural rules governing practice before the Occupational Safety and Health Review Commission.

DATES: Effective on October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Ron Bailey, Attorney-Advisor, Office of the General Counsel, by telephone at (202) 606–5410, by email at *rbailey@oshrc.gov,* or by mail at: 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457.

SUPPLEMENTARY INFORMATION: OSHRC published revisions to its rules of procedure in the **Federal Register** on April 10, 2019 (84 FR 14554), and published corrections on August 30, 2019 (84 FR 45654), and October 4, 2019 (84 FR 53052). This document makes further technical amendments to the final rule.

List of Subjects in 29 CFR Part 2200

Administrative practice and procedure, Hearing and appeal procedures.

Accordingly, 29 CFR part 2200 is amended by making the following technical amendments:

PART 2200—RULES OF PROCEDURE

■ 1. The authority citation for part 2200 continues to read as follows:

Authority: 29 U.S.C. 661(g), unless otherwise noted.

Section 2200.96 is also issued under 28 U.S.C. 2112(a).

■ 2. Amend § 2200.7 by adding paragraph (c)(5) and revising paragraphs (o)(1) and (2) to read as follows:

§ 2200.7 Service, notice, and posting.

* * * * *

(c) * * *

(5) *Non-E-Filed Documents.* Documents required to be served upon other counsel or parties but that are not filed with the Commission in the Commission's E-File System (such as discovery documents served pursuant to § 2200.52(j)) may be served by any means agreed to by all parties in writing.

* * * * *

(o) * * *

(1) *Service on parties and intervenors using Commission's E-File System.* Service of show cause orders shall be deemed completed by service through the Commission's E-File System on a representative who has entered an appearance for a party or intervenor under § 2200.23 or on a self-represented party or intervenor who has not been exempted from using the Commission's E-File System. *See also* § 2200.101(a).

(2) *Service on self-represented parties or intervenors exempted from using the Commission's E-File System.* In addition to the service methods permitted by § 2200.7(c), the Commission or the Judge shall serve a show cause order on a self-represented party or intervenor who has been exempted from using the Commission's E-File System by certified mail or by any other method (including commercial delivery service) that provides confirmation of delivery to the addressee's record address provided under § 2200.6.

■ 3. Amend § 2200.8 by revising paragraphs (c)(1) and (2) to read as follows:

§ 2200.8 Filing.

* * * * *

(c) * * *

(1) *Mandatory e-filing.* All parties and intervenors must file documents electronically in the Commission's E-File System by following the instructions on the Commission's website (*www.oshrc.gov*), unless a self-represented party or intervenor is able to claim that complying with this paragraph will place an undue burden upon that party or intervenor under paragraph (c)(2) of this section or the documents are exempt from e-filing under paragraph (c)(5) of this section. Documents may not be filed with the Commission or the Judge via email.

(2) *Undue burden.* Self-represented parties or intervenors may submit a written statement to the Judge requesting an exemption from the mandatory e-filing requirement on the grounds that it would place an undue burden on them to comply with the requirement. If the Judge grants an exemption, exempted self-represented parties or intervenors must file documents by postage-prepaid first class or higher class U.S. Mail, commercial delivery service, personal delivery, or facsimile transmission as described in paragraph (d) of this section.

* * * * *

■ 4. Amend § 2200.100 by revising the third sentence of paragraph (c) to read as follows:

§ 2200.100 Settlement.

* * * * *

(c) * * * The parties shall also file a draft order terminating the proceedings for adoption by the Judge or, if the Judge's report has been issued, by the Commission. * * *

James J. Sullivan, Jr.,

Chairman.

[FR Doc. 2020–21012 Filed 10–14–20; 8:45 am]

BILLING CODE 7600–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2400

Regulations Implementing the Privacy Act

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Review Commission (OSHRC) is amending its regulations implementing the Privacy Act of 1974. The amendments to the Privacy Act regulations, which were last revised in 2006, are intended to both modernize the regulations and make them simpler to understand.

DATES: Effective October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Ron Bailey, Attorney Advisor, Office of General Counsel, by telephone at (202) 606–5410 or by email at *rbailey@oshrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Revisions to Part 2400

OSHRC's regulations implementing the Privacy Act, 29 CFR part 2400, were promulgated on January 19, 1979, 44 FR 3968, and revised on April 30, 1993, 58 FR 26065, and September 29, 2006, 71 FR 57421. OSHRC is revising these regulations to both modernize and streamline them. For the convenience of the reader, OSHRC has reproduced the regulations and their revisions in their entirety.

Throughout part 2400, OSHRC is revising language primarily to (1) clarify whether the word ''days'' refers to working days or calendar days and to eliminate numbers written as words; (2) eliminate exclusive use of male pronouns and, where possible, minimize the use of gender-specific pronouns; (3) use the phrase ''personal records'' where appropriate to refer to records that are about an individual; (4) streamline or clarify sentences without changing substantive requirements; and (5) account for deleted or renumbered provisions referenced in this part. Additional amendments to part 2400 are discussed below in regulatory sequence.

In 29 CFR 2400.1 (Purpose and scope), OSHRC is making several amendments to clarify what part 2400 covers. In 2006, OSHRC amended this provision to state that ''[t]his part is applicable only to records that are maintained by the Occupational Safety and Health Review Commission . . . *except for records that are disclosed to consumer reporting agencies under section 3711(e) of title 31, United States Code.*'' The statutory requirement, 5 U.S.C. 552a(m), simply states that a consumer reporting agency to which records are disclosed is not considered a government contractor. To clarify that point, OSHRC is deleting the clause that pertains to consumer reporting agencies and adding the following sentence: ''For purposes of this part, such contractors do not include any consumer reporting agency to which a record is disclosed under 31 U.S.C. 3711(e).''

OSHRC is also revising the last two sentences of 29 CFR 2400.1 to read as follows: ''This part does not affect discovery in adversary proceedings before the Commission. Discovery is governed by the Commission's Rules of Procedures in 29 CFR part 2200, subpart D.'' This is the same language that is used in 29 CFR 2400.1, the purpose and scope provision of the agency's FOIA regulations.

In 29 CFR 2400.2 (Description of agency), OSHRC is revising this section to make it identical to 29 CFR 2201.2, the agency's comparable FOIA provision.

In 29 CFR 2400.3 (Delegation of authority), OSHRC is adding the following requirement: ''As necessary, the Privacy Officer shall coordinate this delegated responsibility with the Senior Agency Official for Privacy'' (SAOP). According to OMB, ''[t]he SAOP shall have a central role in overseeing, coordinating, and facilitating the agency's privacy compliance efforts. In this role, the SAOP shall ensure that the agency complies with applicable privacy requirements in law, regulation, and policy.'' Role and Designation of Senior Agency Officials for Privacy, OMB Memorandum 16–24 (Sept. 15, 2016). In order for the SAOP to adequately fulfill these requirements, it is necessary for the Privacy Officer to coordinate with the SAOP on Privacy Act issues.

OSHRC is deleting paragraph (b) of 29 CFR 2400.3 (Delegation of authority), as well as 29 CFR 2400.4 (Collection and disclosure of personal information), because these sections are unnecessary under 5 U.S.C. 552a(f), the statutory provision requiring agencies that maintain systems of records to promulgate rules that establish procedures to implement certain aspects of the Privacy Act. Moreover, the requirements being deleted are either already specified in the Privacy Act, 5 U.S.C. 552a(b), (c), and (e), or are more appropriately addressed in the agency's system-of-records notices, 5 U.S.C. 552a(e).

OSHRC is deleting paragraphs (a) and (b) of 29 CFR 2400.5 (Notification) and moving paragraph (c)—which addresses notification of persons or other agencies who have received Privacy Act records that have subsequently been amended—to a new section that concerns procedures for statements of disagreement and notification of amendment (new 29 CFR 2400.8). Also, OSHRC is incorporating the requirements set forth in paragraph (a)(1), which pertain to written requests for notification on whether a system contains records about the requester, into the section that concerns procedures for requesting records (current 29 CFR 2400.6, new 29 CFR 2400.4).

OSHRC is revising current 29 CFR 2400.6 to specify that the procedures included in this section apply to requests for notification of a system of records' content, as well as requests for access to records. OSHRC also is including an additional method for requesting notification of or access to records—submitting requests to the FOIA Disclosure Officer in accordance with the procedures set forth at 29 CFR 2201.5(a)—to provide an alternative to mail or in-person visits. As to the paragraph concerning ''verification of identity,'' OSHRC is revising to simplify the verification requirements and to eliminate verification by a notarized statement, which is unnecessary given that verification can be accomplished by declaration in accordance with 28 U.S.C. 1746. Finally, to better reflect the contents of this section, OSHRC is revising the section heading as follows: ''Procedures for requesting notification of and access to personal records.''

OSHRC is revising current 29 CFR 2400.7 to divide the requirements in paragraph (a) into two separate paragraphs. New paragraph (a) focuses on the Privacy Officer's responsibilities, once a Privacy Act request concerning medical records is received, and new paragraph (b) focuses on the requirements that must be satisfied before records are forwarded to a designated physician.

OSHRC is revising paragraph (a) of current 29 CFR 2400.8 to clarify that requests to amend records should be requested in the same manner as requests for notification of and access to records. Although no substantive changes are being made to paragraph (b), it is being revised to clarify the Privacy Officer's responsibilities, including explicitly specifying that the requester must be notified in writing how an amendment request has been resolved. Finally, OSHRC is revising the section heading as follows: ''Procedures for amending personal records.''

OSHRC is revising paragraph (a) of current 29 CFR 2400.9 to clarify that the

denial of ''a request to provide notification of a record, or to access or amend a record''—in other words, request denials under new §§ 2400.4, 2400.5 and 2400.6—can be appealed to the Chairman. OSHRC also is revising paragraph (b) to require that the requester be notified, within the initial 30 working-day period for making a final decision, if the Chairman has extended the time period for good cause. In addition, OSHRC is moving paragraph (d) to a new section that concerns procedures for statements of disagreement and notification of amendment (new 29 CFR 2400.8).

OSHRC is adding new 29 CFR 2400.8, which has the heading, ''Procedures for statements of disagreement and notification of amendment.'' The requirements for this new provision are presently included in paragraph (c) of 29 CFR 2400.5 and paragraph (d) of 29 CFR 2400.9. OSHRC is revising these paragraphs for clarification purposes, none of which change the substantive requirements.

The deletion of current 29 CFR 2400.4 and 29 CFR 2400.5, and the addition of new 29 CFR 2400.8, results in current §§ 2400.6, 2400.7, 2400.8, and 2400.9 being re-designated as §§ 2400.4, 2400.5, 2400.6, and 2400.7, and current § 2400.10 being re-designated as § 2400.9.

II. Statutory and Executive Order Reviews

Executive Orders 12866 and 13132, and the Unfunded Mandates Reform Act of 1995: OSHRC is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

Regulatory Flexibility Act: The Chairman of OSHRC certifies under the Regulatory Flexibility Act, 5 U.S.C. 605(b), that these rules will not have a significant economic impact on a substantial number of small entities. The only provision in part 2400 that could economically impact a small entity pertains to how OSHRC charges its Privacy Act fees, and that provision is not being revised. Moreover, when fees are assessed, the amounts are generally minimal; and it is not anticipated that the amendments to other provisions within part 2400 will have much affect (if any) on the number of entities responsible for paying Privacy Act fees or the amounts of those fees. Finally, the Privacy Act's protections apply to ''individuals,'' which typically would not include ''small entities.'' For these reasons, a regulatory flexibility analysis is not required.

Paperwork Reduction Act of 1995: OSHRC has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply because these rules do not contain any information collection requirements that require the approval of OMB.

Congressional Review Act: These revisions do not constitute a ''rule,'' as defined by the Congressional Review Act, 5 U.S.C. 804(3)(C), because they involve changes to agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 29 CFR Part 2400

Privacy.

James J. Sullivan, Jr.,
Chairman.

For the reasons set forth in the preamble, OSHRC revises 29 CFR part 2400 to read as follows:

PART 2400—REGULATIONS IMPLEMENTING THE PRIVACY ACT

Sec.
2400.1 Purpose and scope.
2400.2 Description of agency.
2400.3 Delegation of authority.
2400.4 Procedures for requesting notification of and access to personal records.
2400.5 Special procedures for requesting medical records.
2400.6 Procedures for amending personal records.
2400.7 Procedures for appealing.
2400.8 Procedures for statements of disagreement and notification of amendment.
2400.9 Schedule of fees.

Authority: 5 U.S.C. 552a(f); 5 U.S.C. 553.

§ 2400.1 Purpose and scope.

This part provides procedures to implement the Privacy Act of 1974, 5 U.S.C. 552a. It is applicable only to records that are maintained by the Occupational Safety and Health Review Commission (OSHRC or the Commission), which includes all systems of records operated by an entity on behalf of OSHRC, pursuant to a contract, to accomplish an agency function. For purposes of this part, such contractors do not include any consumer reporting agency to which a record is disclosed under 31 U.S.C. 3711(e). This part does not affect discovery in adversary proceedings before the Commission. Discovery is governed by the Commission's Rules of Procedures in 29 CFR part 2200, subpart D.

§ 2400.2 Description of agency.

OSHRC adjudicates contested enforcement actions under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678. The Commission decides cases after the parties are given an opportunity for a hearing. All hearings are open to the public and are conducted at a place convenient to the parties by an Administrative Law Judge. Any Commissioner may direct that a decision of a Judge be reviewed by the full Commission. The President designates one of the Commissioners as Chairman, who is responsible on behalf of the Commission for the administrative operations of the Commission.

§ 2400.3 Delegation of authority.

The Chairman shall designate an OSHRC employee as the Privacy Officer and shall delegate to the Privacy Officer the authority to ensure agency-wide compliance with this part. As necessary, the Privacy Officer shall coordinate this delegated responsibility with the Senior Agency Official for Privacy.

§ 2400.4 Procedures for requesting notification of and access to personal records.

The purpose of this section is to provide procedures by which an individual may request notification about whether a system of records contains a record about that individual (''a personal record''), or may gain access to such a record included in a system of records.

(a) *Submission of requests*—(1) *Manner.* An individual seeking information regarding the content of a system of records or access to a personal record in a system of records should submit a written request either in person or by mail to the Privacy Officer, OSHRC, One Lafayette Centre, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457. A request may also be submitted to the FOIA Disclosure Officer in accordance with the procedures set forth at 29 CFR 2201.5(a). Such a request, however, must be identified as a ''Privacy Act Request.'' The FOIA Disclosure Officer will forward any request identified in this manner to the Privacy Officer for processing.

(2) *Notification requests.* A request for notification about whether a system of records contains a personal record must specify which system of records, as described in the agency's system-of-records notices published in **Federal Register**, is the subject of the request.

(3) *Access requests.* A request for access to a personal record shall

describe the nature of the record sought, the approximate dates covered by the record, and the system of records in which the record is thought to be included as described in the agency's system-of-records notices published in the **Federal Register**. The request should also indicate whether the requester wishes to review the record in person or obtain a copy by mail. If the information supplied is insufficient to locate or identify the record, the requester shall be notified promptly and, if necessary, informed of the additional information required.

(b) *Period for response.* After receiving a request, the Privacy Officer shall respond to it no later than 10 working days from the request's receipt.

(c) *Verification of identity.* The following standards for verifying an individual's identity are applicable to any individual who requests a personal record under this part:

(1) An individual seeking access to a record in person shall, if possible, present a government-issued identification that includes a photo, such as a passport or a driver's license.

(2) An individual seeking access to a record by mail shall, if possible, provide a signature, address, date of birth, place of birth, and a photocopy of a government-issued identification that includes a photo, such as a passport or a driver's license.

(3) An individual seeking access to a record either by mail or in person who cannot provide the necessary documentation of identification specified in paragraphs (c)(1) and (2) of this section may provide a declaration in accordance with 28 U.S.C. 1746, swearing or affirming to his or her identity and to the fact that he or she understands the penalties for false statements pursuant to 18 U.S.C. 1001.

(d) *Verification of guardianship.* The parent or guardian of a minor or an individual judicially determined to be incompetent and seeking to act on behalf of such minor or incompetent shall, in addition to establishing his or her own identity, establish the identity of the minor or other individual he or she represents as required in paragraph (c) of this section and establish his or her own parentage or guardianship of the subject of the record by furnishing either a copy of a birth certificate showing parentage or a court order establishing the guardianship.

(e) *Accompanying persons.* An individual seeking to review a personal record in person may be accompanied by another individual of his or her own choosing. Both the individual seeking access and the accompanying individual shall be required to sign a form provided by OSHRC indicating that OSHRC is authorized to discuss the contents of the subject record in the presence of both individuals.

(f) *When compliance is possible.* (1) The Privacy Officer shall inform the requester of the determination to grant the request and shall make the personal record available to the individual in the manner requested, that is, either by forwarding a copy of the information to the requester or by making it available for review, unless:

(i) It is impracticable to provide the requester with a copy, in which case the requester shall be notified of this and informed of the procedures set forth in paragraph (c) of this section, or

(ii) The Privacy Officer has reason to believe that the cost of a copy is considerably more expensive than anticipated by the requester, in which case the Privacy Officer shall notify the requester of the estimated cost, and ascertain whether the requester still wishes to be provided with a copy of the information.

(2) Where a personal record is to be reviewed by the requester in person, the Privacy Officer shall inform the requester in writing of:

(i) The date on which the record shall become available for review, the location at which it may be reviewed, and the hours for inspection;

(ii) The requirements for verifying identity as set forth in paragraphs (c) and (d);

(iii) The requester's right to be accompanied by another individual to review the record as set forth in paragraph (e) of this section; and

(iv) The requester's right to have another individual review the record.

(3) If the requester seeks to inspect the personal record without receiving a copy, the requester shall not leave OSHRC premises with the record and shall sign a statement identifying the specific record or category of records that has been reviewed.

(g) *When compliance is not possible.* The denial of a written request to review a personal record shall be sent to the requester in writing and signed by the Privacy Officer. This response shall be provided when the requested record does not exist, does not contain personal information relating to the requester, or is exempt. The response shall include a statement regarding the determining factors of denial, and the requester's rights to administrative appeal and, thereafter, judicial review in a district court of the United States.

§ 2400.5 Special procedures for requesting medical records.

(a) Upon an individual's request for access to any medical record about the requester, including any psychological record, the Privacy Officer shall make a preliminary determination on whether access to such record(s) could have an adverse effect upon the requester. If the Privacy Officer determines that access could have an adverse effect on the requester, OSHRC shall notify the requester in writing and advise that the record(s) at issue can be made available only to a physician of the requester's designation.

(b) OSHRC shall forward such record(s) to the physician designated by the requester once the following requirements are met:

(1) The requester has informed OSHRC of the designated physician's identity;

(2) OSHRC has verified the identity of the physician; and

(3) The physician has agreed to review the record(s) with the requester to both explain the meaning of the record(s) and offer counseling designed to temper any adverse reaction.

(c) If, within 60 calendar days of OSHRC's written request for a designation, the requester has failed to respond or designate a physician, or the physician fails to agree to the release conditions, then OSHRC shall hold the records(s) in abeyance and advise the requester that this action may be construed as a technical denial. OSHRC shall also advise the requester of his or her rights to administrative appeal and, thereafter, judicial review in a district court of the United States.

§ 2400.6 Procedures for amending personal records.

(a) *Submission of requests for amendment.* Upon review of an individual's personal record, that individual may submit a request to amend such record. This request shall be submitted in writing to the Privacy Officer, in accordance with § 2400.4(a)(1)'s procedures, and shall include a statement of the amendment requested and the reasons for such amendment, *e.g.,* relevance, accuracy, timeliness or completeness of the record.

(b) *Action to be taken by the Privacy Officer.* Upon receiving an amendment request, the Privacy Officer shall promptly:

(1) Acknowledge in writing within 10 working days the receipt of the request;

(2) Make such inquiry as is necessary to determine whether the amendment is appropriate; and

(3) Resolve the request by either:

(i) Correcting or eliminating any information that is found to be incomplete, inaccurate, irrelevant to a statutory purpose of OSHRC, or untimely and notifying the requester in writing when this action is complete; or

(ii) Notifying the requester in writing of a determination not to amend the personal record, including the reasons for the denial, and advising the requester of his or her right to appeal in accordance with § 2400.7.

§ 2400.7 Procedures for appealing.

(a) *Submission of appeal.* (1) If a request to provide notification of a personal record, or to access or amend a personal record, is denied either in whole or in part, or if no determination is made within the period prescribed by this part, then the requester may appeal in writing to the Chairman by mailing an appeal letter to the following address: Privacy Appeal, OSHRC, One Lafayette Centre, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457.

(2) To be considered timely, the requester must submit the appeal letter within 30 calendar days of the date of denial, or within 90 calendar days of his or her request if the appeal is from a failure of the Privacy Officer to make a determination. The appeal letter should include, as applicable:

(i) Reasonable identification of the system to which notification was sought, the personal record to which access was sought, or the amendment that was requested.

(ii) A statement of the OSHRC action or failure to act being appealed and the relief sought.

(iii) A copy of the request, the notification of denial, and any other related correspondence.

(b) *Final decisions.* The Chairman must make a final decision no later than 30 working days from the date of the request, but the Chairman may extend this time period for good cause. The requester, however, must be notified of the extension within the initial 30 working-day period, and the extension may not exceed 90 calendar days from the date of the request. Any personal record found on appeal to be incomplete, inaccurate, irrelevant, or untimely, shall within 30 working days of the date of such findings be appropriately amended.

(c) *Decision requirements.* The decision of the Chairman constitutes the final decision of OSHRC on the right of the requester to be notified of, or to access or amend, a personal record. The decision on the appeal shall be in writing and, in the event of a denial, shall set forth the reasons for such denial and state the individual's right to obtain judicial review in a district court of the United States. An indexed file of the agency's decisions on appeal shall be maintained by the Privacy Officer.

§ 2400.8 Procedures for statements of disagreement and notification of amendment.

(a) *Submission of statement of disagreement.* If a final decision concerning an amendment request does not satisfy the requester, then the requester may provide a statement of disagreement that is of reasonable length and sets forth a position regarding the disputed information. This statement of disagreement shall be accepted by OSHRC and included in the relevant personal record. If deemed appropriate, OSHRC may also include a concise statement in the record of its reasons for not making a requested amendment.

(b) *Notification of amendment and statement of disagreement.* (1) OSHRC shall inform any person or other agency about an amendment to a personal record, or notation made to the record under paragraph (a) of this section, if that record has been disclosed to the person or agency, the amendment or notation was made pursuant to this part, and an accounting of the disclosure was made pursuant to 5 U.S.C. 552a(c).

(2) When a personal record is disclosed to a person or other agency after a notation under paragraph (a) of this section is made to the record, OSHRC shall clearly note any portion of the record that is disputed and provide a copy of any notation included in the record.

§ 2400.9 Schedule of fees.

(a) *Policy.* The purpose of this section is to establish fair and equitable fees to permit reproduction of personal records for concerned individuals.

(b) *Reproduction.* (1) For the fees associated with reproduction of personal records, refer to appendix A to part 2201, Schedule of Fees.

(2) OSHRC shall not normally furnish more than one copy of any record.

(c) *Limitations.* No fee shall be charged to any individual for the process of retrieving, reviewing, or amending personal records.

[FR Doc. 2020–21011 Filed 10–14–20; 8:45 am]

BILLING CODE 7600–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe certain interest assumptions under the regulation for plans with valuation dates in November 2020. These interest assumptions are used for paying certain benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective November 1, 2020.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, (202) 229–3829. (TTY users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 229–3829.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminated single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulation are also published on PBGC's website (*https://www.pbgc.gov*).

PBGC uses the interest assumptions in appendix B to part 4022 (''Lump Sum Interest Rates for PBGC Payments'') to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Because some private-sector pension plans use these interest rates to determine lump sum amounts payable to plan participants (if the resulting lump sum is larger than the amount required under section 417(e)(3) of the Internal Revenue Code and section 205(g)(3) of ERISA), these rates are also provided in appendix C to part 4022 (''Lump Sum Interest Rates for Private-Sector Payments'').

This final rule updates appendices B and C of the benefit payments regulation to provide the rates for November 2020 measurement dates.

The November 2020 lump sum interest assumptions will be 0.00

percent for the period during which a benefit is (or is assumed to be) in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for October 2020, these assumptions represent no change in the immediate rate and are otherwise unchanged.

PBGC updates appendices B and C each month. PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to issue new interest assumptions promptly so that they are available for plans that rely on our publication of them each month to calculate lump sum benefit amounts.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during November 2020, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, rate set 325 is added at the end of the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
325	11–1–20	12–1–20	0.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, rate set 325 is added at the end of the table to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
325	11–1–20	12–1–20	0.00	4.00	4.00	4.00	7	8

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2020–22550 Filed 10–14–20; 8:45 am]

BILLING CODE 7709–02–P

POSTAL SERVICE

39 CFR Part 20

International Competitive Services Product and Price Changes

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), to reflect the prices, product features, and classification changes to Competitive Services and other changes, as established by the Governors of the Postal Service.

DATES: *Effective date:* January 24, 2021.

FOR FURTHER INFORMATION CONTACT: Kathy Frigo at 202–268–4178.

SUPPLEMENTARY INFORMATION: New prices will be posted under Docket Number CP2021–15 on the Postal Regulatory Commission's website at *www.prc.gov.*

The number of country groups for Priority Mail Express International® (PMEI) and Priority Mail International® (PMI) will increase from 17 to 20. For both International Priority Airmail® (IPA) and International Surface Air Lift® (ISAL), the number of country groups will increase from 19 to 20. The number of country groups for outbound single-piece First-Class Package International Service® (FCPIS) will increase from 9 to 20.

Country groupings and prices for PMEI, PMI, IPA, ISAL, and outbound single-piece FCPIS will be realigned. The minimum size limits of small packets when sent as IPA, ISAL and FCPIS will be revised to conform to Universal Postal Union (UPU) standards.

This final rule describes the international price and classification changes and the corresponding mailing standards changes for the following Competitive Services:

- Global Express Guaranteed® (GXG)®.
- Priority Mail Express International.
- Priority Mail International.
- First-Class Package International Service.
- International Priority Airmail (IPA).

- International Surface Air Lift (ISAL).
- Direct Sacks of Printed Matter to One Addressee (Airmail M-bags).
- The following international extra services and fees:

- International Insurance
- Certificate of Mailing
- Registered Mail®
- Return Receipt
- Customs Clearance and Delivery Fee
- Pickup on Demand
- International Postal Money Order
- International Money Order Inquiry Fee
- International Money Transfer Service

New prices will be located on the Postal Explorer® website at *https://pe.usps.com.*

Global Express Guaranteed

Global Express Guaranteed (GXG) service provides fast international shipping, with international transportation and delivery provided through an alliance with FedEx Express®. (Due to COVID–19 service impacts, the money-back guarantee for GXG has been suspended until further notice.) The price increase for GXG service averages 0.9 percent.

The Postal Service provides Commercial Base® pricing to online customers who prepare and pay for GXG shipments via USPS-approved payment methods (other than Click-N-Ship® service), with a 5 percent discount off the published retail prices for GXG service. Customers who prepare GXG shipments via Click-N-Ship service will continue to pay retail prices. Commercial Plus® prices are set to match the Commercial Base prices.

Priority Mail Express International

Priority Mail Express International (PMEI) service provides fast service to approximately 180 countries in 3–5 business days for many major markets, although the actual number of days may vary based upon origin, destination and customs delays. Priority Mail Express International with Money-Back Guarantee service is available for certain destinations. The price increase for PMEI service averages 3.6 percent. The Commercial Base price for customers who prepare and pay for PMEI shipments via permit imprint, online at USPS.com®, or as registered end-users using an authorized PC Postage vendor (with the exception of Click-N-Ship service) will be an average of 5.9 percent below the retail price. Customers who prepare PMEI shipments via Click-N-Ship service pay retail prices. Commercial Plus® prices will be equivalent to Commercial Base; however, deeper discounting may still be made available to customers through negotiated service agreements. Also, three additional country price groups are being added for PMEI. In order to better align the country groupings based on volume and geography, the country groupings for PMEI will be realigned.

The Postal Service will continue to include Priority Mail Express International service in customized contracts offered to customers who meet certain revenue thresholds and are willing to commit a large amount of revenue to the USPS® for Priority Mail Express International service and Priority Mail International service.

Priority Mail Express International flat rate pricing continues to be available for Flat Rate Envelopes.

Priority Mail International

Priority Mail International (PMI) is an economical way to send merchandise and documents to about 180 countries in 6–10 business days for many major markets, although the actual number of days may vary based upon origin, destination and customs delays. The price increase for Priority Mail International service averages 5.1 percent. The Commercial Base price for customers who prepare and pay for PMI items via permit imprint, online at *USPS.com,* or as registered end-users using an authorized PC Postage vendor (with the exception of Click-N-Ship service) will be 5 percent below the retail price. Customers who prepare Priority Mail International shipments via Click-N-Ship service will pay retail prices. Commercial Plus prices are set to match Commercial Base prices. Commercial Plus prices will be equivalent to Commercial Base; however, deeper discounting may still be made available to customers through negotiated service agreements. Also, three additional country price groups are being added for PMEI. In order to better align the country groupings for PMI based on volume and geography, the country groupings for PMI will be realigned.

The Postal Service will continue to include Priority Mail International in customized contracts offered to customers who meet certain revenue thresholds and are willing to commit to a larger amount of revenue to the USPS® for Priority Mail Express International and Priority Mail International.

Priority Mail International flat rate pricing continues to be available for Flat Rate Envelopes, Small Flat Rate Boxes, and Medium and Large Flat Rate Boxes.

First-Class Package International Service

First-Class Package International Service (FCPIS) is an economical international service for small packages weighing less than 4 pounds and not exceeding $400 in value. The price increase for FCPIS averages 4.8 percent. The Commercial Base price, available to customers who prepare and pay for FCPIS items via permit imprint or by USPS-approved online payment methods, will be 5 percent below the retail price. Customers who prepare FCPIS shipments via Click-N-Ship service pay retail prices. Commercial Plus prices will be equivalent to Commercial Base; however, deeper discounting will still be made available to customers through negotiated service agreements. Eleven additional country price groups are being added for FCPIS. In order to better align the country groupings for FCPIS based on volume and geography, the country groupings for FCPIS will be realigned. Also, the minimum size limits of small packets when sent as FCPIS will be revised to conform to Universal Postal Union (UPU) standards. The minimum dimensions will be changed to 6 inches in length and 4 inches in height.

Electronic USPS Delivery Confirmation International service—abbreviated E–USPS DELCON INTL—is available for First-Class Package International Service items to select destination countries at no charge.

International Priority Airmail and International Surface Air Lift

International Priority Airmail (IPA) service, including IPA M-bags, is a commercial service designed for volume mailings of all First-Class Mail International postcards, letters, and large envelopes (flats), and for volume mailings of First-Class Package International Service packages (small packets) weighing up to a maximum of 4.4 pounds. IPA shipments are typically flown to foreign destinations (exceptions apply to Canada and Mexico) and are then entered into that country's air or surface priority mail system for delivery. The price increase for IPA letters, flats, and packets is 74.1 percent. International Surface Airlift (ISAL) is similar to IPA except that once flown to the foreign destination, it is entered into that country's surface nonpriority mail system for delivery. The price increase for ISAL letters, flats, and packets is 32.6 percent. One additional country price group is being added to both IPA and ISAL. In order to better align the country groupings for IPA and ISAL based on volume and

geography, the country groupings for IPA and ISAL will be realigned. Also, the minimum size limits of small packets when sent as IPA or ISAL will be revised to conform to Universal Postal Union (UPU) standards. The minimum dimensions will be changed to 6 inches in length and 4 inches in height.

Direct Sacks of Printed Matter to One Addressee (Airmail M-Bags)

An airmail M-bag is a direct sack of printed matter sent to a single foreign addressee at a single address. Prices are based on the weight of the sack. The price increase for Airmail M-bags averages 5.0 percent.

International Extra Services and Fees

Depending on country destination and mail type, customers may add a variety of extra services to their outbound shipments and pay a variety of fees. The Postal Service proposes to increase fees for certain international extra services, as follows:

▪ GXG insurance: There is no charge for GXG insurance for coverage up to $100. The fee for GXG insurance will increase to $1.30 for each additional $100 or fraction over $100, up to a maximum indemnity of $2,499 per shipment (the maximum indemnity varies by country).

Global Express Guaranteed insurance	Fee
$100	$0.00
Each additional $100 or fraction over $100	1.30

Maximum insurance $2,499 (varies by country).

• Priority Mail Express International insurance (PMEI) and Priority Mail International (PMI) insurance: There is no charge for PMEI and PMI merchandise insurance coverage up to $200. The fee for PMEI and PMI merchandise insurance will increase to $1.80 for each additional $100 or fraction over $200, up to a maximum indemnity of $5,000 (the maximum indemnity varies by country).

Indemnity limit not over	Fee
Up to $200	$0.00
$200.01–$300.00	6.85
$300.01–$400.00	8.65
$400.01–$500.00	10.45
$500.01–$600.00	12.25
$600.01–$700.00	14.05
$700.01–$800.00	15.85
$800.01–$900.00	17.65

$17.65 plus $1.80 per $100 or fraction thereof over $900 in declared value. Maximum insurance $5,000 (varies by country).

▪ Certificate of mailing service: Prices for certificate of mailing service will be as follows:

Certificate of mailing	Fee
Individual pieces	
Individual article (PS Form 3817)	$1.55
Duplicate copy of PS Form 3817 or PS Form 3665 (per page)	1.55
Firm mailing sheet (PS Form 3665), per piece (minimum 3). All other qualifying classes of mail	0.53
Bulk quantities	
For first 1,000 pieces (or fraction thereof)	8.80
Each additional 1,000 pieces (or fraction thereof)	1.10
Duplicate copy of PS Form 3606	1.55

▪ International Registered Mail service: The fee for international registered mail will increase to $16.30.

▪ International return receipt service: The fee for international return receipt service will increase to $4.25.

▪ Customs clearance and delivery fee: The customs clearance and delivery fee per dutiable item will increase to $6.65.

▪ Pickup on Demand: The fee for pickup on demand will increase to $25.00.

▪ International Postal Money Orders: The fee for international postal money orders will increase to $10.50.

▪ International Money Order Inquiry: The fee for international money orders inquiry will increase to $7.85.

▪ International Money Transfer Service (Sure Money® service): Prices for international money transfer service will be as follows:

International money transfer service (sure money)	Fee
$0.01–$750.00	$14.85
$750.01–$1500.00	21.50
Refunds	32.50
Change of Recipient	17.35

The Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, 39 CFR part 20 is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), as follows:

* * * * *

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

* * * * *

2 Conditions for Mailing

* * * * *

250 First-Class Package International Service

251 Description and Physical Characteristics

* * * * *

251.2 Physical Characteristics and Standards—Packages (Small Packets)

* * * * *

251.22 Dimensions—Other Than Rolls

[Delete c. and add new a. and b. to indicate minimum dimensions; revise current a. and b. as c. and d. as follows:]

a. Minimum length: 6 inches

b. Minimum height: 4 inches

* * * * *

292 International Priority Airmail (IPA) Service

* * * * *

292.4 Mail Preparation

* * * * *

292.45 IPA Foreign Office of Exchange Codes and Price Groups

* * * * *

Exhibit 292.45a

IPA Foreign Office of Exchange Codes and Price Groups

[Revise the price group numbers in column 3 to read as follows:]

Country labeling name	Foreign office of exchange code	Price group
Afghanistan	KBL	4
Albania	TIA	3

Country labeling name	Foreign office of exchange code	Price group
Algeria	ALG	5
Andorra, via Spain	MAD	3
Angola	LAD	5
Anguilla	AXA	6
Antigua and Barbuda	ANU	6
Argentina	BUE	11
Armenia	EVN	3
Aruba	AUA	6
Ascension, via United Kingdom	LAL	5
Australia [1]	SYD	12
Austria	VIE	9
Azerbaijan	BAK	3
Bahamas	NAS	6
Bahrain	BAH	4
Bangladesh	DAC	4
Barbados	BGI	6
Belarus	MSQ	3
Belgium	BRU	9
Belize	BZE	6
Benin	COO	5
Bermuda	SGE	6
Bhutan, via United Kingdom	LAL	4
Bolivia	LPB	6
Bonaire, Sint Eustatius, and Saba	BON	6
Bosnia-Herzegovina	SJJ	3
Botswana	GBE	5
Brazil	Letter-size: SAO Flat-size: SAO Package-size: CWB	13
British Virgin Islands	RAD	6
Brunei Darussalam	BWN	4
Bulgaria	SOF	3
Burkina Faso	OUA	5
Burma (Myanmar)	RGN	4
Burundi	BJM	5
Cambodia	PNH	4
Cameroon	DLA	5
Canada	See Canadian Labeling Information in Exhibit 292.45b.	1
Cape Verde	RAI	5
Cayman Islands	GCM	6
Central African Republic	BGF	5
Chad	NDJ	5
Chile	SCL	11
China	BJS	14
Colombia	BOG	6
Comoros Islands, via France	CDG	5
Congo, Dem. Rep. of the	FIH	5
Congo, Rep. of the	BZV	5
Cook Islands	RAR	12
Costa Rica	SJO	6
Cote d'Ivoire	ABJ	5
Croatia	ZAG	8
Curacao	CUR	6
Cyprus	LCA	4
Czech Republic	PRG	7
Denmark	CPH	9
Djibouti	JIB	5
Dominica	DOM	6
Dominican Republic	SDQ	6
Ecuador	UIO	6
Egypt	CAI	5
El Salvador	SAL	6
Equatorial Guinea	SSG	5
Eritrea	ASM	5
Estonia	TLL	9
Eswatini	MTS	5
Ethiopia	ADD	5
Falkland Islands, via United Kingdom	LAL	6
Faroe Islands, via Denmark	CPH	9
Fiji	NAN	4
Finland	HEL	9
France (including Corsica and Monaco)	ROI	15
French Guiana	CAY	15

Country labeling name	Foreign office of exchange code	Price group
French Polynesia	FAA	4
Gabon	LBV	5
Gambia	BJL	5
Georgia, Republic of	TBS	3
Germany	FRA	16
Ghana	ACC	5
Gibraltar	GIB	7
Greece	ATH	8
Greenland, via Denmark	CPH	9
Grenada	GND	6
Guadeloupe	PTP	15
Guatemala	GUA	6
Guinea	CKY	5
Guinea-Bissau	OXB	5
Guyana	GEO	6
Haiti	PAP	6
Honduras	TGU	6
Hong Kong	HKG	18
Hungary	BUD	7
Iceland	REK	7
India	DEL	10
Indonesia	JKT	4
Iraq	BGW	4
Ireland	DUB	9
Israel	TLV	8
Italy	MIL	9
Jamaica	KIN	6
Japan	KWS	17
Jordan	AMM	4
Kazakhstan	ALA	4
Kenya	NBO	5
Kiribati	TRW	4
Korea, Republic of (South)	SEL	18
Kosovo, Republic of	PRN	3
Kuwait	KWI	4
Kyrgyzstan	FRU	4
Laos	VTE	4
Latvia	RIX	3
Lebanon	BEY	4
Lesotho	MSU	5
Liberia	MLW	5
Libya	TIP	5
Liechtenstein, via Switzerland	ZRH	7
Lithuania	VNO	7
Luxembourg	LUX	8
Macao	MFM	4
Madagascar	TNR	5
Malawi	LLW	5
Malaysia	KUL	10
Maldives	MLE	4
Mali	BKO	5
Malta	MAR	3
Martinique	FDF	15
Mauritania	NKC	5
Mauritius	PLU	5
Mexico	MEX	2
Moldova	KIV	3
Mongolia	ULN	4
Montenegro	TGD	3
Montserrat	MNI	6
Morocco	CAS	5
Mozambique	MPM	5
Namibia	WDH	5
Nauru	INU	4
Nepal	KTM	4
Netherlands	HAG	9
New Caledonia	NOU	4
New Zealand [2]	AKL	12
Nicaragua	MGA	6
Niger	NIM	5
Nigeria	LOS	5
North Macedonia, Republic of	FRA	3
Norway	OSL	9
Oman	MCT	4

Country labeling name	Foreign office of exchange code	Price group
Pakistan	ISB	4
Panama	PTY	6
Papua New Guinea	BOR	4
Paraguay	ASU	6
Peru	LIM	6
Philippines	MNL	4
Pitcairn Island, via New Zealand	AKL	4
Poland	WAW	7
Portugal (includes Azores and Madeira Islands)	LIS	7
Qatar	DOH	4
Reunion	RUN	15
Romania	BUH	3
Russia	MOW	19
Rwanda	KGL	5
Saint Helena, via United Kingdom	LAL	5
Saint Kitts and Nevis	SKB	6
Saint Lucia	SLU	6
Saint Pierre and Miquelon, via Canada	See Canadian Labeling Information in Exhibit 292.45b.	3
Saint Vincent and The Grenadines	KTN	6
Samoa	APW	4
San Marino, via Italy	MIL	8
Sao Tome and Principe, via Portugal	LIS	5
Saudi Arabia	DMM	4
Senegal	DKR	5
Serbia, Republic of	BEG	3
Seychelles	SEZ	5
Sierra Leone	FNA	5
Singapore	SIN	10
Sint Maarten	SXM	6
Slovak Republic (Slovakia)	BTS	3
Slovenia	LJU	8
Solomon Islands	HIR	4
South Africa	JNB	5
South Sudan, Republic of	JUB	5
Spain (includes Canary Islands)	MAD	8
Sri Lanka	CMB	4
Suriname	PBM	6
Sweden	STO	8
Switzerland	ZRH	9
Taiwan	TPE	10
Tajikistan	DYU	4
Tanzania	DAR	5
Thailand	BKK	10
Timor-Leste, Democratic Republic of	DIL	4
Togo	LFW	5
Tonga	TBU	4
Trinidad and Tobago	POS	6
Tristan da Cunha, via South Africa	JNB	5
Tunisia	TUN	5
Turkey	IST	3
Turkmenistan	ASB	4
Turks and Caicos Islands	GDT	6
Tuvalu, via Fiji	NAN	4
Uganda	KLA	5
Ukraine	IEV	3
United Arab Emirates	DXB	10
United Kingdom of Great Britain and Northern Ireland (includes England, Scotland, Wales, Northern Ireland, Guernsey, Jersey, Alderney, Sark, and The Isle of Man).	LAL	20
Uruguay	MVD	6
Uzbekistan	TAS	4
Vanuatu	VLI	4
Vatican City	VAT	9
Venezuela	MAI	11
Vietnam	SGN	4
Wallis and Futuna Islands, via New Caledonia	NOU	4
Yemen	SAH	4
Zambia	LUN	5

Country labeling name	Foreign office of exchange code	Price group
Zimbabwe	HRE	5

1. At the mailer's option, a finer sortation for IPA items addressed to Australia may be used. If this option is chosen, items addressed with postal codes beginning with 0, 1, 2, 4, and 9 and uncoded mail should be sorted and prepared in direct country containers tagged to Sydney. Both the three-letter exchange office code (''SYD'') and the country name (''Australia'') should be entered in the ''To'' block of PS Tag 115, *International Priority Airmail*. Items addressed with postal codes beginning with 3, 5, 6, 7, and 8 should be sorted and prepared in direct country containers tagged to Melbourne. Both the three-letter exchange office code (''MEL'') and the country name (''Australia'') should be entered in the ''To'' block of PS Tag 115.

2. For all destinations to New Zealand other than Cook Islands. For Cook Islands, see the entry for Cook Islands in this exhibit.

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293 International Surface Air Lift (ISAL) Service

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293.4 Mail Preparation

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293.45 ISAL Foreign Office of Exchange Codes and Price Groups

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Exhibit 293.45a

ISAL Foreign Office of Exchange Codes and Price Groups

[Revise the price group numbers in column 3 to read as follows:]

Country labeling name	Foreign office of exchange code	Price group
Albania	TIA	3
Algeria	ALG	5
Angola	LAD	5
Argentina	BUE	11
Aruba	AUA	6
Australia	SYD	12
Austria	VIE	9
Bahrain	BAH	4
Bangladesh	DAC	4
Belgium	BRU	9
Belize	BZE	6
Benin	COO	5
Bolivia	LPB	6
Bonaire, Sint Eustatius, and Saba	BON	6
Brazil	Letter-size: SAO Flat-size: SAO Package-size: CWB	13
Bulgaria	SOF	3
Burkina Faso	OUA	5
Cameroon	DLA	5
Canada	See Canadian Labeling Information in Exhibit 293.45b	1
Central African Republic	BGF	5
Chile	SCL	11
China	BJS	14
Colombia	BOG	6
Congo, Democratic Republic of the	FIH	5
Cook Islands	RAR	12
Costa Rica	SJO	6
Cote d'Ivoire (Ivory Coast)	ABJ	5
Curacao	CUR	6
Czech Republic	PRG	7
Denmark	CPH	9
Dominican Republic	SDQ	6
Ecuador	GYE	6
Egypt	CAI	5
El Salvador	SAL	6
Ethiopia	ADD	5
Fiji	NAN	4
Finland	HEL	9
France (including Corsica and Monaco)	ROI	15
French Guiana	CAY	15
Gabon	LBV	5
Germany	NIA	16
Ghana	ACC	5
Greece	ATH	8
Guatemala	GUA	6
Guyana	GEO	6
Haiti	PAP	6
Honduras	TGU	6
Hong Kong	HKG	18
Hungary	BUD	7
Iceland	REK	7
India	BOM	10

Country labeling name	Foreign office of exchange code	Price group
Indonesia	JKT	4
Ireland	AHE	9
Israel	TLV	8
Italy	MIL	9
Jamaica	KIN	6
Japan	KWS	17
Jordan	AMM	4
Kenya	NBO	5
Korea, Republic of (South)	SEL	18
Kuwait	KWI	4
Lebanon	BEY	4
Liechtenstein	ZRH	7
Luxembourg	LUX	8
Madagascar	TNR	5
Malaysia	KUL	10
Mali	BKO	5
Mauritania	NKC	5
Mauritius	MRU	5
Mexico	MEX	2
Morocco	CAS	5
Mozambique	MPM	5
Netherlands	HAG	9
New Zealand *	AKL	12
Nicaragua	MGA	6
Niger	NIM	5
Nigeria	LOS	5
Norway	OSL	9
Oman	MCT	4
Pakistan	KHI	4
Panama	PTY	6
Papua New Guinea	BOR	4
Paraguay	ASU	6
Peru	LIM	6
Philippines	MNL	4
Poland	WAW	7
Portugal	LIS	7
Qatar	DOH	4
Reunion	RUN	15
Romania	BUH	3
Russia	MOW	19
Saudi Arabia	DMM	4
Senegal	DKR	5
Singapore	SIN	10
Sint Maarten	SXM	6
Slovak Republic (Slovakia)	BTS	3
South Africa	JNB	5
Spain (includes Canary Islands)	MAD	8
Sri Lanka	CMB	4
Suriname	PBM	6
Sweden	STO	8
Switzerland	ZRH	9
Taiwan	TPE	10
Tanzania	DAR	5
Thailand	BKK	10
Timor-Leste, Democratic Republic of	DIL	4
Togo	LFW	5
Trinidad and Tobago	POS	6
Tunisia	TUN	5
Turkey	IST	3
Uganda	KLA	5
United Arab Emirates	DXB	10
United Kingdom of Great Britain and Northern Ireland (includes England, Scotland, Wales, Northern Ireland, Guernsey, Jersey, Alderney, Sark, and The Isle of Man).	LAL	20
Uruguay	MVD	6
Venezuela	MAI	11
Yemen	SAH	4
Zambia	NLA	5
Zimbabwe	HRE	5

* For all destinations to New Zealand other than Cook Islands. For Cook Islands, see the entry for Cook Islands in this exhibit.

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Country Price Groups and Weight Limits

[Revise the text to read as follows:]

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Country	Global Express Guaranteed		Priority Mail Express International			Priority Mail International			First-Class Mail International and First-Class Package International Service		
	Price group	Max. Wt. (lbs.)	Price group	Max. Wt. (lbs.)	PMEI Flat Rate Envelopes price group [1]	Price group	Max. Wt. (lbs.)	PMI Flat Rate Envelopes and Boxes price group [2]	FCMI price group	Max. Wt.	FCPIS price group
Afghanistan	6	70	n/a	n/a	n/a	7	66	8	6	See Note 3	4
Albania	4	70	3	66	8	3	44	8	4	See Note 3	3
Algeria	4	70	9	44	8	9	44	8	8	See Note 3	5
Andorra	5	4	4	66	8	4	66	8	5	See Note 3	3
Angola	4	70	8	44	8	8	44	8	7	See Note 3	5
Anguilla	7	70	10	55	8	10	22	8	9	See Note 3	6
Antigua and Barbuda	7	70	n/a	n/a	n/a	10	22	8	9	See Note 3	6
Argentina	8	70	10	44	2	10	44	2	9	See Note 3	11
Armenia	4	70	3	44	8	3	44	8	4	See Note 3	3
Aruba	7	70	11	44	8	11	44	8	9	See Note 3	6
Ascension	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	7	See Note 3	5
Australia	6	70	12	66	6	12	66	6	3	See Note 3	12
Austria	5	70	4	66	4	4	66	4	5	See Note 3	9
Azerbaijan	4	70	3	70	8	3	70	8	4	See Note 3	3
Bahamas	7	70	10	22	8	10	22	8	9	See Note 3	6
Bahrain	6	70	6	44	8	6	44	8	8	See Note 3	4
Bangladesh	6	70	6	44	8	6	44	8	6	See Note 3	4
Barbados	7	70	10	66	8	10	44	8	9	See Note 3	6
Belarus	4	70	3	44	8	3	66	8	4	See Note 3	3
Belgium	3	70	4	66	4	4	66	4	5	See Note 3	9
Belize	8	70	10	66	8	10	44	8	9	See Note 3	6
Benin	4	70	9	66	8	9	66	8	7	See Note 3	5
Bermuda	7	70	10	44	8	10	44	8	9	See Note 3	6
Bhutan	6	70	7	66	8	7	66	8	6	See Note 3	4
Bolivia	8	70	11	66	8	n/a	n/a	n/a	9	See Note 3	6
Bonaire, Sint Eustatius, and Saba.	7	70	10	66	8	10	44	8	9	See Note 3	6
Bosnia-Herzegovina	4	70	3	66	8	3	44	8	4	See Note 3	3
Botswana	4	70	9	66	8	9	66	8	7	See Note 3	5
Brazil	8	70	13	66	2	13	66	2	9	See Note 3	13
British Virgin Islands	7	70	n/a	n/a	n/a	10	44	8	9	See Note 3	6
Brunei Darussalam	4	70	6	66	8	6	44	8	6	See Note 3	4
Bulgaria	4	70	3	66	8	3	70	8	4	See Note 3	3
Burkina Faso	4	70	9	70	8	9	66	8	7	See Note 3	5
Burma (Myanmar)	n/a	n/a	6	44	8	6	22	8	6	See Note 3	4
Burundi	4	70	8	66	8	8	66	8	7	See Note 3	5
Cambodia (Kampuchea).	8	70	6	66	8	6	66	8	6	See Note 3	4
Cameroon	4	70	9	44	8	9	66	8	7	See Note 3	5
Canada	1	70	1	66	1	1	66	1	1	See Note 3	1
Cape Verde	4	70	8	66	8	8	44	8	7	See Note 3	5
Cayman Islands	7	70	11	44	8	11	44	8	9	See Note 3	6
Central African Republic.	n/a	n/a	9	66	8	9	66	8	7	See Note 3	5
Chad	4	70	8	66	8	8	44	8	7	See Note 3	5
Chile	8	70	11	66	2	11	44	2	9	See Note 3	11
China	6	70	14	66	3	14	66	3	3	See Note 3	14
Colombia	8	70	10	44	2	10	66	2	9	See Note 3	6
Comoros	n/a	n/a	n/a	n/a	n/a	8	44	8	7	See Note 3	5
Congo, Democratic Republic of the.	4	66	9	66	8	9	66	8	7	See Note 3	5
Congo, Republic of the.	4	70	8	66	8	8	44	8	7	See Note 3	5
Costa Rica	8	70	11	66	8	11	66	8	9	See Note 3	6
Cote d'Ivoire (Ivory Coast).	4	70	8	66	8	8	66	8	7	See Note 3	5
Croatia	4	70	3	66	8	3	66	8	4	See Note 3	8
Cuba	n/a	n/a	11	22	8	11	22	8	9	See Note 3	6
Curacao	7	70	11	66	8	11	44	8	9	See Note 3	6
Cyprus	6	70	7	70	8	7	70	8	4	See Note 3	4
Czech Republic	4	70	3	70	8	3	70	8	4	See Note 3	7
Denmark	5	70	4	66	4	4	66	4	5	See Note 3	9
Djibouti	4	70	9	44	8	9	44	8	7	See Note 3	5
Dominica	7	70	11	44	8	11	44	8	9	See Note 3	6
Dominican Republic	7	70	11	66	2	11	44	2	9	See Note 3	6
Ecuador	8	70	10	66	2	10	66	2	9	See Note 3	6
Egypt	6	70	8	44	8	8	66	8	8	See Note 3	5
El Salvador	8	70	11	66	8	11	44	8	9	See Note 3	6
Equatorial Guinea	n/a	n/a	8	44	8	8	22	8	7	See Note 3	5
Eritrea	4	70	9	66	8	9	44	8	7	See Note 3	5
Estonia	4	70	3	66	8	3	70	8	4	See Note 3	9
Eswatini	4	70	8	66	8	8	44	8	7	See Note 3	5

Country	Global Express Guaranteed		Priority Mail Express International			Priority Mail International			First-Class Mail International and First-Class Package International Service		
	Price group	Max. Wt. (lbs.)	Price group	Max. Wt. (lbs.)	PMEI Flat Rate Envelopes price group [1]	Price group	Max. Wt. (lbs.)	PMI Flat Rate Envelopes and Boxes price group [2]	FCMI price group	Max. Wt.	FCPIS price group
Ethiopia	4	70	9	66	8	9	66	8	8	See Note 3	5
Falkland Islands	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	9	See Note 3	6
Faroe Islands	5	70	5	44	8	5	70	8	5	See Note 3	9
Fiji	8	70	6	66	8	6	44	8	6	See Note 3	4
Finland	5	70	4	66	4	4	70	4	5	See Note 3	9
France	3	70	15	66	4	15	66	4	5	See Note 3	15
French Guiana	8	70	11	66	8	11	66	8	9	See Note 3	15
French Polynesia	4	70	7	66	8	7	66	8	6	See Note 3	4
Gabon	4	70	8	66	8	8	44	8	7	See Note 3	5
Gambia	4	70	n/a	n/a	n/a	8	66	8	7	See Note 3	5
Georgia, Republic of	4	70	3	66	8	3	44	8	4	See Note 3	3
Germany	3	70	16	66	4	16	70	4	5	See Note 3	16
Ghana	n/a	n/a	9	66	8	9	66	8	7	See Note 3	5
Gibraltar	4	70	n/a	n/a	n/a	4	44	8	5	See Note 3	7
Greece	5	70	4	66	8	4	44	8	5	See Note 3	8
Greenland	5	70	n/a	n/a	n/a	5	66	8	5	See Note 3	9
Grenada	7	70	10	66	8	10	44	8	9	See Note 3	6
Guadeloupe	7	70	11	66	8	11	66	8	9	See Note 3	15
Guatemala	8	70	10	66	8	10	44	8	9	See Note 3	6
Guinea	4	70	8	44	8	8	66	8	7	See Note 3	5
Guinea-Bissau	n/a	n/a	9	44	8	9	66	8	7	See Note 3	5
Guyana	8	70	11	66	8	11	44	8	9	See Note 3	6
Haiti	7	70	10	66	8	10	55	8	9	See Note 3	6
Honduras	8	70	11	44	8	11	44	8	9	See Note 3	6
Hong Kong	3	70	18	66	3	18	66	3	3	See Note 3	18
Hungary	4	70	3	66	8	3	44	8	4	See Note 3	7
Iceland	5	70	5	66	8	5	70	8	5	See Note 3	7
India	6	70	6	70	3	6	44	3	6	See Note 3	10
Indonesia	6	70	6	66	3	6	44	3	6	See Note 3	4
Iran	n/a	n/a	n/a	n/a	n/a	7	44	8	8	See Note 3	4
Iraq	6	70	6	44	8	6	44	8	8	See Note 3	4
Ireland	3	70	4	66	4	4	66	4	5	See Note 3	9
Israel	6	70	4	44	4	4	44	4	5	See Note 3	8
Italy	3	70	4	66	4	4	66	4	5	See Note 3	9
Jamaica	7	70	11	66	8	11	22	8	9	See Note 3	6
Japan	3	70	17	66	3	17	66	3	3	See Note 3	17
Jordan	6	70	7	66	8	7	66	8	8	See Note 3	4
Kazakhstan	4	70	7	66	8	7	44	8	6	See Note 3	4
Kenya	4	70	9	70	8	9	70	8	7	See Note 3	5
Kiribati	n/a	n/a	6	66	8	6	44	8	6	See Note 3	4
Korea, Democratic People's Republic of (North Korea).	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	6	See Note 3	4
Korea, Republic of (South Korea).	6	70	18	66	3	18	44	3	3	See Note 3	18
Kosovo, Republic of	4	70	n/a	n/a	n/a	3	70	8	5	See Note 3	3
Kuwait	6	70	6	66	8	6	66	8	8	See Note 3	4
Kyrgyzstan	4	70	7	66	8	7	44	8	6	See Note 3	4
Laos	8	70	6	66	8	6	44	8	6	See Note 3	4
Latvia	4	70	3	66	8	3	70	8	4	See Note 3	3
Lebanon	6	70	6	66	8	6	66	8	8	See Note 3	4
Lesotho	4	70	9	66	8	9	44	8	7	See Note 3	5
Liberia	4	70	9	44	8	9	44	8	7	See Note 3	5
Libya	4	70	n/a	n/a	n/a	9	44	8	8	See Note 3	5
Liechtenstein	5	70	4	66	8	4	66	8	5	See Note 3	7
Lithuania	4	70	3	70	8	3	70	8	4	See Note 3	7
Luxembourg	3	70	4	66	4	4	66	4	5	See Note 3	8
Macao	3	70	6	44	8	6	70	8	6	See Note 3	4
Madagascar	4	70	9	66	8	9	44	8	7	See Note 3	5
Malawi	4	70	9	44	8	9	66	8	7	See Note 3	5
Malaysia	6	70	7	66	8	7	66	8	6	See Note 3	10
Maldives	6	70	6	66	8	6	66	8	6	See Note 3	4
Mali	4	70	8	66	8	8	66	8	7	See Note 3	5
Malta	5	70	5	44	8	5	66	8	5	See Note 3	3
Martinique	7	70	11	66	8	11	66	8	9	See Note 3	15
Mauritania	4	70	8	66	8	8	44	8	7	See Note 3	5
Mauritius	4	70	8	66	8	8	44	8	7	See Note 3	5
Mexico	2	70	2	70	2	2	70	2	2	See Note 3	2
Moldova	4	70	3	70	8	3	70	8	4	See Note 3	3
Mongolia	4	70	7	66	8	7	66	8	6	See Note 3	4
Montenegro	4	70	n/a	n/a	n/a	3	70	8	5	See Note 3	3
Montserrat	7	70	n/a	n/a	n/a	10	44	8	9	See Note 3	6
Morocco	4	70	9	68	8	9	66	8	8	See Note 3	5
Mozambique	4	70	9	66	8	9	66	8	7	See Note 3	5
Namibia	4	70	8	22	8	8	44	8	7	See Note 3	5
Nauru	n/a	n/a	6	44	8	6	44	8	6	See Note 3	4
Nepal	6	70	6	69	8	6	44	8	6	See Note 3	4

Country	Global Express Guaranteed		Priority Mail Express International			Priority Mail International			First-Class Mail International and First-Class Package International Service		
	Price group	Max. Wt. (lbs.)	Price group	Max. Wt. (lbs.)	PMEI Flat Rate Envelopes price group [1]	Price group	Max. Wt. (lbs.)	PMI Flat Rate Envelopes and Boxes price group [2]	FCMI price group	Max. Wt.	FCPIS price group
Netherlands	3	70	4	66	4	4	66	4	5	See Note 3	9
New Caledonia	8	70	7	66	8	7	66	8	6	See Note 3	4
New Zealand	6	70	12	66	6	12	66	6	6	See Note 3	12
Nicaragua	8	70	10	55	8	10	66	8	9	See Note 3	6
Niger	4	70	9	70	8	9	70	8	7	See Note 3	5
Nigeria	4	70	9	66	8	9	66	8	7	See Note 3	5
North Macedonia, Republic of.	4	70	3	66	8	3	70	8	4	See Note 3	3
Norway	5	70	5	66	4	5	66	4	5	See Note 3	9
Oman	6	70	6	66	8	6	44	8	8	See Note 3	4
Pakistan	6	70	6	66	8	6	70	8	6	See Note 3	4
Panama	8	70	11	66	8	11	70	8	9	See Note 3	6
Papua New Guinea	8	70	7	55	8	7	44	8	6	See Note 3	4
Paraguay	8	70	10	55	8	10	66	8	9	See Note 3	6
Peru	8	70	11	70	2	11	70	2	9	See Note 3	6
Philippines	6	70	6	44	3	6	44	3	6	See Note 3	4
Pitcairn Island	n/a	n/a	n/a	n/a	n/a	6	22	8	6	See Note 3	4
Poland	4	70	3	44	4	3	44	4	4	See Note 3	7
Portugal	5	70	4	66	4	4	66	4	5	See Note 3	7
Qatar	6	70	7	66	8	7	70	8	8	See Note 3	4
Reunion	4	70	n/a	n/a	n/a	8	66	8	9	See Note 3	15
Romania	4	70	3	70	8	3	70	8	4	See Note 3	3
Russia	4	70	19	70	7	19	44	7	4	See Note 3	19
Rwanda	4	70	9	66	8	9	66	8	7	See Note 3	5
Saint Helena	n/a	n/a	n/a	n/a	n/a	9	44	8	7	See Note 3	5
Saint Kitts and Nevis	7	70	10	66	8	10	44	8	9	See Note 3	6
Saint Lucia	7	70	11	44	8	11	44	8	9	See Note 3	6
Saint Pierre and Miquelon.	n/a	n/a	n/a	n/a	n/a	4	66	8	4	See Note 3	3
Saint Vincent and the Grenadines.	7	70	10	44	8	10	22	8	9	See Note 3	6
Samoa	n/a	n/a	7	44	8	7	44	8	6	See Note 3	4
San Marino	3	70	5	66	8	5	66	8	5	See Note 3	8
Sao Tome and Principe.	n/a	n/a	8	66	8	8	44	8	7	See Note 3	5
Saudi Arabia	4	70	6	66	8	6	66	8	8	See Note 3	4
Senegal	4	70	8	66	8	8	66	8	7	See Note 3	5
Serbia, Republic of	4	70	3	66	8	3	70	8	5	See Note 3	3
Seychelles	4	70	8	66	8	8	70	8	7	See Note 3	5
Sierra Leone	n/a	n/a	9	66	8	9	66	8	7	See Note 3	5
Singapore	3	70	6	66	3	6	66	3	6	See Note 3	10
Sint Maarten	7	70	11	66	8	11	44	8	9	See Note 3	6
Slovak Republic (Slovakia).	4	70	3	66	8	3	66	8	5	See Note 3	3
Slovenia	4	70	3	66	8	3	66	8	5	See Note 3	8
Solomon Islands	n/a	n/a	6	66	8	6	44	8	6	See Note 3	4
Somalia	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
South Africa	4	70	9	66	8	9	66	8	7	See Note 3	5
South Sudan, Republic of.	n/a	n/a	n/a	n/a	n/a	8	44	8	7	See Note 3	5
Spain	5	70	4	66	4	4	44	4	5	See Note 3	8
Sri Lanka	6	70	6	66	8	6	66	8	6	See Note 3	4
Sudan	n/a	n/a	9	66	8	9	44	8	7	See Note 3	5
Suriname	8	70	n/a	n/a	n/a	11	44	8	9	See Note 3	6
Sweden	5	70	5	66	4	5	66	4	5	See Note 3	8
Switzerland	5	70	5	66	4	5	66	4	5	See Note 3	9
Syrian Arab Republic (Syria).	n/a	n/a	6	44	8	6	70	8	8	See Note 3	4
Taiwan	3	70	7	33	3	7	44	3	6	See Note 3	10
Tajikistan	n/a	n/a	7	66	8	7	66	8	6	See Note 3	4
Tanzania	4	70	9	66	8	9	66	8	7	See Note 3	5
Thailand	6	70	6	66	3	6	66	3	6	See Note 3	10
Timor-Leste, Democratic Republic of.	6	70	n/a	n/a	n/a	7	44	8	6	See Note 3	4
Togo	4	70	9	66	8	9	70	8	7	See Note 3	5
Tonga	4	70	6	66	8	6	44	8	6	See Note 3	4
Trinidad and Tobago	7	70	10	66	8	10	44	8	9	See Note 3	6
Tristan da Cunha	n/a	n/a	n/a	n/a	n/a	9	22	8	7	See Note 3	5
Tunisia	4	70	9	66	8	9	66	8	8	See Note 3	5
Turkey	6	70	4	66	8	4	66	8	4	See Note 3	3
Turkmenistan	n/a	n/a	6	66	8	6	44	8	6	See Note 3	4
Turks and Caicos Islands.	7	70	10	66	8	10	44	8	9	See Note 3	6
Tuvalu	n/a	n/a	n/a	n/a	n/a	6	55	8	6	See Note 3	4
Uganda	4	70	9	66	8	9	66	8	7	See Note 3	5
Ukraine	4	70	3	44	8	3	66	8	4	See Note 3	3
United Arab Emirates	6	70	7	70	8	7	70	8	8	See Note 3	10

Country	Global Express Guaranteed		Priority Mail Express International			Priority Mail International			First-Class Mail International and First-Class Package International Service		
	Price group	Max. Wt. (lbs.)	Price group	Max. Wt. (lbs.)	PMEI Flat Rate Envelopes price group [1]	Price group	Max. Wt. (lbs.)	PMI Flat Rate Envelopes and Boxes price group [2]	FCMI price group	Max. Wt.	FCPIS price group
United Kingdom of Great Britain and Northern Ireland.	3	70	20	66	5	20	66	5	5	See Note 3 ...	20
Uruguay	8	70	11	44	2	11	66	2	9	See Note 3 ...	6
Uzbekistan	4	70	7	66	8	7	70	8	6	See Note 3 ...	4
Vanuatu	8	70	7	55	8	7	44	8	6	See Note 3 ...	4
Vatican City	3	70	4	66	8	4	44	8	5	See Note 3 ...	9
Venezuela	8	70	11	66	2	11	66	2	9	See Note 3 ...	11
Vietnam	6	70	6	66	3	6	70	3	6	See Note 3 ...	4
Wallis and Futuna Islands.	4	70	n/a	n/a	n/a	6	66	8	6	See Note 3 ...	4
Yemen	6	70	7	66	8	7	66	8	8	See Note 3 ...	4
Zambia	4	70	8	66	8	8	66	8	7	See Note 3 ...	5
Zimbabwe	4	70	8	44	8	8	44	8	7	See Note 3 ...	5

* * * * *

Individual Country Listings

* * * * *

[For every country that offers Priority Mail Express International, Priority Mail International, First-Class Package Service International, replace the current price group shown in the individual country listing with the applicable price groups shown above.]

* * * * *

We will publish an appropriate amendment to 39 CFR part 20 to reflect these changes.

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020–22885 Filed 10–13–20; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2019–0220; FRL–10015–04–Region 1]

Air Plan Approval; Massachusetts; Reasonably Available Control Technology for the 2008 and 2015 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. The SIP revision consists of a demonstration that Massachusetts meets the requirements of reasonably available control technology (RACT) for the two precursors for ground-level ozone, oxides of nitrogen (NO_X) and volatile organic compounds (VOCs), set forth by the Clean Air Act (CAA or Act) with respect to the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQSs or standards). Additionally, we are approving specific regulations that implement the RACT requirements by limiting air emissions of NO_X and VOC pollutants from sources within the Commonwealth. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on November 16, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2019–0220. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: David L. Mackintosh, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. 617–918–1584, email *Mackintosh.David@epa.gov.*

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

Table of Contents

I. Background and Purpose
II. Public Comment
III. Final Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Background and Purpose

On August 3, 2020 (85 FR 46581), EPA issued a notice of proposed rulemaking (NPRM) for the Commonwealth of Massachusetts. In the NPRM, EPA proposed approval of a SIP revision submitted by Massachusetts on October 18, 2018 and revised by Massachusetts on May 28, 2020. The SIP revision contains a certification that Massachusetts has met all RACT requirements for the 2008 and 2015 8-hour ozone NAAQSs, negative declarations for ten Control Technique Guidelines (CTGs), and the following changes to Title 310 Code of Massachusetts Regulations (CMR): Revised section 7.00, Definitions; revised 7.00 Appendix B: Emission Banking, Trading, and Averaging, subsection (4)(b) Applicability revised section 7.08(2), Municipal Waste Combustors; revised section 7.18, VOC RACT subsections (3) Metal Furniture Surface Coating, (5) Large Appliance Surface Coating, (11) Surface Coating of Miscellaneous Metal Parts and Products, (12) Packaging Rotogravure and Packaging Flexographic Printing, (14) Paper, Film and Foil Surface Coating, (21) Surface Coating of Plastic Parts, (24) Flat Wood Paneling Surface Coating, (25) Offset Lithographic Printing Letterpress Printing; withdrawal of section 7.18(7), Automobile Surface

Coating; adding 7.18, VOC RACT subsections (31) Industrial Cleaning Solvents and (32) Fiberglass Boat Manufacturing; revised section 7.19, NO_X RACT subsections (2) General Provisions, (4) Large Boilers, (5) Medium-size Boilers, (6) Small Boilers, (7) Stationary Combustion Turbines, (8) Stationary Reciprocating Internal Combustion Engines, and (9) Municipal Waste Combustor Units, and adding 310 CMR 7.26, Industry Performance Standards subsections (20) through (25) and (27) through (29) Environmental Results Program for Lithographic, Gravure, Letterpress, and Flexographic Printing.

The NPRM provides the rationale for EPA's proposed approval, which will not be restated here.

II. Public Comment

EPA received one comment in response to the NPRM. The comment is outside the scope of a RACT SIP action, does not explain (or provide a legal or technical basis for) how the proposed action should differ in any way, and makes no specific mention of the proposed action; the comment is not germane.

III. Final Action

EPA is approving the Massachusetts SIP revision as meeting the Commonwealth's RACT obligations for the 2008 and 2015 8-hour ozone NAAQSs as set forth in sections 182(b), 182(f) and 184(b)(2) of the CAA, and is adding to the SIP the Commonwealth's submission entitled ''Reasonably Available Control Technology State Implementation Plan Revision 2008 and 2015 Ozone National Ambient Air Quality Standards'' and ''RACT SIP Revision'' dated October 18, 2018 and May 28, 2020 respectively. EPA is approving negative declarations for nine CTG categories: (1) Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds; (2) Leaks from Petroleum Refinery Equipment; (3) Manufacture of Synthesized Pharmaceutical Products; (4) Manufacture of Pneumatic Rubber Tires; (5) Large Petroleum Dry Cleaners; (6) Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins; (7) Equipment Leaks from Natural Gas/Gasoline Processing Plants; (8) Air Oxidation Processes; and (9) Surface Coating of Automobiles and Light-Duty Trucks. A tenth negative declaration, which applies to the Oil and Natural Gas Industry CTG, was approved by EPA on August 21, 2020 (85 FR 51666). EPA is also approving Title 310 CMR changes to the Massachusetts SIP, as follows: Revised section 7.00, Definitions; revised 7.00 Appendix B: Emission Banking, Trading, and Averaging, subsection (4)(b) Applicability; revised section 7.08(2), Municipal Waste Combustors; revised section 7.18, VOC RACT subsections (2) Compliance with Emission Limitations, (3) Metal Furniture Surface Coating, (5) Large Appliance Surface Coating, (11) Surface Coating of Miscellaneous Metal Parts and Products, (12) Packaging Rotogravure and Packaging Flexographic Printing, (14) Paper, Film and Foil Surface Coating, (20) Emission Control Plans for Implementation of RACT, (21) Surface Coating of Plastic Parts, (24) Flat Wood Paneling Surface Coating, (25) Offset Lithographic Printing Letterpress Printing, and (30) Adhesives and Sealants; withdrawal of 7.18, section (7) Automobile Surface Coating; addition of 7.18 VOC RACT, subsections (1)(g) and (h), (31) Industrial Cleaning Solvents, and (32) Fiberglass Boat Manufacturing; revised section 7.19, NO_X RACT subsections (1) Applicability, (2) General Provisions, (3) Emission Control Plans for Implementation of RACT, (4) Large Boilers, (5) Medium-size Boilers, (6) Small Boilers, (7) Stationary Combustion Turbines, (8) Stationary Reciprocating Internal Combustion Engines, and (9) Municipal Waste Combustor Units; and addition of 310 CMR 7.26, Industry Performance Standards, subsections which incorporate an Environmental Results Program for Lithographic, Gravure, Letterpress, and Flexographic Printing: subsections (20) through (25), (27), (28) except (28)(a), and (29).

IV. Incorporation by Reference

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

V. Statutory and Executive Order Reviews

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

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

[1] 62 FR 27968 (May 22, 1997).

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 14, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 17, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

For the reasons stated in the preamble, the EPA amends part 52 of chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart W—Massachusetts

■ 2. In § 52.1120:

■ a. Amend the table in paragraph (c) by revising the entries for ''310 CMR 7.00 Definitions'', ''310 CMR 7.00 Appendix B Emission Banking, Trading, and Averaging'', ''310 CMR 7.08 Incinerators. Municipal Waste Combustors 310 CMR 7.08(2)'', ''310 CMR 7.18 Volatile and Halogenated Organic Compounds'', ''310 CMR 7.19 Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO_X)'', and ''310 CMR 7.26 ''Industry Performance Standards''.

■ b. Amend the table in paragraph (e) by adding a provision for ''Reasonably Available Control Technology State Implementation Plan Revision 2008 and 2015 Ozone National Ambient Air Quality Standards and RACT SIP Revision'' at the end of the table.

The additions and revisions read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MASSACHUSETTS REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	* * *
310 CMR 7.00	Definitions	3/9/2018 and 3/20/2020	10/15/2020 [Insert **Federal Register** citation].	Approved 90 new definitions, updated 6 definitions, and deleted definitions for: Automotive Surface Coating, Manufacturing Plant, and Propanol Substitute.
*	*	*	*	* * *
310 CMR 7.00 Appendix B.	Emission Banking, Trading, and Averaging.	3/9/2018	10/15/2020 [Insert **Federal Register** citation].	Revises (4)(b) Applicability.
*	*	*	*	* * *
310 CMR 7.08	Incinerators. Municipal Waste Combustors 310 CMR 7.08(2).	3/20/2020	10/15/2020 [Insert **Federal Register** citation].	
*	*	*	*	* * *
310 CMR 7.18	Volatile and Halogenated Organic Compounds.	3/20/2020	10/15/2020 [Insert **Federal Register** citation].	Withdraws subsection (7) Automobile Surface Coating; adds new subsections (1)(g) and (h), (31) Industrial Cleaning Solvents, (32) Fiberglass Boat Manufacturing; revises subsections (2) Compliance with Emission Limitations, (3) Metal Furniture Surface Coating, (5) Large Appliance Surface Coating, (11) Surface Coating of Miscellaneous Metal Parts and Products, (12) Packaging Rotogravure and Packaging Flexographic Printing, (14) Paper, Film and Foil Surface Coating, (20) Emission Control Plans for Implementation of Reasonably Available Control Technology, (21) Surface Coating of Plastic Parts, (24) Flat Wood Paneling Surface Coating, (25) Offset Lithographic Printing; and adds subsections, (30) Adhesives and Sealants.
310 CMR 7.19	Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO_X).	3/20/2020	10/15/2020 [Insert **Federal Register** citation].	Revises subsection (1) Applicability, (2) General Provisions, (3) Emission Control Plans for Implementation of RACT, (4) Large Boilers, (5) Medium-size Boilers, (6) Small Boilers, (7) Stationary Combustion Turbines, (8) Stationary Reciprocating Internal Combustion Engines, and (9) Municipal Waste Combustor Units.

EPA-APPROVED MASSACHUSETTS REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
310 CMR 7.26	Industry Performance Standards.	3/9/2018	10/15/2020 [Insert **Federal Register** citation].	Adds Environmental Results Program for Lithographic, Gravure, Letterpress, and Flexographic Printing subsections 20 through 25 and 27 through 29, except 28(a).
*	*	*	*	*

* * * * *

(e) * * *

MASSACHUSETTS NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanation
*	*	*	*	*
Reasonably Available Control Technology State Implementation Plan Revision 2008 and 2015 Ozone National Ambient Air Quality Standards and RACT SIP Revision.	Statewide	Submitted 10/18/2018 and 5/28/2020.	10/15/2020 [Insert **Federal Register** citation].	Includes negative declarations for 10 CTGs.

[FR Doc. 2020–21146 Filed 10–14–20; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2500

RIN 3045–AA75

Agency Operating Name, Adoption of New Logos, & Retirement of Logos

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: This rule makes non-substantive amendments to the Corporation for National and Community Service's (CNCS) regulations to change the operating name of the agency to ''AmeriCorps,'' to adopt two new logos, and to retire all existing logos, except Days of Service, from daily use. This final rule adds a new part—2500—to Title 45 of the Code of Federal Regulations to reflect the operational name change, new logos, and retirement of logos. This rule is not intended to change the legal effect of the use of the name AmeriCorps as defined in agency's regulations.

DATES: This rule is effective on October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom at the Corporation for National and Community Service, 250 E Street SW, Washington, DC 20525, *aborgstrom@cns.gov,* phone 202–422–2781.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout 2017 and 2018, the Corporation for National and Community Service coordinated efforts to increase its effectiveness, efficiency, and accountability. This effort culminated in the 2018 announcement of CNCS's Transformation and Sustainability Plan (Plan) that set forth six goals that included simplifying CNCS's brand. After CNCS issued the Plan, the agency focused its efforts on implementing the Plan's six goals. This rule is the outcome of the implementation of Goal 5 to ''simplify the CNCS brand.''

To gain insight and knowledge about the CNCS brand, the agency engaged in a multi-stage, in-depth research analysis that included an open comment period, in-depth interviews, and a survey of nearly 4,000 members, volunteers, grantees, sponsors, and service program alumni. The results of this research showed that 80 percent of the general public is not familiar with CNCS. Only 12 percent of the general public can correctly identify the main purpose of CNCS. Of CNCS's actual grantees and sponsors, 50 percent said it can be difficult to explain the AmeriCorps and Senior Corps programs.

After conducting a lengthy research and development process and considering feedback from stakeholders, staff, and the public, the agency is adopting a new name: AmeriCorps. The agency is adopting the following two official logos and retiring for use all existing logos, including those for the following programs: Foster Grandparents, Senior Companions, RSVP, AmeriCorps State and National, AmeriCorps VISTA, AmeriCorps NCCC, and the Volunteer Generation Fund.

The adoption of an operating name for CNCS does not change the legal name of the agency, which will remain the Corporation for National and Community Service. Thus, Congress will continue to appropriate funds to CNCS (and the agency's Congressional Budget Request would still be issued as CNCS). The formal title of the head of the agency (*i.e.,* for purposes of Presidential appointment and Senate confirmation) will remain the Chief Executive Officer of the Corporation for National and Community Service. However, the agency will use the adopted operating name in virtually every other context, including referring to the head of the agency as the Chief Executive Officer of AmeriCorps.

Changing the operational name does not change the mission or structure of the agency's programs, their names, or their funding streams. Rather, it will focus and unify promotion efforts under one operating name and the two new logos to elevate awareness of the opportunities for all Americans.

II. Regulatory Procedures

Inapplicability of Prior Public Notice and Delayed Effective Date Requirements

This regulation involves matters relating to agency management and involves a technical change regarding

the name of the two CNCS components. For this reason, pursuant to 5 U.S.C. 553(a)(2), prior notice and comment is not required. Because this is not a substantive rule, publication and service of the rule thirty days before its effective date, pursuant to 5 U.S.C. 553(d), is likewise not required.

Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits.

Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the finding that the name and logo change will have no substantive effect on the public.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (b)), CNCS certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, CNCS has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Unfunded Mandates

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, state, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has Federalism implications if the rule imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have any Federalism implications, as described above.

List of Subjects in 45 CFR Part 2500

Agency name and logos.

■ For the reasons set out in the preamble, CNCS adds part 2500 to Title 45, Subtitle B of the Code of Federal Regulations as follows:

PART 2500—AGENCY OPERATING NAME AND LOGOS

Sec.
2500.1 Agency Operating Name
2500.2 Description of Logos
2500.3 Retirement of Logos
2500.4 Authority to affix logos

Authority: 42 U.S.C. 12651c (c); 12653 (a) and (f).

§ 2500.1 Agency Operating Name.

(a) The Corporation for National and Community Service adopts AmeriCorps as its official agency operating name.

(b) Use of AmeriCorps as the agency operating name incorporates the Corporation for National and Community Service by reference.

§ 2500.2 Description of Logos.

(a) The AmeriCorps Logo (Logo) is the key element in agency identification. It provides a visual representation of the agency's role to unite America by bringing people together to serve communities. It is symbolic of the way AmeriCorps members and volunteers lift and improve communities through service and volunteering. This Logo is the visual link which connects the graphic communications of all Agency programs.

(b) The Logo is described as follows: The logo is an image of a solid circle containing an A where one pillar is a solid block line and the other is represented by a flag pole with the flag in motion, appearing to fly from the left to the right and forming the A as the flag intersects with the other pillar. AmeriCorps appears in bold to the right of the mark.

Figure 1 to paragraph (b)

(c) The AmeriCorps Seniors Logo (Seniors Logo) identifies the highlighted AmeriCorps Seniors programs and represents the agency's commitment to programs and volunteer opportunities for the older American population.

(d) The AmeriCorps Seniors Logo is described as follows: The word Seniors appears beneath AmeriCorps to the right of the circle containing the A.

Figure 2 to paragraph (c)

§ 2500.3 Retirement of Logos.

The agency officially retires the day-to-day use of all pre-existing logos, emblems, and other insignia, except the Days of Service logos, but does not relinquish the legal rights to these logos.

§ 2500.4 Authority to affix logos.

Restrictions on the use of AmeriCorps logos are found in 45 CFR 2540.500 through 2540.560.

Dated: September 4, 2020.

Helen Serassio,

Acting General Counsel.

[FR Doc. 2020–20318 Filed 10–14–20; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2018–0029; FF09E22000 FXES11130900000 201]

RIN 1018–BD46

Endangered and Threatened Wildlife and Plants; Reclassification of the American Burying Beetle From Endangered to Threatened With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), reclassify (downlist) the American burying beetle (*Nicrophorus americanus*) from endangered to threatened on the Federal List of Endangered and Threatened Wildlife. This determination is based on a thorough review of the best available scientific and commercial information, which indicates that the threats to this species have been reduced to the point that it is not currently in danger of extinction throughout all or a significant portion of its range, but that it is likely to become so within the foreseeable future. We also finalize a rule under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of the American burying beetle.

DATES: This rule is effective November 16, 2020.

ADDRESSES: This final rule and supporting documents are available on the internet at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2018–0029. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jonna Polk, Field Supervisor, U.S. Fish and Wildlife Service, Oklahoma Ecological Services Field Office, 9014 East 21st St., Tulsa, OK 74129; telephone 918–382–4500. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act a species may warrant reclassification from endangered to threatened if it no longer meets the definition of endangered (in danger of extinction). The American burying beetle is listed as endangered, and we are finalizing a reclassification (downlisting) of the American burying beetle as threatened because we have determined it is not currently in danger of extinction. Downlisting a species as a threatened species can only be made by issuing a rulemaking.

What this document does. This rule reclassifies the American burying beetle from endangered to threatened (*i.e.,* ''downlists'' the species), with a rule issued under section 4(d) of the Act, based on the species' current status.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of 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. We may reclassify a species if the best available commercial and scientific data indicate the species no longer meets the applicable definition in the Act.

We have determined that the American burying beetle is no longer in danger of extinction and, therefore, does not meet the definition of an endangered species, but is still affected by current and ongoing threats to the extent that the species meets the definition of a threatened species under the Act. Increasing temperatures due to changing climate are projected to impact American burying beetle populations within the foreseeable future. Likewise, we project future impacts to American burying beetle populations due to land use change associated with urbanization and agricultural activities.

We are promulgating a section 4(d) rule. We are issuing a section 4(d) rule to provide measures necessary and advisable to provide for the conservation of the American burying beetle. The 4(d) rule prohibits all intentional take of the American burying beetle and specifically tailor the incidental take prohibitions and exceptions under section 9(a)(1) of the Act as a means to provide protective mechanisms to State and Federal partners, as well as private landowners, so that they may continue with certain activities that are not anticipated to cause direct injury or mortality to American burying beetles and that will facilitate the conservation and recovery of the species.

Previous Federal Actions

Please refer to the proposed rule to reclassify American burying beetle from endangered to threatened (84 FR 19013; May 3, 2019) for a detailed description of previous Federal actions concerning this species.

Summary of Changes From the Proposed Rule

We have made two changes from the proposed rule in this final rule: One of the changes affects the rule language, and one affects only the preamble.

(1) Under the proposed 4(d) rule provisions, we defined ''conservation lands'' where incidental take would continue to be prohibited within the Southern Plains populations. The proposed 4(d) rule included The Nature Conservancy Tall Grass Prairie Preserve as ''conservation lands'' where

incidental take would be prohibited. In this final rule, we have removed The Nature Conservancy Tall Grass Prairie Preserve from this definition of conservation lands and, therefore, removed the prohibition on incidental take in this area, because The Nature Conservancy has developed a Memorandum of Understanding to document their commitment to provide ongoing management, research, and monitoring at that site that makes the prohibitions in the proposed rule unnecessary.

(2) In *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity or CBD*)), the court vacated part of the 2014 Significant Portion of its Range Policy. Following the court's holding in *CBD,* we have now revised the significant portion of the range analysis in this final rule. We evaluated the status of the species in three potentially significant portions of the species' range and found that none meet the definition of endangered. This updated analysis did not result in any changes to the proposed rule but provides support for the determination.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the American burying beetle. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought peer review of the SSA report. The Service sent the SSA report to 12 independent peer reviewers and received 8 responses. The purpose of peer review is to ensure that our listing determinations and 4(d) rules are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and threats to the species. The draft SSA report was also sent to species experts and all Tribes and States within the current range for a partner review. We received review from six States and two species experts.

I. Final Listing Determination

Background

The American burying beetle (*Nicrophorus americanus*) is the largest silphid (carrion beetle) in North America, reaching 1.0 to 1.8 inches (25 to 35 centimeters) in length (Anderson 1982, p. 362; Backlund and Marrone 1997, p. 53). During the daytime, American burying beetles are believed to bury themselves under vegetation litter or into soil (Jurzenski 2012, p. 76). At night, American burying beetles are active from late spring through early fall, occupy a variety of habitats and bury themselves in the soil to hibernate for the duration of the winter. American burying beetles emerge from their winter inactive period when ambient nighttime air temperatures consistently exceed 59 degrees Fahrenheit (°F) (15 degrees Celsius (°C)) (Kozol et al. 1988, p. 11; Kozol 1990b, p. 4; Bedick et al. 1999, p. 179; Service 2008, p. 13). Reproduction occurs in the spring to early summer after this emergence. New adult beetles or offspring (called tenerals), usually emerge in summer, over-winter (hibernate) as adults, and comprise the breeding population the following summer (Kozol et al. 1988, p. 2; Amaral et al. 2005, pp. 30, 35).

The American burying beetle is native to at least 35 States in the United States, covering most of temperate eastern North America, and the southern borders of three eastern Canadian provinces. The species is believed to be extirpated from all but nine States in the United States and is likely extirpated from Canada. However, the current range is much larger than originally thought when the species was listed in 1989. Based on the last 15 years of surveys, the American burying beetle occurs in portions of Arkansas, Kansas, Oklahoma, Nebraska, South Dakota, and Texas; on Block Island off the coast of Rhode Island; and in reintroduced populations on Nantucket Island off the coast of Massachusetts and in southwest Missouri, where a nonessential experimental population (NEP) was established in 2012 under section 10(j) of the Act (77 FR 16712; March 22, 2012). Reintroduction efforts are also under way in Ohio, and survival of reintroduced American burying beetles into the next year (successful overwintering) was documented in 2019. American burying beetles have not been documented in Texas since 2008.

Please refer to the May 3, 2019, proposed rule to reclassify American burying beetle from endangered to threatened (84 FR 19013) and the SSA report for a full summary of species information. Both are available at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2018–0029.

Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Recovery plans must, to the maximum extent practicable, include ''objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions [of section 4 of the Act], that the species be removed from the list.''

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

The American burying beetle recovery plan was approved by the Service on September 27, 1991 (Service 1991). Delisting criteria were not established in the recovery plan. However, for reclassification from endangered to threatened, the recovery plan established a criterion of at least three self-sustaining populations of at least 500 individuals in each of four broad geographical areas of the species' historical range: the Northeast, the Southeast, the Midwest, and the Great Lakes States. The threshold of 500 individuals was developed based on limited empirical data from Block Island (Service 1991, p. 8) and principles from the conservation biology literature (Franklin 1980; Soule 1980; Salwasser et al. 1982) that suggested the effective population number of 500 was the minimum threshold size for a biological population to maintain long-term adaptability.

We now understand that a population estimate of 500 adults is probably an inadequate metric for a self-sustaining population of this species because minimum viable population for most species would be considerably larger than 500 individuals. Minimum viable population thresholds vary by species, and additional empirical data and analysis for American burying beetles indicate that a larger threshold may be more appropriate for this species (Reed et al. 2003; Amaral et al. 2005; p. 36; Brook et al. 2006; Flather et al. 2011; Wolf et al. 2015). However, new population targets for the species have not been developed and would be different for each population due to differences in habitat and stressors acting on populations. Likewise, conservation of populations in the four broad geographical areas used in the recovery plan may not appropriately address future threats given our current understanding of the species' range and risks to populations (see sections 2.5.4 and 5.4 in the SSA Report; Service 2019). For example, the authors of the recovery plan were not aware of future climate-related risks and current projections indicating that southern portions of the historical range would not be suitable for future recovery (see section 5.4 in the SSA Report; Service 2019). Thus, the recovery plan information is considered to be out of date (Service 2008), and the SSA Report (Service 2019) provides an updated, revised analysis of current and future risks based on our current understanding of the species' needs.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species.'' The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following 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 consider these same five factors in reclassifying a species from endangered to threatened (50 CFR 424.11(c) through (e)).

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, as well as those that affect individuals through alteration of their habitat or required resources. 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 species' expected response, 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 Services 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.

Our proposed rule described ''foreseeable future'' as the extent to which we can reasonably rely on predictions about the future in making determinations about the future conservation status of the species. The Service since codified its understanding of foreseeable future in 50 CFR 424.11(d) (84 FR 45020). In those regulations, we explain 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. The Service will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability. The Service need not identify the foreseeable future in terms of a specific period of time. These regulations did not significantly modify the Service's interpretation; rather they codified a framework that sets forth how the Service will determine what constitutes the foreseeable future based on our long-standing practice. Accordingly, though regulations do not apply to the final rule for the American burying beetle because it was proposed prior to their effective date, they do not change the Service's assessment of foreseeable future for the American burying beetle as contained in our proposed rule and in this final rule.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be downlisted to threatened under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2018–0029.

To assess American burying beetle viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events); and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this section, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Summary of Species Needs

Adults and larvae depend on dead animals (carrion), *e.g.,* cotton rats, pheasants, prairie dogs, ground squirrels, etc., for food and moisture. Adults also require adequate soil moisture, appropriate soil temperatures, and appropriate soil particle size to allow them to bury themselves and/or a carcass (see chapter 2 of the SSA Report; Service 2019). Adequate soil moisture levels appear to be critical for American burying beetles, and they show a strong preference for moist, sandy loam soil with organic matter (Hoback 2008, unpublished), but a specific threshold for soil moisture is unknown. When the nighttime ambient air temperature is consistently below 59 °F (15 °C), American burying beetles bury into the soil and become inactive (Service 1991, p. 11; Scott and Traniello 1989, pp. 34–35; Kozol 1995, p. 11, Bedick et al. 2006, p. 28).

For reproduction, American burying beetles need appropriately sized carrion, access to mates, and suitable soils. The optimum weight of carcasses is 3.5 to 7.0 ounces (80 to 200 g) (Kozol 1989, pp. 12–13, 25, 36–39, figures 1 and 2; Kozol 1990a, pp. 7–8). Once an appropriate carcass has been found for reproduction, American burying beetles may compete amongst themselves or with other species for control of the carcass until usually only a single dominant male and female burying beetle remain (Springett 1967, p. 56; Wilson and Fudge 1984, entire; Scott and Traniello 1989, p. 34). Once the pair wins the battle for the rights to the carcass, the successful couple buries the carrion, copulates, and constructs an underground cavity called a brood chamber around the carcass, although either sex is capable of burying a carcass alone (Kozol et al. 1988, p. 170).

Once underground, both parents strip the carcass of fur or feathers, roll the carcass into a ball and treat it with secretions that form a brood chamber and retard growth of mold and bacteria. The female American burying beetle lays eggs in the soil adjacent to the carcass (Pukowski 1933, p. 555; Milne and Milne 1976, p. 84; Scott and Traniello 1990, p. 274) where the eggs incubate for about 6 days before hatching into larvae that require parental care. Higher ambient temperatures increase egg development rates and reduce incubation times (Damos and Savopoulou-Soultani 2012). Females reproducing on smaller carcasses produce fewer eggs than females reproducing on larger carcasses (Billman et al. 2014a, entire; 2014b, entire). American burying beetles will also cull their brood through cannibalism to increase size and survival of larvae in response to a less than adequately sized carcass (Billman et al. 2014a, entire; 2014b, entire).

Summary of Current Condition of the Species

For the purposes of this analysis we organized the current range of the American burying beetle into analysis areas that follow broad geographic and ecological patterns: Northern Plains analysis areas, Southern Plains analysis areas, and the New England Analysis Area (see Figure 1). This is the scale of ''populations'' referred to in the analysis of risk factors potentially affecting the species (chapters 4 and 5 in the SSA Report; Service 2019).

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Figure 1. The Southern Plains analysis areas include the Red River, Arkansas River, and Flint Hills analysis areas in Texas, Oklahoma, Kansas, and Arkansas. The Northern Plains analysis areas include the Loess Canyons, Sand Hills, and Niobrara River analysis areas in Nebraska and South Dakota. The New England Analysis Area includes Block Island off the coast of Rhode Island and a reintroduced population on Nantucket Island off the coast of Massachusetts.

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Because the American burying beetle completes its life cycle in one year, each year's population levels are largely dependent on the reproductive success of the previous year and reproductive conditions in the current year. Fluctuations are thought to be a function of the abundance of the carrion resources on which the species depends. Therefore, population numbers may be cyclic (due to weather, disease, etc.), with high abundance in one year, followed by a decline in numbers the succeeding year. Because survey information can fluctuate over time and survey effort is not equal for all analysis areas, the SSA Report (Service 2019) uses a combination of habitat and population factors to evaluate the current condition of populations. For each analysis area, a current condition category is assigned based on relative abundance, population distribution, known population trends, availability of suitable habitat, acres of protected areas, and the level of management in protected areas (see section 4.7.1 in the SSA Report; Service 2019). The current condition categories are qualitative estimates of the current status of the species.

Habitat Factors

Large quantities of potentially suitable habitat are available in the Southern Plains and the Northern Plains analysis areas, though the New England Analysis Area is much smaller (See Table 1). Most analysis areas contain large areas of managed protected lands as well (Table 1). The New England Analysis Area has a relatively small amount of protected lands due to the limited area of these islands, but a relatively high percentage of conservation lands (Block, 41% and Nantucket, 33%).

TABLE 1—ACRES OF SUITABLE HABITAT AND PROTECTED LANDS WITHIN EACH ANALYSIS AREA.

Analysis area	Suitable habitat (acres)	Managed protected lands (acres)[a]	Multi-purpose protected lands (acres)[b]	Total acres in each Analysis Area
Red River	2,678,406	123,779	23,997	3,251,894
Arkansas River	14,470,603	1,486,002	933,608	17,753,431
Flint Hills	2,758,610	133,196	52,114	3,706,908
Loess Canyons	1,686,948	15,342	3,843	2,758,610
Sandhills	8,633,685	93,983	24,633	10,819,170
Niobrara	2,961,469	58,918	33,582	4,108,903
Nantucket[c]	23,311	11,934	[c]NA	36,321
Block Island[c]	2,554	2,507	[c]NA	6,111

[a]Managed lands incorporate active management to maintain or improve wildlife habitat and are assumed to protect or improve American burying beetle habitat.
[b]Multi-purpose protected lands are assumed to include some management for wildlife that would protect or improve American burying beetle habitat.
[c]Note that Nantucket and Block Island together form the New England Analysis Area.
[d]Protected lands on Nantucket and Block Island are mostly private and protected by easements. The active management is primarily monitoring and provisioning of carcasses.

Population Factors

Southern Plains Analysis Areas

Between 1993 and 1996, the southeastern portion of the Red River Analysis Area supported localized populations with relatively high catch rates of American burying beetles (Creighton et al. 2009, p. 40), but catch rates in these areas have declined since the early 2000s. No positive surveys have been documented in the Arkansas or Texas portions of the Red River Analysis Area since 2008, and only eight positive surveys are known in the analysis area (all in Oklahoma) since 2008. Within the Red River Analysis Area, the Hugo Wildlife Management Area in Oklahoma is the only protected area currently known to support American burying beetles, with five captured in 2016. Populations in Texas may be extirpated as the last documented record of the species occurred in 2008.

Both the Arkansas River Analysis Area and the Flint Hills Analysis Area have large areas of suitable habitat, several large protected areas, and a relatively wide distribution of American burying beetles within the analysis areas.

Northern Plains Analysis Areas

The Loess Canyons Analysis Area, the Sandhills Analysis Area, and the Niobrara River Analysis Area all have large areas of native habitat and relatively wide distribution of American burying beetles within the analysis areas. In the Loess Canyons Analysis Area, expansion of eastern redcedar (*Juniperus virginiana*) due to a lack of fire or mechanical control has reduced the habitat quality in much of this analysis area, this population is sensitive to droughts, and the analysis area is relatively small and isolated from other populations.

New England Analysis Area

This area is small relative to other analysis areas, but the level of protection and active management are significantly greater than the other analysis areas. On Block Island, the American burying beetle population is relatively stable with population estimates ranging from 200 to 1,000. This population has been monitored annually since 1991. Carrion provisioning has been conducted on Block Island since 1993. On Nantucket Island, the reintroduced population does not appear to be self-sustaining and requires human assistance for long-term maintenance (Mckenna-Foster et al. 2016, entire). The current resiliency of the analysis area is considered moderate due to relatively good distribution, and fair ratios of positive to negative surveys, although the populations on both islands are highly dependent on active management.

Summary of current overall viability

Resiliency ranged from moderate to high in all analysis areas, with the exception of the Red River Analysis Area where resiliency is considered low. Overall, representation is considered moderate. The current genetic diversity appears to be relatively high, but the ecological diversity has been reduced with the loss of about 90 percent of the historical range. The current known range includes populations from northern and southern areas and eastern and western areas of the historical American burying beetle range, although representation from eastern areas is limited to the New England island populations and the genetics represented from the Block Island population. Multiple populations within the analysis areas provide redundancy that reduces the risk of any catastrophic events.

Threats

The American Burying Beetle Recovery Plan (Service 1991) and the 5-year status review of the species (Service 2008) identify the following factors as threats or potential threats to American burying beetles: direct habitat loss and alteration, increase in competition for carrion resources, decrease in abundance of prey, loss of genetic diversity in isolated populations, disease/pathogens, dichloro-diphenyl-trichloroethane (commonly known as DDT), habitat fragmentation due to agricultural and grazing practices that lead to changes in vertebrate composition or density, and invasive species. DDT and some other threats identified in the recovery plan and 5-year status review are either no longer a threat or pose less of a threat to the species.

Overutilization (Factor B) for any purpose was not identified as a threat to the species at the time of listing in 1989, and it is not considered a threat to the species' continued existence today. While disease and predation (Factor C) may kill or injure individual American burying beetles, they are not known to result in population-level impacts. Further information regarding disease and predation can be found in the SSA Report (Service 2019).

Populations in the New England and Northern Plains Analysis areas are expected to experience future threats from land use change, and all populations are expected to experience future threats from a changing climate over varying time periods. Existing regulatory mechanisms (Factor D), such as regulations for species protections implemented by the States, and

implementation of the Sikes Act (16 U.S.C. 670a–670f, as amended) by the Department of Defense (DoD) through Integrated Natural Resources Management Plans (INRMPs), vary by region and specific location, but generally do not fully address the numerous threats that the American burying beetle faces across its range, particularly those future threats such as land use change and climate change. However, incorporation of INRMPs on the DoD installations currently provide management and conservation benefit to American burying beetles occurring in those areas.

The American burying beetle declined over much of its historical range while eight species in the same genus are still relatively common rangewide (Sikes and Raithel 2002, p. 104). Anecdotal evidence indicates that the reduction of appropriate carrion resources is a primary mechanism of population decline for the American burying beetle. This hypothesis fits the temporal and geographical pattern of the disappearance of American burying beetles from 90 percent of their historical range, and may explain why American burying beetles declined while related species that do not rely on the same carrion resources did not similarly decline (Sikes and Raithel 2002, p. 104). The availability of appropriately sized carrion may explain current distributions of the American burying beetle and the presence or absence of American burying beetles in most of the existing analysis areas. For example, the American burying beetle population on Nantucket Island was established with provisioned carcasses, but is projected to be extirpated without continued provisioning of appropriately sized carcasses (Mckenna-Foster et al. 2016, entire). American burying beetles need carcasses of 80 to 200 grams, and areas that can support the species must have potential carrion sources within this size range. The abundance of potential carrion species and competition for the carcasses can affect availability for American burying beetles.

Risks such as conversion to cropland and wind energy development are greater in portions of the Northern Plains analysis areas, while risks associated with grazing, silviculture, and oil and gas development are more common in the Southern Plains analysis areas. All remaining populations have some risks associated with areas of urban or suburban development, particularly in the New England Analysis Area, but most current American burying beetle populations are in rural areas and have potential risks associated with habitat loss due to agricultural land uses. All habitat alterations also have potential to affect carrion populations, competing scavenger populations, and carrion availability. Risks associated with the effects of changing climate, including increasing temperatures, are now the most significant threat for most analysis areas.

Two scenarios in the SSA Report (Service 2019) explore potential future land use changes to help characterize the likely potential for impacts to suitable habitat for the American burying beetle. The two land use scenarios in the SSA Report (Service 2019) were evaluated independently and then later evaluated in combination with two separate climate change scenarios.

The large areas of known and potential habitat in the Southern Plains buffer the effects of most land use changes. Urban development and conversion to agricultural lands are not considered a threat to the species in the Southern Plains analysis areas because the projected loss of habitat is unlikely to affect the viability of the species in these areas (Service 2019). The projected combined permanent loss of suitable habitat from all sources for the Southern Plains analysis areas is 1.2% or 246,293 acres from the existing 19,995,088 acres (Service 2019). The combined impacts of urban expansion and agriculture (primarily conversion to cropland) are expected to affect 5–15% of the suitable habitat in the Northern Plains, and redcedar expansion in the Loess Canyon Analysis Area is expected to result in up to an additional 30% habitat loss (Service 2019). The projections in our SSA Report (Service 2019) indicate that future representation and redundancy are both reduced with potential losses of habitat in New England, Loess Canyons, and the reintroduction site in Missouri. The potential loss of the Loess Canyons population is due to land use changes, including redcedar expansion, and the New England populations and Missouri reintroduction could be lost if active management and habitat protection are not continued. The combined effects of land use and future changes in climate are likely to impact the resiliency of most populations and the overall viability of the species.

Recent development and potential expansion of wind energy projects could also add to impacts from other land use changes. Potential land use impacts related to an expanding wind industry in the Northern Plains were not fully evaluated in the SSA Report (Service 2019) due to limited information, so additional analysis is recommended to improve the reliability of land use projections. The construction of wind turbines, roads, and powerlines has direct permanent habitat impacts and fragments the remaining habitat. The operation of wind turbines also has potential for direct take through American burying beetle collisions with the blades. However, future land use effects related to wind power were not factored into land use scenarios because we did not have estimates of future development or total areas that may be affected by wind projects, and no studies have evaluated the effects of wind projects on American burying beetles. The most significant threat to the American burying beetle is changes in climate. This threat affects the southern populations more than those in northern locations due to the southern population areas already experiencing temperatures near the species critical thermal tolerances. Therefore, changes in climate within the foreseeable future is an existential risk only to those populations in the southern portion of the species range. Here we present a summary of climate-related risks; additional information is available in the SSA Report (Service 2019). The SSA Report's chapter 3 summarizes general climate risks, chapter 4 includes current risks, and chapter 5 covers future risks (Service 2019).

Most considerations of climate change in Endangered Species Act classification decisions hinge upon whether climate change will manifest in changing habitat conditions and how the species is likely to respond to these changes in the future. Therefore, a key consideration for classification decisions where climate change is a potential stressor is how we interpret ''foreseeable future'' in the definition of a threatened species under the Act.

The Intergovernmental Panel on Climate Change (IPCC) adopted four possible Representative Concentration Pathways (RCP) scenarios (2.6, 4.5, 6, and 8.5) to capture the possible ranges of climate change within the next century (Hartmann et al. 2013; Moss et al. 2008). In our analysis of potential climate change impacts to the American burying beetle, we used two scenarios, RCP 4.5 and 8.5, over different blocks of time through the end of this century (years 2010–2039, 2040–2069, and 2070–2099 time periods). For the purpose of this document, we define those time periods as: 'early century time period' (2010–2039), 'mid-century time period' (2040–2069), and 'late century time period' (2070–2099).

We use projections from two RCPs (4.5 and 8.5) to account for uncertainty regarding future atmospheric greenhouse gas concentrations. RCP 4.5 is at the low end of the intermediate range of conditions projected while RCP 8.5 is the high end of IPCC projections of atmospheric conditions. By using both a very high and low emissions scenarios in our projections, we bracketed the likely possibilities for climate change in the future. For ease of reference, we refer to these as ''emissions scenarios,'' although they are not based solely on emissions of greenhouse gases.

Our approach of using the two RCPs is consistent with the current widespread scientific practice of considering projections based on RCP 4.5 and RCP 8.5 so as to consider a range of projected conditions, rather than relying on a single scenario. The U.S. Global Change Research Program used these two RCPs as the core scenarios for the Fourth National Climate Assessment (Hayhoe et al. 2017), and they also are used as the basis for projections generated via the U.S. Geological Survey's National Climate Change Viewer. Although it is theoretically possible to achieve the RCP 2.6 pathway and outcome, we did not use it as it is not feasible or likely; numerous scientific papers show that key assumptions underlying it already have not been met (including a very rapid reduction in greenhouse gas emissions) and other future activities it relies upon are highly speculative. RCP 4.5 and 8.5 scenarios are more feasible and widely used for future climate assessments. Further, we did not use RCP 6 because the specific datasets used in our analyses are only available for RCP 4.5 and 8.5.

The life-history characteristics of American burying beetles indicate limited ability to tolerate warmer temperatures. Adult American burying beetles use secretions to slow decomposition of carcasses they bury for reproduction (see *Summary of Species Requirements,* above, for more information on the role of carcasses in reproduction). The carcasses are buried and must support both adults and larvae for at least 2 to 3 weeks, but high temperatures reduce the effectiveness of the secretions and accelerate decomposition (Jacques et al. 2009, p. 871). While the American burying beetle has life-history requirements similar to other carrion beetles, it is the largest *Nicrophorus* in North America and requires a larger carcass to reach its maximum reproductive potential (*i.e.,* to raise a maximum number of offspring) than the other burying beetles (Service 1991, p. 2; Kozol et al. 1988, p. 37; Trumbo 1992, pp. 294–295). American burying beetles also have a longer time period for egg and larval development than other *Nicrophorus* carrion beetles, so the carcass must last longer (at least 12 to 14 days) to provide food and moisture for adults and support development of their larvae to the pupa stage. Temperature-related increases in decomposition and development of fly larvae would limit or prohibit reproductive success for American burying beetles if carcasses are in a suitable condition for shorter periods of time or do not last long enough to support development of their larvae.

The distribution of American burying beetles and other burying beetles in the Nicrophorus genus also indicates a limited ability to tolerate warmer temperatures. *Nicrophorus* abundance and diversity are higher in cooler climates. There are 15 *Nicrophorus* species in the United States and Canada, but only 2 are endemic to Central and South America, and they occur at higher elevations with cooler temperatures. Reasons for burying beetles' lack of success in warmer climates include increased competition with flies and ants (Peck and Anderson 1985 p. 248, Jiron and Cartin 1981 entire, Trumbo 1990 p. 6–7), as well as increased rates of carcass decomposition (Jacques et al. 2009. p. 871). Carcass decomposition is dominated by dipteran species (true flies), and the diversity of dipteran species using carcasses increases in warmer climates. Based on species distributions and existing climate conditions, few *Nicrophorus* species appear to be capable of maintaining populations in areas with long-term average summer mean-maximum temperatures at or exceeding a 95 °F threshold (*N. carolinus,* and possibly *N. pustulatus* and *N. marginatus*), and there are no *Nicrophorus* species in areas with average summer mean-maximum temperatures exceeding 100 °F.

Under both RCP 4.5 and 8.5 emissions scenarios, all American burying beetle populations in the Southern Plains Analysis Areas would be projected to have summer mean-maximum temperatures exceeding 95 °F within the mid-century time period. Surveys for American burying beetles in locations that have experienced a mean-maximum temperature near or above 95 °F during summer have shown declining capture rates the following year. Existing survey information from Fort Chaffee (Arkansas River Analysis Area) from 1992 through 2016 supports our conclusion that mean-maximum temperatures above 95 °F would adversely affect American burying beetle populations. During the study, catch rates of American burying beetles declined from the previous year every time mean-maximum temperatures exceeded 95 °F, which happened a total of six times throughout the study period. Based on this information, we anticipate continued population declines and potential extirpation if mean-maximum temperatures exceeding 95 °F became the average during summer months and more extreme temperatures occur more frequently.

Southern populations of American burying beetles that experience summer mean-maximum temperatures near 95 °F are declining. Since 2008, only seven American burying beetles have been detected within the Oklahoma portion of the southernmost analysis area, and no American burying beetles have been documented in the Texas or Arkansas portions. We have no evidence to suggest that habitat conditions that might otherwise explain the observed declines within these areas have significantly changed. American burying beetles were last detected in Texas in 2008 and populations have declined or are extirpated in large protected areas like Camp Maxey, Texas, with no apparent changes in land use. It appears that temperatures near this area are at, or past, a threshold that would support American burying beetles. This conclusion may be further supported by the fact that the species does not exist south of the Red River area in Texas and Louisiana, where habitat, soil conditions, and carrion availability are likely to be similar. Thus, we conclude that the southern edge of the species' range is driven by the 95 °F temperature threshold.

Temperature has always limited the American burying beetle's range to some degree. Populations at the northern edge of the range are limited by cool nighttime temperatures and shorter growing seasons, whereas populations at the southern edge of the range are likely limited by high temperatures. The western edge of the species' range has been limited by reduced precipitation and soil moisture. Although temperature and other effects of climate change are expected to affect American burying beetles in both the northern and the southern parts of the range, we expect that the populations in southern areas will be affected sooner and to a greater extent based on projected temperatures. Under both the RCP 4.5 and 8.5 emissions scenarios, a majority of the Southern Plains analysis areas are expected to be near or exceed summer mean-maximum threshold temperatures (95 °F) by 2039, with potential to

extirpate American burying beetles from most or all Southern Plains populations. Within the mid-century time period, all Southern Plains analysis areas are expected to exceed threshold temperatures under both the RCP 4.5 and 8.5 emissions scenarios, likely resulting in extirpation of the American burying beetle from these areas. American burying beetles near the southern and western edge of the range in Kansas, Oklahoma, and Texas may already be at or near their limits for temperature- and moisture-related tolerances and have a limited ability to adapt to rapidly changing climate conditions (see comments on limits related to life history in chapter 5 of the SSA Report; Service 2019).

No American burying beetle populations, including known historical populations, are located in areas that experience a long-term summer mean-maximum air temperature above 95 °F. The Red River Analysis Area represents the southernmost and warmest portion of the American burying beetle's current range, with summer mean-maximum air temperatures of approximately 93 to 94 °F.

Increased air temperatures, changes in precipitation, increased evaporative losses, and prolonged droughts may stress or kill individual American burying beetles and reduce reproductive success or reduce the time periods with suitable conditions for reproduction. High air temperatures have been documented to kill or sterilize American burying beetles at captive colonies when air conditioning systems have failed, resulting in colony temperatures at 85 to 90 °F for about 2 weeks (Merz 2016, pers. comm.). Survey protocols require traps to be checked in the morning because American burying beetle mortalities occur when they are confined in traps during warm days. Additional indirect effects of increased temperatures and reduced precipitation or soil moisture may be related to competition. Congeners with higher temperature or lower moisture tolerances, like *N. carolinus,* may be more competitive and reduce or eliminate American burying beetles in southern populations. Species like *N. carolinus* can compete for appropriate carcasses and reproduce under warmer and drier conditions than American burying beetles (Abbott and Abbott 2013, p. 2). At Camp Maxey, American burying beetle and *N. orbicollis* numbers declined when *N. carolinus* numbers increased rapidly (Abbott and Abbott 2013, p. 2).

Increasing temperatures resulting from changes in the climate could reduce the reproductive success of American burying beetles by reducing the portion of the active season with suitable temperatures for reproduction. Recent temperature studies with *N. orbicollis* indicate even small increases in temperature can affect reproduction (Quinby et al. 2020, entire). This type of research is currently being conducted with American burying beetles as well, but those results are not yet available. *N. orbicollis* has a similar historical range to the American burying beetle, is the most closely related congener, and basic physiological characteristics, such as thermal tolerances are highly conserved within lineages; therefore, we expect the American burying beetle study is likely to yield similar results. For *N. orbicollis,* the percent of successful broods declined at temperatures greater than 20 °C (68 °F) and declined rapidly at any temperatures greater than 25 °C (77 °F). An increase of only 2 to 3 degrees (from 25 to 27–28 °C, or approximately 77 to 80 °F) stopped most beetles from attempting to prepare a carcass for reproduction, and those that did were not successful in producing any larvae or tenerals. The warmer temperatures precluded eggs from hatching or larvae from developing beyond a very early stage. The study also demonstrated effects of temperatures on seasonal timeframes that would support reproduction. While more southern latitudes have a longer active season and would logically have more time to reproduce, the temperature restrictions reduce the potential for reproduction in Oklahoma. *N. orbicollis* in the northern portion of their range (Wisconsin) have a longer period of suitable climate conditions for reproduction and could reproduce more often than *N. orbicollis* in the southern portion of their range (Oklahoma) due to these temperature restrictions. Projected climate changes could limit reproduction in the future to an even greater extent.

American burying beetles are a nocturnal species; thus, nighttime temperatures are likely to influence the behavior and range of this species as well. Nights above 75 °F were observed only in the Southern Plains analysis areas (Red River, Arkansas River, and Flint Hills analysis areas) with the exception of 7 nights over a 35-year period in Colome, South Dakota. The effects of the increase in nights above 75 °F and potential impacts to reproductive success may be occurring in the Red River Analysis Area, where declines in positive American burying beetle surveys have been documented since the early 2000s. A recent study evaluating reproductive strategies in *N. orbicollis* across a temperature gradient (54 °F, 59 °F, 68 °F, 77 °F, and 81 °F) found that temperatures above 68 °F adversely affected reproductive success in *N. orbicollis* (Quinby et al. 2020, p. 8) and may have a similar effect on American burying beetles. There was no reproductive success in *N. orbicollis* at 81 °F (Quinby et al. 2020, p. 5). We do not have data specifically related to reproductive success in the Red River Analysis Area, but the American burying beetle population declines coincide with the increase in nighttime temperatures above 75 °F.

American burying beetles are active only at night, resulting in a very narrow window of time for suitable carcasses to be available for American burying beetles to find, bury, and prepare for reproduction. Higher temperatures cause carrion to decompose more rapidly, and fly larvae to develop faster and quickly consume small carcasses. At high temperatures, exposed carcasses can be heavily infested with fly larvae within 2 days, and carcasses may be suitable and available for only 1 or 2 nights. Thus, we conclude that increased air temperatures can affect reproductive success by reducing the availability of suitable carrion due to competition with flies and ants.

Risks associated with the effects of changing climate, including increasing temperatures, are a significant threat for some analysis areas in the foreseeable future. The information in the SSA Report (see chapter 5; Service 2019) indicates that projected increases in air and soil temperatures, as a result of climate change, are a significant risk to future viability of the species. Within the mid-century time period, American burying beetles in all Southern Plains analysis areas would likely be extirpated and would represent a loss of approximately 59 percent of the current range of the species. The summer mean-maximum threshold (95 °F), where we determine American burying beetle numbers will decline and not be able to persist into the future, is predicted to be exceeded in nearly all portions of the Southern Plains analysis areas under either the moderate or high emissions levels of climate change within the mid-century time period. Northern Plains analysis areas are largely unaffected by moderate emissions levels of climate change within the mid-century time period (see chapter 5 of the SSA Report; Service 2019), but under the RCP 8.5 emissions scenario, temperatures approach 93 to 95 °F in most of the Northern Plains analysis areas by the end of the mid-century time period. Under the RCP 8.5 emissions scenario, Southern Plains American burying beetle populations would be projected

to have summer mean-maximum temperatures up to 98 to 100 °F within the mid-century time period. We conclude that the American burying beetle is at risk of extirpation within the Southern Plains analysis areas under the two projected climate conditions we analyzed (RCP 4.5 and 8.5) within the mid-century time period. The species would likely continue to be represented by Northern Plains and New England populations, but at least three populations in the Southern Plains and 59 percent of the existing range of the species are projected to be lost within the mid-century time period. The effects of a changing climate, such as increasing temperatures, changes in precipitation, increased evaporative losses, and prolonged droughts, stress and sometimes kill individual American burying beetles and, therefore, are likely to reduce reproductive success. Overall, we consider these factors threats to American burying beetle populations, but the impacts are currently limited to the southernmost parts of the range. However, in large portions of the Northern Plains analysis areas temperatures are projected to approach the thermal tolerance limits of the American burying beetle under the high emission scenario of RCP 8.5 by the end of the mid-century time period and future projections within the mid-century time frame indicate that American burying beetles have a high risk of extirpation throughout the Southern Plains analysis areas due to these effects of climate change. Under the RCP 4.5 scenario, the Southern Plains Analysis Areas has an increased risk of extirpation by the end of the mid-century time period, leaving only the Northern Plains and New England populations.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Summary of Comments and Recommendations

In the proposed rule published on May 3, 2019 (84 FR 19013), we requested that all interested parties submit written comments on the proposal by July 2, 2019. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in USA Today. We received a request for a public hearing. We held a public hearing on September 24, 2019, in Tulsa, Oklahoma, and reopened the public comment period from September 9, 2019, to October 9, 2019 (84 FR 47231). All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below.

Peer Reviewer Comments

As discussed in Supporting Documents above, we received comments from 8 peer reviewers. We also solicited reviews of the draft SSA report from all States and Tribes within the American burying beetle's current range and species experts during a partner review. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in the SSA report. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final SSA report. Peer reviewer comments are addressed in the following summary and were incorporated into the final SSA report as appropriate. The changes consisted of clarifications and corrections to the SSA report, including typographical edits, revising descriptions of our analysis, and expanding some risk information related to the potential effects of the invasive redcedar and wind energy expansion. The reviewers' comments resulted in minor changes in the resiliency assessments for some analysis areas, but did not substantially change the SSA report's information on current and future status of American burying beetle populations.

The comments on the SSA report and proposed rule did not change our determination that the American burying beetle meets the definition of a threatened species under the Act.

Public Comments

We received comments from 75 respondents. These included comments primarily from individuals, nongovernmental organizations, and industries, but also included comments from five U.S. Senators, two States, and one Tribe. We reviewed all comments provided and addressed the substantive comments. Many comments were not substantive or relevant to the downlisting decision, but all comments are available at *http://www.regulations.gov* in Docket No. FWS–R2–ES–2018–0029. Substantive comments are grouped together in related categories below.

(1) Comment: Several commenters, including the Nebraska Game and Parks Commission, indicated that American burying beetle populations have not met the downlisting goals in the recovery plan and suggested that delisting criteria is needed.

Our Response: Downlisting criteria are important, but not legally required for reclassification (50 CFR 424.11(c)). The American burying beetle recovery plan was approved by the Service on September 27, 1991; since then, new information about the status and conservation of the species has become available. For reclassification from endangered to threatened, the recovery plan established a criterion of at least 3 self-sustaining populations of at least 500 individuals in each of 4 broad geographical areas of the species' historical range: the Northeast, the Southeast, the Midwest, and the Great Lakes States. The current total size of populations exceed that criterion; however, the populations are not within the geographical areas described in the recovery plan, making them more vulnerable to local or regional impacts than if they were spread through each of the broad geographical areas. Several large populations occur in the western portions of the range, and two smaller populations that require active management have been maintained in New England. Some very large populations that likely support several thousand adults are considered more resilient than populations of only 500 adults and can be considered equivalent to 2 or more smaller populations. Current populations exist in northern, southern, eastern, and western portions of the historical range, but with very limited representation in the East. Each of the 6 analysis areas within western populations has more than 1 million acres of suitable habitat, and at least 4 analysis areas support relatively large

populations. Although considerably smaller, the New England Analysis Area supports 1 population with estimates of approximately 500 or more American burying beetles and another smaller population with active management.

The recovery plan is an exceptional source of information but is out of date and contained only reclassification criteria rather than reclassification and delisting criteria (see Review of the Recovery Plan, above, for more information on the role of reclassification criteria in our determination). New information will be used to inform the criteria needed to be met for full recovery of the species. Recovery is a dynamic process requiring adaptive management that may or may not fully follow the guidance provided in an earlier recovery plan. The SSA Report does not include recovery criteria, but will inform the establishment of such criteria as it provides an updated, revised analysis of current and future status of the species and risks based on our current understanding of the species' needs. Information in the SSA Report indicates that maintaining or reestablishing populations in southern portions of the historical range is not feasible for the future due to the effects of projected increases in temperatures due to climate changes. The Service plans to use the information from the SSA Report and any additional information to revise the recovery plan to include delisting criteria.

(2) Comment: Several commenters, including the Nebraska Game and Parks Commission, suggest that downlisting is inconsistent with the information in the SSA and proposed rule because we project a declining status and risk of extinction in the future. Several commenters pointed out that it does not make sense to downlist the American burying beetle if it may need to be reclassified as endangered in the future if projected future risks are accurate.

Our Response: We believe that most of the comments asserting that the proposed reclassification is not supported by the SSA are related to misunderstanding the definitions of threatened and endangered in the Act. The definition of endangered is ''any species which is in danger of extinction throughout all or a significant portion of its range,'' while the definition of threatened is ''likely to become an endangered species within the foreseeable future.'' The definitions of threatened and endangered both include being endangered or at risk of extinction, but they are based on different timeframes. The definition of endangered applies to a species' current status, and a threatened determination means that the species is likely to become endangered in the future. The SSA concludes that there are currently at least six relatively resilient populations with distribution in several relatively large areas within the range. While we recognize the large loss of the historical range, the current range is much larger than originally thought when the species was listed and there are several large populations with relatively good genetic diversity and relatively low current risks. We believe the current risk of extinction is low for the American burying beetle and that the best available information indicates the species no longer meets the definition of an endangered species (*i.e.,* it is not currently in danger of extinction), but the future risk to the species indicates that it meets the definition of a threatened species.

The SSA projects future risks that include changes in climate that may extirpate southern populations within a 20–30-year period under either the RCP 4.5 or RCP 8.5 scenario and may affect Northern Plains populations within 50 years under the RCP 8.5 scenario. Therefore, the species is likely to be endangered within the foreseeable future (2069, the end of the second 30-year climate analysis period). While the status of the American burying beetle is currently relatively stable, we have determined that it is likely to become endangered within the foreseeable future, based on the analysis of how climate change will impact its future condition in the SSA report. Thus, we conclude that the SSA is consistent with this final determination and supports our determination that the American burying beetle meets the definition of a threatened species.

By definition, a threatened species determination implies a potential need to reclassify the species as endangered if our projections about its status in the foreseeable future are accurate. However, ongoing and future conservation and recovery actions may help establish populations in areas that are safe from climate-related risks, potentially precluding the need to reclassify the species in the future. If such efforts are not sufficient, then uplisting the species to endangered would be considered at that time.

(3) Comment: A few commenters suggest that reintroduced populations have not been documented to be self-sustaining and should not have been used in the downlisting decision. They further suggest that additional genetics information is needed for maintaining genetic diversity and reintroduction efforts.

Our Response: We agree that all current reintroduction efforts need more time and monitoring to determine if they can be self-sustaining. We also want to clarify that reintroduced populations are included in the description of where the species currently occurs, but are not considered self-sustaining and were not used to justify the reclassification. Reintroduction efforts have potential to produce self-sustaining populations and are necessary for the ultimate recovery of the species. We hope we can learn from ongoing efforts to reestablish additional populations within the historical range.

We also agree that additional genetics information for all existing populations would be helpful for assessing the resiliency and representation of populations and important for maintaining genetic diversity. Additional genetics information would be important for any reintroduction efforts. For the purposes of the proposed rule and SSA Report, we used the best available information and believe that information supports the reclassification and the 4(d) rule. With the exception of the New England populations, the existing populations in the Northern Plains and Southern Plains are relatively large and appear to support good genetic diversity. The Northern Plains and Southern Plains populations are currently separated from each other, but, within each area, the populations are in close proximity and may have some genetic exchange between those populations. The existing genetic information does not indicate any significant genetic differences between the Northern Plains and Southern Plains populations, but they are geographically separated and continued isolation can create genetic limitations for recovery. We strongly encourage additional genetic analysis to help support future recovery and reintroduction efforts.

(4) Comment: A few commenters suggested that defining incidental take as resulting from soil disturbance may not be appropriate and we need to provide more explanation about why we take such an approach.

Our Response: Soil disturbance has been used to evaluate the potential for take of American burying beetles in occupied areas for many years given that they spend a substantial portion of their lifespan underground. Because American burying beetles and brood chambers have been documented within 2 inches of the soil surface and adults may seek shelter during the day in varying depths and types of soil during the active season, any soil disturbance is likely to affect the species during the

active season. Soil disturbance can crush or injure buried adult beetles and expose them to daytime heat and potential predators. Soil disturbance can collapse or expose brood chambers and kill larvae and pupa. American burying beetles are typically buried deeper during the winter months, but depths vary according to location and temperatures. Soil disturbance during the winter months can kill adults by exposing them to freezing temperatures and predation.

The Service usually defines incidental take in terms of the number of occupied acres disturbed and determines the risk of incidental take based on the type and timing of the disturbance for proposed projects. We consider incidental take of American burying beetles to occur as a result of soil disturbance in the form of harm, harassment, and/or mortality. The number of American burying beetles that will be taken is difficult to estimate for most projects because density estimates are not available for most areas. For specific projects, the risks of take can be determined or adjusted if current density estimates are available. The risk of incidental take is associated with disturbance of soils in suitable habitat with confirmed or potential presence of American burying beetles. American burying beetles use a variety of habitat types; we have defined habitats we consider to be unfavorable in the proposed and final rule. American burying beetle presence or absence can be determined through surveys using established scientific protocols during the active season.

Take of American burying beetles is difficult to quantify because: (1) Individuals of the species are small in size, making them difficult to locate, which makes encountering dead or injured individuals unlikely; (2) American burying beetle losses may be masked by temporal fluctuations in numbers; (3) American burying beetles spend a substantial portion of their lifespan underground; and (4) the species is primarily active at night. Because we cannot often estimate the precise number of individual American burying beetles that will be incidentally taken, we use soil disturbance as a proxy to quantify take levels and define when take would be considered to be exceeded.

(5) Comment: Several commenters suggest that climate change is not certain enough to occur to be assumed as a primary risk for the American burying beetle. Several commenters also suggested that all four representative concentration pathways (RCPs, potential emissions scenarios) should be used. The commenters asked that the Service provide the public information on how these models perform at predicting temperature increase in contrast with historical data.

Our Response: The best available science indicates that we can expect increasing temperatures within the range of the American burying beetle within the foreseeable future. Likewise, the best available science indicates that increasing temperatures are likely to have significant negative effects to individual beetles and overall populations within the foreseeable future, particularly within the Southern Plains Analysis Area.

We used RCP 4.5 and 8.5 in the analysis e for the work presented in the SSA report. We consulted with multiple climate experts for our analysis of potential climate effects. Based on the recommendation of climate scientists at the South Central Climate Adaptation Science Center (a research consortium of Federal, State, and Tribal entities), climate change projections downscaled by scientists at the University of Idaho were selected. The climate change assessment in the American Burying Beetle SSA used the average of 20 global climate models for two of the four emission scenarios (RCP 4.5 and RCP 8.5). Consultations with climate scientists at several Federal and academic institutions confirmed that the selected approach was optimal. The MACA–METDATAv2 downscaling of Global Climate Models (GCMs) was chosen for the American Burying Beetle SSA on the recommendation of the South Central Climate Adaptation Science Center. The downscaling of GCMs using the METDATA method increased the precision of climate projections by 28 to 120 times, depending on the original GCM. While the chosen downscaling dataset provided a robust (20 GCMs) and consistent (same models available in all datasets) pool of downscaled projections available in an online format with data access optimized for terrestrial analyses, only two (RCP 4.5 and RCP 8.5) of the four (RCPs 2.6, 4.5, 6.0, and 8.5) representative concentration pathways (RCPs, potential emissions scenarios) were available. All four RCPs are available through an archive hosted by the University of California and Lawrence Livermore National Lab. Downscaled projections using the Bias Corrected Spatial Disaggregation (BSCD) method are available for all four RCPs and up to 37 GCMs. However, downscaled datasets are not available for all models in all RCPs (only 18 of 37 are available across all 4 RCPs). Additionally, the BSCD data access web portal is optimized for aquatic analyses, not terrestrial, and there is no option available to average datasets across GCMs. Different downscaling methods were employed by the research groups (METDATA vs BCSD), and the source GCMs varied.

The MACA–METDATAv2 downscaling is a valid methodology and constitutes the best available science regarding climate change projections for this context. Each GCM uses a different set of assumptions in order to project future temperatures. These assumptions contribute to the variation seen across the modeled output from the various GCMs within each RCP scenario. Recent literature and consultations with climate scientists at the South Central Climate Adaptation Science Center indicate that the RCP 2.6 is not achievable even if the most ambitious current international agreements (*e.g.,* the Paris Climate Accords) are successful. Furthermore, all four RCPs will consistently exceed the 95 °F mean maximum summer (June, July, and August) temperature threshold established in the American burying beetle SSA by 2040 in the Southern Plains analysis areas. The four RCPs do not diverge from the RCP 4.5 projections until about 2055 (RCP 2.6) and 2080 (RCP 6.0), which are, respectively, near the end and beyond the foreseeable future established by the American burying beetle recommendation team (2040–2069, or mid-century timeframe as described above under *Threats*). A comparison of all four RCP scenarios with historical data shows all four are nearly identical and only predict minor changes through 2055. The historical data was within the variability projected for all four scenarios. In summary, the American burying beetle SSA used the average of 20 global climate models for 2 of the 4 emission scenarios (RCP 4.5 and RCP 8.5) based on the best available science, and this analysis will be updated as new information becomes available.

(6) Comment: Four commenters opined that the Southern Plains populations are at higher risk due to climate changes and need more protection than other populations.

Our Response: In our revised significant portion of the range analysis (presented below), we considered that the Southern Plains populations are at higher risk from climate-related changes; however, we concluded that the Southern Plains populations are not currently at risk of extinction. Populations at the southern and western edges of the species' range in Kansas, Oklahoma, and Texas are vulnerable to changes in temperature and precipitation (and related soil moisture)

in the future. Relative to other populations, Southern Plains populations are currently at a lower risk from any land use changes. Land use changes could have local impacts but are unlikely to affect populations in the Southern Plains. The combination of large areas of suitable habitat, relatively large areas of protected habitat, and relatively low levels of projected changes resulted in low risks to habitat and populations in the Southern Plains with the exception of climate-related risks. Large areas of the Southern Plains analysis areas are rural with most of the land used as pasture or hay production for decades. The land use is not that likely to change much, and human population levels are projected to remain constant or fall in many counties. Only small portions of the Southern Plains analysis areas are in or near urban areas that are projected to expand.

Continued or expanded protection of habitat is not likely to change the status of existing American burying beetle populations. The 4(d) rule exemptions for the Southern Plains analysis areas are based on this information, and no new information was provided during the peer review or public comment periods to change the projections provided in the SSA Report. Continued or expanded habitat protections would do little to avoid or minimize the primary risks that are related to projected increasing temperatures and other climate-related changes. Reintroduction of southern American burying beetles to cooler portions of the range is the only likely option for maintaining the genetic diversity represented by the Southern Plains populations. Within the Southern Plains analysis areas, the conservation areas will support American burying beetles for as long as possible and provide sources of American burying beetles for reintroductions and areas for recovery-related research.

Along these lines, one of the above commenters elaborated that the conservation areas in the 4(d) rule for the Southern Plains were vulnerable to extirpation and had highly variable numbers of American burying beetles. American burying beetle population numbers vary, but we determine that the large sizes of the conservation areas buffer the effects of seasonal or annual variations. All conservation areas are greater than 30,000 acres in size, and most are surrounded by additional suitable habitat.

(7) Comment: A few commenters expressed an opinion that conservation areas were not needed and that the conservation banks in Oklahoma could be used to support reintroductions.

Our Response: We will use conservation banks to assist recovery actions, and these banks are protected through perpetual easements and endowment funds to support management activities. However, the conservation banks (all less than 10,000 acres) are relatively small compared to the conservation areas described in the final rule, and our ability to remove American burying beetles from these areas without impacting the local populations is more limited.

(8) Comment: Six commenters, including the Nebraska Game and Parks Commission, suggested that the 4(d) exemptions should be consistent across the range. Some commenters wanted proposed exemptions for the Northern Plains populations to apply to the entire range, while others wanted the more extensive exemptions proposed for the Southern Plains to apply.

Our Response: The risks for American burying beetle populations are different for each region of the country. The area, density, and distribution of populations are also different in each location, and risks that may be minor for one population could be substantial and affect the resiliency of other populations. For example, urban expansion may be a minor risk for larger populations in Oklahoma but is a substantial risk for the small Block Island population in Rhode Island. The proposed 4(d) rule includes protection of the species from take related to soil disturbance activities on Block Island because suitable habitat is limited (only about 2,000 acres), and protecting habitat is necessary for the conservation of this important population.

In finalizing protections and exemptions in the 4(d) rule, we considered appropriate risks for each region or population. Exemptions for all land uses are being finalized for the Southern Plains populations (except in conservation areas) because projected habitat losses due to changes in land uses are less than 2% and there are large areas of protected habitat. The primary threats to southern populations are related to projected temperature increases. Exceptions are limited to grazing and wildlife management in the Northern Plains populations because potential habitat losses due to changes like conversions of grassland to cropland and invasion of redcedar are higher than the projected habitat loses in the Southern Plains. The Northern Plains populations may be the only large and resilient populations remaining within 20–30 years, and habitat impacts should be closely evaluated. Some potential impacts like the expansion of wind energy projects and related fragmentation impacts to habitat and carrion availability were not addressed in the SSA Report due to a lack of available information. These potential impacts to Northern Plains populations need to be evaluated, and necessary protections can be applied through section 7 consultations and section 10 permits. Exceptions for grazing and wildlife management practices, as defined under Provisions of the 4(d) Rule, are proposed exceptions for the northern populations because lands under this management have supported resilient American burying beetle populations. We conclude that applying protections based upon the tailored conservation needs within each analysis area provides the protection that is necessary and advisable to conserve the American burying beetle as a whole. The American burying beetle SSA report provides detailed information on the status of the species in each region.

(9) Comment: Several commenters suggested that the proposed 4(d) rule is catering to the oil and gas industry.

Our Response: The 4(d) rule is based on assessments of current and future land use effects on American burying beetle populations. The exceptions provided in the 4(d) rule are not specific to the oil and gas industry or any other industry. The approach taken in the 4(d) rule was based on our analysis that indicated that less than 2 percent of suitable habitat in the Southern Plains analysis area is vulnerable to the effects of all impacts combined (including oil and gas activities). Thus, prohibiting these impacts is not necessary for the conservation of the American burying beetle in this area. The rule is supported by the best available scientific and commercial information, our analysis of threats to the species, and measures necessary and advisable for the conservation of the species.

(10) Comment: A few commenters suggested the proposed rule should have included more information on threats or risks related to carrion sources.

Our Response: Appropriately sized carrion are key to supporting American burying beetle populations. However, the known information for carrion sources used by American burying beetles is limited, and available information on the status of potential carrion species is also very limited. General information on possible effects of land use changes on carrion sources is provided in the SSA report, but the best available information does not allow us to draw conclusions on the

threats posed by the availability of carrion resources.

(11) Comment: One commenter stated that surveys indicated the Northern Plains populations declined by 90% in 2019 and are at risk because the number of tenerals was low and they are an annual species.

Our Response: We have reviewed the American burying beetle capture rates for surveys in 2019. This information is not reflected in the SSA Report because it was developed before the 2019 survey information was available. We have discussed this issue with Dr. Wyatt Hoback and others familiar with the Northern Plains populations and believe the reductions in capture rates was due to the record level of flooding that occurred in that area in 2019. This event is an example of circumstances that factor into our evaluation of the resiliency of populations.

Population abundance can vary substantially with annual species; thus, the SSA Report looked at catch rates over a 15-year time period to provide a better assessment for the abundance and resiliency of populations. Previous droughts have also caused declines in annual catch rates, and severe weather can affect annual reproduction and catch rates. The decline in catch rates in the 2019 Northern Plains surveys is more extreme than most, but the flooding event was also the largest on record and extended over much of the active season. We believe that the Northern Plains populations will rebound from these flooding events, because this is a temporary or short-term effect and the large area of contiguous habitat and good distribution of American burying beetles within the Sandhills and Niobrara analysis areas should allow the populations to recover in subsequent years.

The habitat in the Northern Plains analysis areas has historically supported some of the highest densities of American burying beetles within its current range, and this habitat is expected to recover from the flooding. We expect these areas to support good numbers of American burying beetles in the near future but may be affected by climate risks within the foreseeable future. Because these populations may represent the only large and resilient populations by 2040, we have limited exceptions under the 4(d) rule to grazing and wildlife management within the Northern Plains analysis areas. We will reassess this information with the survey information in upcoming years and note that the Act requires a status review every 5 years.

Determination of American Burying Beetle Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of ''endangered species'' or ''threatened species.'' The Act defines an ''endangered species'' as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following 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.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we find that the risk of extinction of the American burying beetle has been ameliorated since the species was listed. The current range is much larger than originally thought when the species was listed and there are several large populations with relatively good genetic diversity and relatively low current risks. However, the future threat of increased temperature puts the species at risk of extinction in the foreseeable future.

The large areas of known and potential habitat in the Southern Plains buffer the effects of most land use changes. The Arkansas River and Flint Hills analysis areas are adjacent to each other and combined provide over 17 million acres of potential habitat. These analysis areas support large populations with moderate to high resiliency (see chapter 4 of the SSA report). The Red River Analysis Area has over 2 million acres of suitable habitat but has a very limited population with low resiliency.

The Northern Plains populations are also relatively large with a combined area of over 11 million acres of suitable habitat in the Niobrara and Sandhills analysis areas that currently support populations with moderate to high resiliency. A smaller area of suitable habitat (1,686,948 acres) supports a smaller population with low to moderate resiliency in the Loess Canyons analysis area.

The New England analysis area currently supports two populations on separate islands. The Block Island population is relatively small with only about 2,000 acres of suitable habitat, but it supports a population with moderate resiliency with continued active management. Nantucket Island is a reintroduced population on a larger island, but resiliency is low and active management with carcass supplementation is required to maintain this population.

In summary, the current status includes at least five populations with moderate to high resiliency and several of these populations are relatively large. We find that the species is not currently in danger of extinction as it faces relatively low near-term risk of extinction. Thus, after assessing the best available information, we conclude that the American burying beetle is not currently in danger of extinction throughout all of its range. Therefore, we proceeded with determining whether the American burying beetle is likely to become endangered within the foreseeable future throughout all of its range.

Within the mid-century time period (*i.e.,* 2040–2069), American burying beetles in all Southern Plains analysis areas would likely be extirpated as a result of increasing temperatures due to climate change. The projected combined permanent loss of suitable habitat from all land use sources for the Southern Plains analysis areas is minimal compared to the total extent of suitable habitat. The impact of agriculture (primarily conversion to cropland) is expected to affect areas of suitable habitat (5–15 percent) in the Northern Plains (Wright and Wimberly 2013, p. 4134), and redcedar expansion in the Loess Canyon Analysis Area is expected to result in larger proportions (30 percent) of habitat loss in the future (Walker and Hoback 2007, pages 297–298). This loss of the Southern Plains populations (approximately 59 percent of the existing range of the species) and additional losses of habitat in the Northern Plains would severely impact representation of the species and would limit our ability to recover the species. The combined effects of land use and future climate changes are likely to impact the resiliency of most populations and the overall viability of the species. Thus, after assessing the best available information, we conclude that the American burying beetle is likely to become in danger of extinction

in the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

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. The court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity or CBD*), vacated the aspect of the 2014 Significant Portion of its Range Policy that provided that the Services do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we evaluated whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *CBD,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the American burying beetle, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

Based on the SSA Report (Service 2019), there are three potential portions of the range that could be significant for American burying beetle: The Northern Plains analysis areas, the Southern Plains analysis areas, and the New England Analysis Area. These three areas correspond to the areas of representation for the species. Representation describes the ability of a species to adapt to changing environmental conditions. Representation can be measured through the breadth of genetic diversity within and among populations and the ecological diversity (also called environmental variation or diversity) of populations across the species' range. The more representation or diversity the species has, the higher its potential of adapting to changes (natural or human caused) in its environment. Geographic distribution of occupied and potentially suitable habitat and genetic information were used to describe representation for the American burying beetle. The areas of representation were developed primarily based on geographic separation, the ecological variation represented across these three areas, and some genetic variation in the New England Analysis Area when compared with the other two areas.

For the purposes of the SSA analysis, we further assessed three smaller areas each in the Northern Plains and Southern Plains representation areas. However, we determined that these smaller areas were not, by themselves, separate areas of representation for the species. Evidence indicates that the smaller analysis areas within each larger area are connected genetically and demographically, such that they behave as metapopulations. In some cases, there are differences in risk factors related to land uses, and human population concentrations that facilitated the SSA analysis, particularly with respect to those risk factors. These smaller areas were simply used as a framework for conducting the SSA analysis. As explained below, they are not sufficiently distinct to be considered areas of representation for the species.

The three individual analysis areas within the Northern Plains (Loess Canyons, Sandhills, and Niobrara analysis areas) are in close geographical proximity to one another, and existing information suggests that they share similar genetic characteristics. One example of ecological variation that unites these three analysis areas is that the timing and number of breeding attempts per season remains the same across all three Northern Plains analysis areas, but differs from the Southern Plains analysis areas (Service 2019, p. 98). Combined, the Northern Plains analysis areas represent about 40 percent of the known species range.

The three analysis areas within the Southern Plains (Red River, Arkansas River, and Flint Hills) were combined for similar reasons. The three southern analysis areas are adjacent, and may be one population, meaning that individuals in one of the smaller areas could potentially breed with individuals in the other southern analysis areas, but it is very unlikely they would have access to mates in either of the other areas of representation (*i.e.,* Northern Plains or New England). Existing information suggests that individuals within the Southern Plains analysis areas also share similar genetic characteristics. Combined, the Southern Plains analysis areas represent about 59 percent of the known species range, and individuals in this representative area may have genetic adaptations to warmer climates. For example, individuals in the Southern Plains analysis areas are known to become active earlier in the season than individuals in the Northern Plains analysis areas. Likewise, individuals in the Southern Plains analysis areas may potentially breed twice in one season and the young-of-year may breed in the same season they are born, unlike individuals in other parts of the range (Service 2019, p. 98).

The New England Analysis Area is relatively small with a total of only 42,431 acres on two islands but represents the only remaining population within the eastern portion of the historical range. Recent evidence suggests that the New England population may represent a genetically distinct population as compared to the Northern Plains and Southern Plains analysis areas. Although the New England Analysis Area is distinct from the other areas, they appear to share some genotypes. However, geographic isolation between the two areas will likely continue to differentiate them further, making them more distinct over time. The New England Analysis Area is the only portion of the species' range that is not threatened by projected climate changes.

The first question of the significant portion of the range analysis we address is the status or risk of extinction (*i.e.,* identifying portions where the species may currently be in danger of extinction) for each portion of the range. We considered whether the current condition of the species in any portion of the range (*i.e.,* the Northern Plains analysis areas, the Southern Plains analysis areas, and the New England Analysis Area) along with any threats acting in those areas cause that portion of the range to be in danger of extinction. We examined the following threats: Urban and suburban development, land use change, decreased carrion availability, competition with other scavengers, wind energy development, silviculture, oil and gas development, and increasing temperatures due to changing climate, as well as their cumulative effects for each of the three portions of the range.

In the Northern Plains representation area, although threats evaluated include urban and suburban development, most current American burying beetle populations are in rural areas and have potential risks associated with habitat loss due to agricultural land uses, and

these threats are the ones that we consider the most important drivers of the species' status in this representation area. All habitat alterations also have potential to affect carrion populations, competing scavenger populations, and carrion availability. Risks such as conversion to cropland, cedar expansion, and wind energy development also affect portions of the Northern Plains analysis areas. However, the large areas of known and potential habitat buffer the effects of most of these land use changes, and these threats are not known to currently cause population-level impacts to American burying beetles in the Northern Plains representation area. Likewise, given the large size of this representative area and the relatively small proportion of anticipated impacts from such activities, population-level impacts from these land use threats do not put the species at risk of extinction now and are not anticipated within the foreseeable future.

Our analysis of the available information on changes in climate indicates that, although the change in climate is occurring now, the impacts from climate change that are likely to put the species at risk of extinction will occur in the future. The combination of land use and climate-related risks do have potential to endanger Northern Plains populations within the foreseeable future. Under the RCP 4.5 emissions scenario, temperatures approach 93 to 95 °F in small areas of the Northern Plains analysis areas by the end of the mid-century time period, however, under the RCP 8.5 emissions scenario, temperatures approach 93 to 95 °F in most of the Northern Plains analysis areas by the end of the mid-century time period. Thus, after assessing the best available information, we conclude that the American burying beetle is not currently in danger of extinction within the Northern Plains representative area but is likely to become endangered in the foreseeable future.

Many of the same threats apply to the Southern Plains representation area as well: Urban and suburban development, land use change, decreased carrion availability, and competition with other scavengers. In the Southern Plains area most current American burying beetle populations are in rural areas and have potential risks associated with habitat loss due to agricultural land uses. Risks associated with grazing, silviculture, and oil and gas development also affect portions of the Southern Plains analysis areas. The large areas of known and potential habitat buffer the effects of most land use changes, and these threats are not known to currently cause population-level impacts to American burying beetles. Likewise, given the large size of these analysis areas and the relatively small proportion of anticipated impacts from such activities, population-level impacts from these land use threats are not anticipated within the foreseeable future. The Southern Plains analysis areas are currently experiencing the effects of climate change. However, the magnitude of the changes up to the present time are low enough that the species is not in danger of extinction. The bulk of the impact from climate change to these analysis areas occur in the future according to our analysis. Within the foreseeable future, *i.e.,* the mid-century time period (2040–2069), all Southern Plains analysis areas are expected to exceed threshold temperatures under both the RCP 4.5 and 8.5 emissions scenarios, likely resulting in extirpation of the American burying beetle from these areas. Thus, after assessing the best available information, we conclude that the American burying beetle is not currently in danger of extinction within the Southern Plains representative area but is likely to become endangered in the foreseeable future.

In the New England Analysis Area, threats from urban or suburban development affect populations in this area. However, ongoing active management in the New England Analysis Area, including ongoing provisioning of carcasses for the species, has minimized the impacts of these threats and has resulted in relatively stable populations within the New England Analysis Area. The large proportions of protected habitat in the New England Analysis Area and significant ongoing active management mitigate population-level impacts from current threats in this analysis area and the species is not in danger of extinction in this analysis area now. This ongoing management is expected to continue into the foreseeable future.

In the New England Analysis Area, the climate is colder than the other analysis areas and temperature increases have not approached any possible thresholds, and temperatures are not expected to exceed those thresholds within the foreseeable future. Future risks to the New England Analysis Area are related to limited population sizes and limited habitat. The population estimates on Block Island fluctuate between 200 and 1,000 individuals, and they are genetically isolated from any other populations. Continued management of the New England population helps maintain resiliency, but limited population size and genetic diversity are risks to future populations and additional habitat loss could reduce that population size. In some cases, where American burying beetles occur on lands with conservation easements or deed restrictions or owned by conservation organizations, existing regulatory mechanisms appear to be adequate. However, given the varied missions of these landowners, the level of protection varies and may change over time. Populations in the New England Analysis areas are expected to experience future threats from land use change because habitat is already very limited. Only about 2,000 acres of suitable habitat are available on Block Island, and much of the protection for this habitat is based on easements with time limits and not specifically related to the American burying beetle. Existing regulatory mechanisms do not adequately address those future threats to the American burying beetle in New England. Thus, after assessing the best available information, we conclude that the American burying beetle is not currently in danger of extinction within the New England Analysis Area but is likely to become endangered in the foreseeable future.

For each portion of the range, we found that the threats to the species, along with conservation measures that ameliorate these threats, do not cause a current danger of extinction for the species in any portion. For this reason, we find that the American burying beetle is not in danger of extinction throughout a significant portion of its range.

Determination of Status

Our review of the best scientific and commercial data available indicates that the American burying beetle meets the definition of a threatened species. Therefore, we are reclassifying the American burying beetle as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

II. Final Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the ''Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation'' of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the

Act to mean ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.'' Additionally, the second sentence of section 4(d) of the Act states that the Secretary ''may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants.'' Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (*see State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising its authority under section 4(d), the Service has developed a rule that is designed to address the American burying beetle's specific threats and conservation needs. Although the statute does not require the Service to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the American burying beetle. As discussed under Summary of Biological Status and Threats, the Service has concluded that the American burying beetle is likely to become in danger of extinction within the foreseeable future primarily due to the combined effects of land use change and the future impacts of climate change, which will make much of the current range uninhabitable by the species. The provisions of this 4(d) rule will promote conservation of the American burying beetle by encouraging management of the landscape in ways that meet both land management considerations and the conservation needs of the American burying beetle. The provisions of this rule are one of many tools that the Service will use to promote the conservation of the American burying beetle.

Provisions of the 4(d) Rule

The 4(d) rule prohibits all intentional take of the American burying beetle. The 4(d) rule prohibits incidental take of the species only where the Service has specifically tailored the prohibition of incidental take in each of the three geographic areas that the American burying beetle occupies. In the New England and Northern Plains analysis areas, incidental take is prohibited only in suitable habitat when the take is the result of soil disturbance. Suitable habitat is defined, consistent with the SSA Report (Service 2019), as areas where suitable soils contain the appropriate abiotic elements (*e.g.,* soil temperature, soil moisture, particle size, etc.) that are favorable for excavation and formation of brood chambers and where appropriate carrion for reproduction is available. This suitable habitat accounts for breeding, feeding, overwintering, and dispersal needs. Areas that are regularly tilled, vegetation maintained at less than 8 inches through regular mowing, wetland areas with standing water or saturated soils, or urban areas with paved surfaces are examples of lands considered unfavorable for use by American burying beetles. Soil disturbance means movement or alteration of soil associated with modifying the existing land use. Soil disturbance includes actions such as grading, filling, soil excavating or topsoil stripping. Soil disturbance also includes non-physical alterations such as chemical treatment, including ground or soil sterilizers, and pesticides that would make the habitat unsuitable. However, typical agricultural levels of applications like liming or fertilizer should not affect American burying beetles, and we do not intend to regulate such practices.

Because incidental take stemming from normal livestock ranching and grazing activities is not expected to have an appreciable negative impact on the species, and retaining land uses associated with ranching or grazing (rather than converting the land to row crops) provides potential habitat for the species, we are not prohibiting any incidental take associated with ranching and grazing. Ranching and grazing means activities involved in grazing livestock (*e.g.,* cattle, bison, horse, sheep, goats or other grazing animals) such as: Gathering of livestock; construction and maintenance of fences associated with livestock grazing; installation and maintenance of corrals, loading chutes, and other livestock working facilities; development and maintenance of livestock watering facilities; placement of supplements such as salt blocks for grazing livestock; and, when associated with livestock grazing, the control of noxious weeds, haying, mowing, and prescribed burning. Ranching and grazing does not include any form of tillage, conversion of grassland to cropland, or management of cropland.

In the Southern Plains analysis areas, incidental take is prohibited only on certain conservation lands, as defined below under Regulation Promulgation. However, within these conservation lands, activities conducted in compliance with Service-approved conservation plans that result in take of the species are not prohibited. For example, on conservation lands in the Southern Plains analysis areas managed by the Department of Defense, certain activities that result in incidental take are not prohibited if those activities are in compliance with a Service-approved integrated natural resources management plan.

In addition to intentional take and some forms of incidental take, the 4(d) rule also prohibits activities related to possession and other acts with unlawfully taken American burying beetles, import and export of the species, activities related to shipping or delivering the species in interstate or foreign commerce, and the sale or offering to sell of the species. These activities are generally prohibited for endangered wildlife. We have determined that it is appropriate to extend the Act's protections to these activities as well for the American burying beetle.

This 4(d) rule tailors the Act's protections to allow activities that have only minor or temporary effects and are unlikely to affect the resiliency of American burying beetle populations or viability of the species. The risks for American burying beetle populations are different for each region of the

country, and risks that may be minor for one population could affect the resiliency of others. For example, urban expansion is a minor risk for larger populations in Oklahoma, but is a substantial risk for the small Block Island population in Rhode Island. The 4(d) rule includes protection of habitat related to soil disturbance activities on Block Island because suitable habitat is limited (only about 2,000 acres) and protecting habitat is necessary for the conservation of this population.

Although threats vary in type and degree across the American burying beetle's range, those related to land use activities and climate change continue to impact the species. Habitat loss or alteration related to land use activities is ongoing in all American burying beetle populations, but the impacts of these habitat losses is minor for most analysis areas with the exception of the Loess Canyons and New England populations. Impacts from changing climate are ongoing as well, and populations in the Southern Plains analysis areas are projected to be extirpated within 20 to 30 years, as described above (Service 2019).

Provisions of the 4(d) Rule in the New England Analysis Area

Within the New England Analysis Area, we prohibit incidental take only if it occurs in suitable habitat and is the result of soil disturbance, as defined below under Regulation Promulgation, which includes converting suitable habitat from an existing land use to a different land use. The species persistence in the New England Analysis Area is dependent upon active management occurring on two small coastal islands. A large percentage of land mass in the New England Analysis Area is protected in some form, and American burying beetles occur on many lands with conservation easements or deed restrictions or owned by conservation organizations; municipal, State, and Federal agencies; and private land trusts. However, existing land protections are not comprehensive for the American burying beetle. Given the varied missions of these landowners, the level of protection varies and may change over time. Although some minimal level of take may occur incidental to ranching and grazing, the effects of such land uses serve to maintain suitable habitat for the species. Urban and suburban expansion and development activities can lead to soil disturbance that may lead to incidental take of the species. Habitat conversion further limits the habitat available to American burying beetles in the New England Analysis Area.

The population in the New England Analysis Area is proportionally more sensitive and vulnerable to impacts than the other analysis areas, because it is limited to two small coastal islands, and the species' persistence on one or both of the islands is likely dependent on management, particularly captive breeding, reintroduction, and the provisioning of carrion. Thus, urban and suburban expansion represent substantial risks to the future viability of the species in this area. Limiting the prohibition to suitable habitat is sufficient as any beetles occupying unsuitable habitat would be very few in number and possibly either lost to the population or not of value to the population.

In addition, activities by State or Federal government agencies related to wildlife management that result in incidental take of American burying beetles is not prohibited in the New England Analysis Area.

Provisions of the 4(d) Rule in the Northern Plains Analysis Areas

Within the Northern Plains analysis areas, we prohibit incidental take only if it occurs in suitable habitat and is the result of soil disturbance, which includes converting habitat from an existing land use to a different land use, as defined below under Regulation Promulgation. The combined impacts of urban expansion and agriculture (primarily conversion to cropland) are expected to affect 5–15% of the suitable habitat in the Northern Plains (Service 2019). Potential impacts related to wind energy expansion are likely (additional information provided in the SSA Report and proposed rule), but additional information is needed to fully evaluate the potential effects to habitat and carrion availability. Only low percentages of the Northern Plains analysis areas are protected, with only one large protected area that supports significant numbers of American burying beetles. Thus, we find that land use changes like urban expansion and agricultural land conversion to cropland (combined with other risks such as cedar expansion as discussed in the proposed rule) represent risks to the future viability of the species in this area.

However, incidental take that is the result of normal grazing and livestock activities is not prohibited. In addition, activities by State or Federal government agencies related to wildlife management that result in incidental take of American burying beetles is not prohibited. Grasslands in the Northern Plains support relatively high-density populations of American burying beetles that have high resiliency. Ranching, grazing, and wildlife management activities in this area are generally compatible with conservation of this species, as these land uses help maintain native grassland habitats (see chapters 4 and 5 in the SSA Report; Service 2019) important for American burying beetle conservation. Based on the analysis of climate change impacts in the SSA Report (Service 2019), we believe it is possible that the Northern Plains may support the only remaining self-sustaining populations with moderate or high resiliency by the mid-century time period. Therefore, protecting existing habitat in the Northern Plains is important for the future viability of the species. Although there may be some minimal level of take incidental to ranching, grazing, and wildlife management activities, the effects of such land uses serve to maintain suitable habitat for the species and prevent more extensive soil disturbance than would occur with other land use changes such as farming or urban development.

Provisions of the 4(d) Rule in the Southern Plains Analysis Areas

Within the Southern Plains analysis areas on defined conservation lands, see below under Regulation Promulgation, incidental take is exempted if it occurs in compliance with a Service-approved management plan, such as an integrated natural resources management plan (INRMP), that includes conservation measures for the American burying beetle. Outside of defined conservation lands, incidental take is not prohibited because the Southern Plains Analysis Area currently has low risks to the species associated with land development. The combined permanent loss of habitat projected due to urban and agricultural expansion is less than 2 percent (Service 2019).

Currently, conservation lands provide relatively large protected areas of habitat with good populations; these lands would potentially serve as sources of American burying beetles for relocation and reintroduction efforts in areas that are projected to have future climate conditions that would be expected to sustain the species. We define ''conservation lands'' as lands included within the existing boundaries of Fort Chaffee in Arkansas (approximately 64,000 acres) and McAlester Army Ammunition Plant (approximately 45,000 acres) and Camp Gruber/Cherokee Wildlife Management Area (approximately 64,000 acres), both in Oklahoma. These areas have defined

boundaries and management that is compatible with recovery for the American burying beetle; however, that management is not intentionally being conducted for American burying beetles, and monitoring and management would likely cease at some sites without the incidental take protections in place specific to the species. Active management and monitoring in these conservation lands is considered important to help support recovery by serving as source populations for relocation and reintroduction efforts of American burying beetle populations, for as long as they sustain beetle populations.

Land use changes such as urban development and conversion to agricultural lands that cause habitat loss and fragmentation are a minor risk in Southern Plains analysis areas. These activities are not considered a threat to the species in this area because the combined permanent loss of habitat projected due to urban and agricultural expansion is less than 2 percent of these large analysis areas and is unlikely to affect the viability of the species in these areas (Service 2019). Large areas of suitable habitat, combined with low levels of projected land use change, and relatively large areas of protected habitat indicate that impacts to habitat are not likely to affect the viability of the species in these areas.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: Scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

The Service recognizes the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Service in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Service shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve American burying beetles that may result in otherwise prohibited take for wildlife without additional authorization.

Nothing in this 4(d) rule changes in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the American burying beetle. However, interagency cooperation will be further streamlined through programmatic consultations for the species between Federal agencies and the Service. A programmatic consultation has been developed (see *https://www.fws.gov/southwest/es/oklahoma/default.htm*) to allow Federal agencies to consult using the 4(d) rule in a streamlined manner for all Federal actions that can comply with the 4(d) rule.

Required Determinations

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* and upon request from the Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Fish and Wildlife Service's Species Status Assessment Team and the Oklahoma Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entries for ''Beetle, American burying'' under ''INSECTS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
INSECTS				

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	* *	* *		* *
Beetle, American burying	*Nicrophorus americanus*	Wherever found, except where listed as an experimental population.	T	54 FR 29652, 7/13/1989; 85 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS], 10/15/2020; 50 CFR 17.47(d).[4d]
Beetle, American burying	*Nicrophorus americanus*	In southwestern Missouri, the counties of Cedar, St. Clair, Bates, and Vernon.	XN	77 FR 16712, 3/22/2012; 50 CFR 17.85(c).[10j]
*	* *	* *		* *

■ 3. Amend § 17.47 by adding paragraph (d) to read as follows:

§ 17.47 Special rules—insects.

* * * * *

(d) American burying beetle (*Nicrophorus americanus*)—(1) *Prohibitions.* The following prohibitions apply to the American burying beetle:

(i) *Take of the American burying beetle.* Take of the American burying beetle, except that take that is incidental to otherwise lawful activity (incidental take) is prohibited only when the take occurs on suitable American burying beetle habitat:

(A) In the New England and Northern Plains Analysis Areas where the incidental take results from soil disturbance; or

(B) In the Southern Plains Analysis Areas where the incidental take occurs on defined conservation lands, except where incidental take is in compliance with a Service-approved conservation plan.

(ii) *Possession and other acts with unlawfully taken American burying beetles.* It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any American burying beetle that was taken in violation of paragraph (d)(1)(i) of this section or State law. Notwithstanding the preceding sentence, Federal and State law enforcement officers may possess, deliver, carry, transport, or ship any American burying beetle taken in violation of the Act as necessary in performing their official duties.

(iii) *Import and export of the American burying beetle.* It is unlawful to import or export the American burying beetle.

(iv) *Interstate or foreign commerce.* It is unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, the American burying beetle.

(v) *Sale or offer for sale.* It is unlawful to sell or to offer for sale in interstate or foreign commerce any American burying beetle.

(2) *Exceptions from prohibitions.* (i) Any employee or agent of the Service or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take American burying beetles, provided that, for State conservation agencies, the American burying beetle is covered by an approved cooperative agreement to carry out conservation programs.

(ii) Federal or State government agencies may incidentally take American burying beetles when conducting wildlife management activities in the Northern Plains Analysis Areas.

(iii) Incidental take of American burying beetles resulting from ranching and grazing activities is allowed.

(3) *Definitions.* For the purposes of this paragraph (d), we define the following terms:

(i) *Conservation lands* means lands included within the existing boundaries:

(A) In Arkansas, of Fort Chaffee (approximately 64,000 acres); and

(B) In Oklahoma, of McAlester Army Ammunition Plant (approximately 45,000 acres) and Camp Gruber/Cherokee Wildlife Management Area (approximately 64,000 acres).

(ii) *New England Analysis Area* means Block Island in Rhode Island and Nantucket Island in Massachusetts.

(iii) *Northern Plains Analysis Areas* means portions of Nebraska and South Dakota, as presented in the map at paragraph (d)(4) of this section, to initially include an 18.6-mile buffer around each capture location to determine the outside boundaries of the analysis area. For specific information regarding whether a parcel of land is inside the Northern Plains Analysis Areas, contact your local Service ecological services field office. Field office contact information may be obtained from the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(iv) *Ranching and grazing* means activities involved in grazing livestock (*e.g.,* cattle, bison, horse, sheep, goats, or other grazing animals) such as: Gathering of livestock; construction and maintenance of fences associated with livestock grazing; installation and maintenance of corrals, loading chutes, and other livestock working facilities; development and maintenance of livestock watering facilities; placement of supplements such as salt blocks for grazing livestock; and, when associated with livestock grazing, the control of noxious weeds, haying, mowing, and prescribed burning. Ranching and grazing does not include any form of farming, conversion of grassland to cropland, or management of cropland.

(v) *Soil disturbance* means movement or alteration of soil. Soil disturbance includes actions such as grading, filling, soil excavating, or topsoil stripping. Soil disturbance also includes non-physical alterations such as chemical treatment.

(vi) *Southern Plains Analysis Areas* means portions of Arkansas, Kansas, Oklahoma, and Texas, as presented in the map at paragraph (d)(4) of this section, to initially include an 18.6-mile buffer around each capture location to determine the outside boundaries of the analysis area. For specific information regarding whether a parcel of land is inside the Southern Plains Analysis Areas, contact your local Service ecological services field office. Field office contact information may be obtained from the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(4) *Map of American Burying Beetle Analysis Areas.*

Figure 1 to Paragraph (d)(4)

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–19810 Filed 10–14–20; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register

Vol. 85, No. 200

Thursday, October 15, 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.

FEDERAL RESERVE SYSTEM

12 CFR Part 271

Rules Regarding Availability of Information

AGENCY: Federal Open Market Committee (Committee), Federal Reserve System.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The Committee is inviting comment on a notice of proposed rulemaking (proposal) that would amend the Committee's Rules Regarding Availability of Information (Committee's Rules). The amendments clarify and update the Committee's regulations implementing the Freedom of Information Act (FOIA) by streamlining its regulations and incorporating guidance from the Department of Justice (DOJ).

DATES: Comments must be received by December 14, 2020.

ADDRESSES: You may submit comments, identified by ''*Part 271 Rules Regarding Availability of Information,*'' by any of the following methods:

- *Email: fomcregs.comments@frb.gov.* Include ''*Part 271 Rules Regarding Availability of Information*'' in the subject line of the message.
- *Fax:* (202) 452–2921.
- *Mail:* Matthew Luecke, Deputy Secretary of the Committee, Federal Open Market Committee, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Committee's website at *https://www.federalreserve.gov/foia/fomc/readingrooms.htm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed in paper upon request by calling (202) 973–7400 to receive copies of the comments by mail.

FOR FURTHER INFORMATION CONTACT: Matthew Luecke, Deputy Secretary of the Committee, (202) 452–2576, Federal Open Market Committee, 20th Street and Constitution Avenue NW, Washington, DC 20551; Misty M. Kheterpal, Senior Counsel, (202) 452–2597, or Eric Stitely, Senior Attorney, (202) 872–4944; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this proposed revision of the Committee's Rules is to set forth more clearly the procedures for requesting access to documents that are records of the Committee under the FOIA. The proposal also revises certain definitions to be consistent with language from the FOIA and DOJ guidance [1] and to conform to the Committee's current FOIA practices. The Committee is also proposing to reorganize the format of its rules for clarity by organizing the regulations into three subparts. Subpart A, consisting of §§ 271.1 through 271.4, will contain general provisions and definitions of terms used throughout part 271. Subpart B, consisting of §§ 271.10 through 271.16, will implement the FOIA and lay out the requirements and procedures for requesting records from the Committee. Subpart C, consisting of § 271.20, will set forth the procedures with respect to subpoenas. These provisions and changes are described in more detail below.

II. Description of the Proposal

A. Subpart A—General

Subpart A describes the authority, purpose, and scope of the regulation and includes new or revised definitions for the terms used in the regulation. Subpart A also has a new section, § 271.3, which describes the process for certification and service of subpoenas. Finally, § 271.4, which describes prohibitions against disclosure, was formerly part of § 271.7(e) and has been moved to Subpart A for clarity.

[1] *https://www.justice.gov/oip/template-agency-foia-regulations.* The DOJ Guidance incorporates requirements found in the FOIA Improvement Act of 2016 (Pub. L. 114–185).

§ 271.1 Authority, Purpose, and Scope

While § 271.1 largely tracks the current § 271.1, the Committee has made changes to improve the language and organization of the section.

§ 271.2 Definitions

Section 271.2 contains the definitions of key terms used throughout part 271. The Committee's proposal to § 271.2 adds new terms and clarifies certain existing terms. In addition, the Committee proposes moving all terms related to the fees for processing a FOIA request, such as ''commercial use request,'' ''direct costs,'' ''duplication,'' ''educational institution,'' ''noncommercial scientific institution,'' ''representative of the news media,'' and ''review'' to the general fees section at § 271.16. The Committee's proposed changes to these fees-related definitions are discussed in more depth in the Fees section below.

The Committee proposes adding new definitions for three new terms (''Committee,'' ''exempt information,'' and ''working day''). The Committee also proposes modifying the definitions of ''records of the Committee'' and ''search'' to clarify the full scope of those terms and to conform the terms with current Committee practices to facilitate the orderly processing of requests. Finally, the Committee proposes deleting the definition ''information of the committee'' as no longer necessary in light of the revision made in § 271.2(e).

§ 271.2(b) Committee Committee means the Chairman of the Committee or his designee.

§ 271.2(c) Exempt information The Committee proposes adding the term ''exempt information'' to emphasize that the term applies to information subject to an exemption under the FOIA.

§ 271.2(e) Records of the Committee The Committee's revised definition of this term updates the description of records by incorporating language from the definition of ''information of the committee'' to better clarify the types of records the public can request under the FOIA.

§ 271.2(f)(1) Search The proposed changes simplify the definition of ''search'' by moving the part of the definition relating to computing fees to § 271.16, which discusses the fee schedule.

§ 271.2(g) Working day The Committee proposes adding a definition of ''working day'' to clarify time limits in accordance with the FOIA. 5 U.S.C. 552(a)(6)(A)(i).

§ 271.3 Certification of Record; Service of Subpoenas or Other Process

A new § 271.3 will be added to subpart A to add language clarifying that the secretary of the Committee may certify the authenticity of any Committee record and is authorized to accept service of subpoenas or other judicial process.

§ 271.4 Prohibition Against Disclosure

A new § 271.4 will be added to subpart A to emphasize the general prohibition on disclosure of the Committee's exempt information by Board or Reserve Bank staff. This provision is currently included in § 271.7(e).

B. Subpart B—Published Information and Records Available to Public; Procedures for Requests

Subpart B implements the FOIA and sets forth the procedures for requesting records from the Committee.

§ 271.10 Published Information

This revised section (currently § 271.3) is modified to combine similar information from current §§ 271.3 and 271.4 into one section. Since it is the first section in subpart B, it will be renumbered to § 271.10. Section 271.10 lists and explains the various types of information that are readily available to the public in the **Federal Register** or in the Committee's electronic reading room. The proposed regulations revise the regulations in four ways. First, the Committee proposes shortening the list of items published in the **Federal Register** by replacing the item listed in original paragraph (a)(6) with *Other notices as required by law* in order to add flexibility in the event of new required reports. Second, the Committee proposes removing the paragraph regarding the *Annual report to Congress* due to the ready availability of this information on the Board's public website. Third, the Committee proposes moving the information from paragraph (c) regarding *Other published information* into paragraph (b) *Publicly available information;* specifically, the information will be under paragraph (b)(1) about the Committee's electronic reading room. Finally, the Committee will consolidate duplicative material in current § 271.4 into § 271.10(b). The FOIA statute requires certain information be made available for public inspection. Currently, the Committee's regulations summarize under current § 271.4 that ''records described in 5 U.S.C. 552(a)(2)'' will be made available for inspection in electronic format. In order to be more transparent, the Committee will now list out the specific types of information from 5 U.S.C. 552(a)(2) in § 271.10(b)(1)(i) through (v). In particular, § 271.10(b)(1) will explain what information is available in the Committee's electronic reading room, § 271.10(b)(2) will explain which publicly available filings may be made available at Reserve Banks, and § 271.10(b)(3) will contain the existing provision from current § 271.4(d) authorizing the Committee to delete personal privacy details prior to disclosure.

§ 271.11 Records Available to the Public Upon Request

This revised section (currently § 271.5) is modified to separate the mechanics of making a request (new § 271.11(a)) from the contents of the request (new § 271.11(b)). Specifically, information about how the request should reasonably describe records will now be covered in the contents of the request instead of in the section describing the procedures for making a request. In addition, the Committee proposes adding language to clarify that a request for records cannot be combined with any other request submitted to the Committee. Finally, § 271.11(c) will include information about what constitutes a perfected request in addition to the current information about defective requests.

§ 271.12 Processing Requests

The substance of current § 271.6 relating to processing requests is largely unchanged, although some clarifying language has been added. This section (newly numbered § 271.12) contains information on tracking and time limits. In addition, the Committee proposes clarifying that its time period for responding to a request begins when it receives a perfected request that includes all required information. Responses to requests, currently in § 271.6, will be moved to the next section, § 271.13. Matters related to appeals, also currently included in § 271.6, will be moved to a later section, § 271.14. Further changes to § 271.12 include incorporating language from DOJ guidance into §§ 271.12(c) (''Expedited Processing'') and (e) (''Time Limits'').

§ 271.13 Responses to Requests

While the majority of the language in the proposal reflects the current regulation regarding responses to requests, § 271.13 is reorganized and includes a few substantive edits. Section 271.13(a) will clarify that the search for responsive records, and therefore the start of the response time clock, will begin once the Committee has received a perfected request. The language will also be revised to explain that the search for responsive records will be of Committee records in existence as of the date of the search. The foreseeable harm standard language currently in § 271.7(a) will be moved to § 271.13(c) and the discussion of segregability, now in § 271.7(b), will be moved to § 271.13(d) to reflect the sequential process that the Committee takes when it processes a FOIA request. The Committee proposes editing § 271.13(e)(3) (currently § 271.6(e)(3)) to conform to the DOJ guidance, mainly to specify that the Committee will provide the requester with an estimate of the amount of information withheld unless the amount of information withheld is indicated by deletions marked on the documents that are produced in part or if providing an estimate would harm an interest protected by an exemption. Section 271.13(f) will set out with additional specificity what determinations are considered ''adverse determinations'' that can be appealed. Finally, the Committee proposes editing § 271.13(g) (currently § 271.6(g)) to indicate that the Committee will typically send responsive records via email unless otherwise agreed upon by the Committee and the requester.

§ 271.14 Appeals

The Committee proposes adding a new section, § 271.14, for Appeals, which was previously discussed in § 271.6(h). Section 271.14(a)(1) will now specifically include information about how to appeal the denial of expedited treatment. Further, the time period of 90 days for a requester to file an appeal is being added to conform to the FOIA statute and DOJ guidance. Finally, the Committee proposes adding § 271.14(c) to explain that the Committee may reconsider an adverse determination if intervening circumstances or additional facts come to the attention of the Committee.

§ 271.15 Exemptions From Disclosure

Section 271.15 lists the exemptions available under the FOIA, currently located in § 271.7. The Committee proposes simplifying the language related to exemption (b)(3) of the FOIA, 5 U.S.C. 552(b)(3), to incorporate rather than repeat the statutory language. In addition, language restricting the Committee's use of exemption (b)(5) of

the FOIA, 5 U.S.C. 552(b)(5), will be moved from the introductory paragraph of the exemptions section into the section describing the specific exemption, § 271.15(a)(5). The Committee also proposes adding clarifying information to § 271.15(b) which discusses the circumstances under which the Committee may make a discretionary release of exempt information. For example, the Committee proposes moving language currently in § 271.7(c), which permits the Committee to make discretionary disclosures of any material that is exempt under FOIA, into § 271.15(b)(1). The Committee also proposes adding paragraph (b)(2) to explain that the Committee's prior release of particular exempt information does not waive the Committee's ability to withhold similar exempt information in response to the same or a different request. Section 271.15(c) is mostly unchanged from the current provision (§ 271.7(d)) regarding delayed release of information.

§ 271.16 Fee Schedules; Waiver of Fees

Proposed § 271.16 sets forth various provisions relating to the fees applicable to requests for records and also provides the proposed fee schedule in a table. The Committee proposes several changes to the current fee provisions. First, the Committee proposes adding language to § 271.16(a) (currently § 271.9(a)) to emphasize that the fee schedules will be applied in a manner consistent with the limitations set forth in 5 U.S.C. 552(a)(4)(A)(viii), which reference the Committee's compliance with the response time limit and also address unusual circumstances. Second, the Committee proposes adding § 271.16(b) to address the definitions for search time, direct costs, duplication, and review, which have been modified to provide greater clarity. Third, the Committee proposes removing from § 271.16(c)(1) any reference to a dollar threshold for when the Committee will give advance notification of fees. Fourth, proposed § 271.16(d) will define the different categories of requesters, which are currently found in § 271.2 (''Definitions''). The Committee believes that these definitions are better grouped in the fees section so that users only have to reference a single section in order to determine the fee category for which they qualify. The proposal updates the definitions for ''representative of the news media,'' ''educational institution,'' and ''noncommercial scientific institution'' to be consistent with the FOIA and DOJ guidance. The Committee will also set out a fee schedule in chart form in place of the current regulatory language so that users can more easily determine which fees apply. Finally, the Committee proposes modifying § 271.16(g) (currently § 271.9(f)) to include DOJ guidance language regarding the conditions for a waiver or reduction of fees.

C. Subpart C—Subpoenas, Orders Compelling Production, and Other Process

Subpart C sets forth the procedures with respect to subpoenas, orders compelling productions, and other process.

§ 271.20 Subpoenas, Orders Compelling Production, and Other Process

Information addressing the actions required of any individual who is served with a subpoena, order, or other judicial or administrative process requiring production of exempt information of the Committee is currently in § 271.8. The Committee proposes moving this section into newly created subpart C under § 271.20. The Committee proposes minor clarifying revisions to this section in order to update the process to conform to current Committee practice. The Committee also proposes adding language to make clear that the Committee does not expect parties to defy court orders where the Committee has had an opportunity to appear and oppose disclosure of its information.

III. Administrative Law Matters

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* the Committee is publishing an initial regulatory flexibility analysis (''IRFA'') of the proposal.[2] The RFA generally requires each federal agency to prepare an IRFA in connection with the promulgation of a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Under regulations issued by the Small Business Administration (''SBA''), a small entity includes a depository institution, bank holding company, or savings and loan holding company with average total assets of $600 million or less and trust companies with average total assets of $41.5 million or less.[3]

Based on the Committee's analysis, and for the reasons stated below, the Committee believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Committee will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* The proposed rule updates the procedures for requesting access to documents that are records of the Committee under the FOIA, which authorizes the release of information. Specifically, the amendments clarify and update the Committee's regulations implementing the FOIA by streamlining its regulations and incorporating guidance from the DOJ.

2. *Small entities affected by the proposed rule.* Like the Committee's current part 271 regulation, the requirements set forth in the proposed rule with respect to requests for Committee records under the FOIA apply equally to all persons and to all entities regardless of their size. The proposal, which in part introduces organizational changes to clarify the Committee's FOIA regulation, does not impose economic effects on FOIA requesters, including any FOIA requesters that would be small entities. Notably, under the FOIA, fees for processing FOIA requests must be limited to reasonable standard charges.

3. *Recordkeeping, reporting, and compliance requirements.* The proposal does not impose any reporting, recordkeeping, or other compliance requirements on persons or entities, including small entities. The proposed rule only makes technical changes to the process for requesting Committee information. This streamlining does not materially affect any reporting requirements associated with how the Committee processes FOIA requests. For these reasons, the proposal does not impose any reporting, recordkeeping, or other compliance requirements on persons or entities, including small entities.

4. *Other Federal rules.* The Committee does not believe that the proposal duplicates, overlaps, or conflicts with any other Federal rules.

5. *Significant alternatives to the proposed revisions.* The Committee does not believe that there are other significant alternatives to the proposed rule which accomplish its stated objectives.

Paperwork Reduction Act

There is no collection of information required by this proposal that would be

[2] 5 U.S.C. 603.

[3] 84 FR 34261 (July 18, 2019). Pursuant to SBA regulations, the asset size of a concern includes the assets of the concern whose size is at issue and all of its domestic and foreign affiliates. 13 CFR 121.103(a)(6).

subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires each federal banking agency to use plain language in all rules published after January 1, 2000. In light of this requirement, the Committee believes this proposal is presented in a simple and straightforward manner and is consistent with this ''plain language'' directive.

List of Subjects in 12 CFR Part 271

Federal Open Market Committee, Freedom of information.

Authority and Issuance

For the reasons set forth in the **SUPPLEMENTARY INFORMATION**, the Federal Open Market Committee proposes to revise 12 CFR part 271 to read as follows:

PART 271—RULES REGARDING AVAILABILITY OF INFORMATION

Subpart A—General

Sec.
271.1 Authority, purpose, and scope.
271.2 Definitions.
271.3 Certification of record; service of subpoenas or other process.
271.4 Prohibition against disclosure.

Subpart B—Published Information and Records Available to Public; Procedures for Requests

271.10 Published information.
271.11 Records available to the public upon request.
271.12 Processing requests.
271.13 Responses to requests.
271.14 Appeals.
271.15 Exemptions from disclosure.
271.16 Fee schedules; waiver of fees.

Subpart C—Subpoenas, Orders Compelling Production, and Other Process

271.20 Subpoenas, orders compelling production, and other process.

Authority: 5 U.S.C. 552; 12 U.S.C. 263.

Subpart A—General

§ 271.1 Authority, purpose, and scope.

(a) *Authority and purpose.* This part establishes mechanisms for carrying out the Federal Open Market Committee's (Committee) statutory responsibilities relating to the disclosure, production, or withholding of information. In this regard, the Committee has determined that the Committee, or its delegees, may disclose exempt information of the Committee, in accordance with the procedures set forth in this part, whenever it is necessary or appropriate to do so in the exercise of any of the Committee's authorities, including but not limited to authority granted to the Committee in the Freedom of Information Act, 5 U.S.C. 552, and section 12A of the Federal Reserve Act, 12 U.S.C. 263. The Committee has determined that all such disclosures made in accordance with the rules and procedures specified in this part are authorized by law. This part also sets forth the categories of information made available to the public, the procedures for obtaining information and records, the procedures for limited release of exempt information, and the procedures for protecting confidential business information.

(b) *Scope.* (1) Subpart A of this part contains general provisions and definitions of terms used in this part.

(2) Subpart B of this part implements the Freedom of Information Act (FOIA) (5 U.S.C. 552).

(3) Subpart C of this part sets forth the procedures with respect to subpoenas, orders compelling production, and other process.

§ 271.2 Definitions.

For purposes of this part:

(a) *Board* means the Board of Governors of the Federal Reserve System established by the Federal Reserve Act of 1913 (38 Stat. 251).

(b) *Committee* means the Chairman of the Committee or the Chairman's designee.

(c) *Exempt information* means information that is exempt from disclosure pursuant to § 271.15(a).

(d) *Federal Reserve Bank* or *Reserve Bank* means one of the District Banks authorized by the Federal Reserve Act, 12 U.S.C. 222, including any branch of any such bank.

(e) *Records of the Committee* or *Committee records* include all information coming into the possession of the Committee or any member thereof or of any officer, employee, or agent of the Committee, the Board, or any Federal Reserve Bank, in the performance of duties for, or pursuant to the direction of, the Committee. These records include rules, statements, decisions, minutes, memoranda, letters, reports, transcripts, accounts, charts, and other written material.

(f)(1) *Search* means a reasonable search of such records of the Committee as seem likely in the particular circumstances to contain information of the kind requested.

(2) As part of the Committee's search for responsive records, the Committee is not obligated to conduct any research, create any document, or modify an electronic program or automated information system.

(g) *Working day* means any day except Saturday, Sunday, or a legal Federal holiday.

§ 271.3 Certification of record; service of subpoenas or other process.

(a) *Certification of record.* The secretary of the Committee may certify the authenticity of any Committee record, or any copy of such record, for any purpose, and for or before any duly constituted Federal or state court, tribunal, or agency.

(b) *Service of subpoenas or other process.* Subpoenas or other judicial or administrative process demanding access to any Committee records or making any claim against the Committee or against Committee members or staff in their official capacity shall be addressed to and served upon the Secretary of the Committee, Federal Open Market Committee, 20th Street & Constitution Avenue NW, Washington, DC 20551. The Committee does not accept service of process on behalf of any employee in respect of purely private legal disputes.

§ 271.4 Prohibition against disclosure.

Except as provided in this part or as otherwise authorized, no officer, employee, or agent of the Board or any Reserve Bank shall disclose or permit the disclosure of any exempt information of the Committee to any person other than Board or Reserve Bank officers, employees, or agents properly entitled to such information in the performance of duties for, or pursuant to the direction of, the Committee.

Subpart B—Published Information and Records Available to Public; Procedures for Requests

§ 271.10 Published information.

(a) **Federal Register**. The Committee publishes, or incorporates by reference, in the **Federal Register** for the guidance of the public:

(1) A description of its organization;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of procedures;

(3) Rules of procedure;

(4) Substantive rules, interpretations of general applicability, and statements of general policy formulated and adopted by the Committee;

(5) Every amendment, revision, or repeal of the foregoing in paragraphs (a)(1) through (4) of this section; and

(6) Other notices as required by law.

(b) *Publicly available information*—(1) *Electronic reading room.* Information relating to the Committee, including its

open market operations, is made publicly available on the websites of the Board and the Federal Reserve Banks, as well as in the Committee's electronic reading room, *https://www.federalreserve.gov/foia/fomc/readingrooms.htm#rr1.* The Committee also makes the following records available in its electronic reading room.

(i) Final opinions, including concurring and dissenting opinions, as well as final orders and written agreements, made in the adjudication of cases.

(ii) Statements of policy and interpretations adopted by the Committee that are not published in the **Federal Register**.

(iii) Administrative staff manuals and instructions to staff that affect the public.

(iv) Copies of all records, regardless of form or format—

(A) That have been released to any person under § 271.11; and

(B)(*1*) That because of the nature of their subject matter, the Committee has determined have become or are likely to become the subject of subsequent requests for substantially the same records; or

(*2*) That have been requested three or more times.

(v) A general index of the records referred to in paragraph (b)(1)(iv) of this section.

(2) *Inspection in electronic format at Reserve Banks.* The Committee may determine that certain classes of publicly available filings shall be made available for inspection in electronic format only at the Reserve Bank where those records are filed.

(3) *Privacy protection.* The Committee may delete identifying details from any public record to prevent a clearly unwarranted invasion of personal privacy.

§ 271.11 Records available to the public upon request.

(a) *Procedures for requesting records.* (1) Requesters are encouraged to submit requests electronically using the online request form located at *www.federalreserve.gov/secure/forms/FOMCForm.aspx.* Alternatively, requests may be submitted in writing to the Secretary of the Committee, Federal Open Market Committee, 20th Street and Constitution Avenue NW, Washington, DC 20551; or sent by facsimile to the Secretary of the Committee, (202) 452–2921. Clearly mark the request FREEDOM OF INFORMATION ACT REQUEST.

(2) A request may not be combined with any other request or FOIA appeal.

(b) *Contents of request.* A request must include:

(1) The requester's name, address, daytime telephone number, and an email address if available.

(2) A description of the records that enables the Committee to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the Committee's operations. Whenever possible, the request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record.

(3) A statement agreeing to pay the applicable fees. If the information requested is not intended for a commercial use (as defined in § 271.16(d)(1)) and the requester seeks a reduction or waiver of fees because he or she is either a representative of the news media, an educational institution, or a noncommercial scientific institution, the requester should include the information called for in § 271.16(g)(2).

(c) *Perfected and defective requests.* (1) The Committee will consider the request to be perfected on the date the secretary of the Committee receives a request that contains all of the information required by paragraphs (b)(1) through (3) of this section.

(2) The Committee need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this section.

(3) The Committee may return a defective request, specifying the deficiency. The requester may submit a corrected request, which will be treated as a new request.

§ 271.12 Processing requests.

(a) *Receipt of requests.* Upon receipt of any request that satisfies the requirements set forth in § 271.11, the Committee shall assign the request to the appropriate processing schedule, pursuant to paragraph (b) of this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Committee by another agency or by a Federal Reserve Bank, is the date the secretary of the Committee actually receives the request.

(b) *Multitrack processing.* (1) The Committee provides different levels of processing for categories of requests under this section.

(i) Requests for records that are readily identifiable by the Committee and that have already been cleared for public release or can easily be cleared for public release may qualify for simple processing.

(ii) All other requests shall be handled under normal processing procedures, unless expedited processing has been granted pursuant to paragraph (c) of this section.

(2) The Committee will make the determination whether a request qualifies for simple processing. A requester may contact the Committee to learn whether a particular request has been assigned to simple processing. If the request has not qualified for simple processing, the requester may limit the scope of the request in order to qualify for simple processing by contacting the Committee in writing, by letter or email, or by telephone.

(c) *Expedited processing.* (1) A request for expedited processing may be made at any time. A request for expedited processing must be clearly labeled ''Expedited Processing Requested.'' The Committee will process requests and appeals on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information.

(2) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (c)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the Government activity involved in the request—one that extends beyond the public's right to know about Federal Government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ''urgency to inform'' the public on the topic. As a matter of administrative discretion, the Committee may waive the formal certification requirement.

(3) Within 10 calendar days of receipt of a request for expedited processing, the Committee will notify the requester of its decision on the request. A denial of expedited processing may be appealed to the Committee in accordance with § 271.14. The

Committee will respond to the appeal within 10 working days of receipt of the appeal.

(d) *Priority of responses.* The Committee will normally process requests in the order they are received in the separate processing tracks, except when expedited processing is granted in which case the request will be processed as soon as practicable.

(e) *Time limits.* The time for response to requests shall be 20 working days from when a request is perfected. Exceptions to the 20-day time limit are only as follows:

(1) In the case of expedited treatment under paragraph (c) of this section, the Committee shall give the expedited request priority over non-expedited requests and shall process the expedited request as soon as practicable.

(2) Where the running of such time is suspended for a requester to address fee requirements pursuant to § 271.16(c)(1) or (2).

(3) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B), the Committee may:

(i) Extend the 20-day time limit for a period of time not to exceed 10 working days, where the Committee has provided written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; and

(ii) Extend the 20-day time limit for a period of more than 10 working days where the Committee has provided the requester with an opportunity to modify the scope of the FOIA request so that it can be processed within that time frame or with an opportunity to arrange an alternative time frame for processing the original request or a modified request, and has notified the requester that the Committee's FOIA Public Liaison is available to assist the requester for purposes of this paragraph (e)(3)(ii) and in the resolution of any disputes between the requester and the Committee, and of the requester's right to seek dispute resolution services from the Office of Government Information Services.

§ 271.13 Responses to requests.

(a) When the Committee receives a perfected request, it will conduct a reasonable search of Committee records in its possession on the date the Committee's search begins and will review any responsive information it locates.

(b) If a request covers documents that were created by, obtained from, or classified by another agency, the Committee may refer the request for such documents to that agency for a response and inform the requester promptly of the referral. To the extent there is confidential supervisory information, as that term is defined by 12 CFR 261.2(b), contained within Committee records, disclosure of such information will be handled in consultation with the Board.

(c) In responding to a request, the Committee will withhold information under this section only if—

(1) The Committee reasonably foresees that disclosure would harm an interest protected by an exemption described in § 271.15(a); or

(2) Disclosure is prohibited by law.

(d) The Committee will take reasonable steps necessary to segregate and release nonexempt information.

(e) The Committee shall notify the requester of:

(1) The Committee's determination of the request;

(2) The reasons for the determination;

(3) An estimate of the amount of information withheld, if any. An estimate is not required if the amount of information is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;

(4) The right of the requester to seek assistance from the Committee's FOIA Public Liaison; and

(5) When an adverse determination is made, the Committee will advise the requester in writing of that determination and will further advise the requester of:

(i) The right of the requester to appeal any adverse determination within 90 calendar days after the date of the determination, as specified in § 271.14;

(ii) The right of the requester to seek dispute resolution services from the Committee's FOIA Public Liaison or from the Office of Government Information Services; and

(iii) The name and title or position of the person responsible for the adverse determination.

(f) Adverse determinations, or denials of requests, include decisions that the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited treatment.

(g) The Committee will normally send responsive, nonexempt documents to the requester by email but may use other means as arranged between the Committee and the requester or as determined by the Committee. The Committee will attempt to provide records in the format requested by the requester.

§ 271.14 Appeals.

(a) If the Committee makes an adverse determination as defined in § 271.13(f), the requester may file a written appeal with the Committee, as follows:

(1) The appeal should prominently display the phrase FREEDOM OF INFORMATION ACT APPEAL on the first page, and shall be sent directly to *FOMC-FOIA-Mailbox@frb.gov* or, if sent by mail, addressed to the Secretary of the Committee, Federal Open Market Committee, 20th Street and Constitution Avenue NW Washington, DC 20551; or sent by facsimile to the Secretary of the Committee, (202) 452–2921. If the requester is appealing the denial of expedited treatment, the appeal should clearly be labeled ''Appeal for Expedited Processing.''

(2) A request for records under § 271.11 may not be combined in the same letter with an appeal.

(3) To be considered timely, an appeal must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the adverse determination.

(b) Except as provided in § 271.12(c)(3), the Committee shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal by the Committee. If an adverse determination is upheld on appeal, in whole or in part, the determination letter shall notify the appealing party of the right to seek judicial review and of the availability of dispute resolution services from the Office of Government Information Services as a non-exclusive alternative to litigation.

(c) The Committee may reconsider an adverse determination, including one on appeal, if intervening circumstances or additional facts not known at the time of the adverse determination come to the attention of the Committee.

§ 271.15 Exemptions from disclosure.

(a) *Types of records exempt from disclosure.* Pursuant to 5 U.S.C. 552(b), the following records of the Committee are exempt from disclosure under this part.

(1) Any information that is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and is in fact

properly classified pursuant to the Executive order.

(2) Any information related solely to the internal personnel rules and practices of the Committee.

(3) Any information specifically exempted from disclosure by statute to the extent required by 5 U.S.C. 552(b)(3).

(4) Any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential.

(5) Inter- or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the Committee, provided that the deliberative process privilege shall not apply to records that were created 25 years or more before the date on which the records were requested.

(6) Any information contained in personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Any records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7).

(8) Any matter that is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, including a state financial institution supervisory agency.

(b) *Release of exempt information.* (1) Except where disclosure is expressly prohibited by statute, regulation, or order, the Committee may release records that are exempt from mandatory disclosure whenever the Committee determines that such disclosure would be in the public interest.

(2) The fact that the Committee has determined to release particular exempt information does not waive the Committee's ability to withhold similar exempt information in response to the same or a different request.

(c) *Delayed release.* Except as required by law, publication in the **Federal Register** or availability to the public of certain information may be delayed if immediate disclosure would likely:

(1) Interfere with accomplishing the objectives of the Committee in the discharge of its statutory functions;

(2) Interfere with the orderly conduct of the foreign affairs of the United States;

(3) Permit speculators or others to gain unfair profits or other unfair advantages by speculative trading in securities or otherwise;

(4) Result in unnecessary or unwarranted disturbances in the securities markets;

(5) Interfere with the orderly execution of the objectives or policies of other Government agencies; or

(6) Impair the ability to negotiate any contract or otherwise harm the commercial or financial interest of the United States, the Committee, any Federal Reserve Bank, or any department or agency of the United States.

§ 271.16 Fee schedules; waiver of fees.

(a) *Fee schedules.* Consistent with the limitations set forth in 5 U.S.C. 552(a)(4)(A)(viii), the fees applicable to a request for records pursuant to § 271.11 are set forth in table 1 to this section. These fees cover only the full allowable direct costs of search, duplication, and review. No fees will be charged where the average cost of collecting the fee (calculated at $5.00) exceeds the amount of the fee.

(b) *For purposes of computing fees.* (1) Search time includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Such activity is distinct from ''review'' of material to determine whether the material is exempt from disclosure.

(2) Direct costs mean those expenditures that the Committee actually incurs in searching for, reviewing, and duplicating records in response to a request made under § 271.11, as shown in table 1 to this section.

(3) Duplication refers to the process of making a copy, in any format, of a document.

(4) Review refers to the process of examining documents that have been located as being potentially responsive to a request for records to determine whether any portion of a document is exempt from disclosure. It includes doing all that is necessary to prepare the documents for release, including the redaction of exempt information. It does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Payment procedures.* The Committee may assume that a person requesting records pursuant to § 271.11 will pay the applicable fees, unless the request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (g) of this section.

(1) *Advance notification of fees.* If the estimated charges are likely to exceed the amount authorized by the requester, the secretary of the Committee shall notify the requester of the estimated amount. Upon receipt of such notice, the requester may confer with the secretary of the Committee to reformulate the request to lower the costs or may authorize a higher amount. The time period for responding to requests under § 271.12(e) and the processing of the request will be suspended until the requester agrees in writing to pay the applicable fees.

(2) *Advance payment.* The Committee may require advance payment of any fee estimated to exceed $250. The Committee may also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. The time period for responding to a request under § 271.12(e), and the processing of the request shall be suspended until the Committee receives the required payment.

(3) *Late charges.* The Committee may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest is at the rate prescribed in 31 U.S.C. 3717 and accrues from the date of the billing.

(d) *Categories of uses.* The fees assessed depend upon the intended use for the records requested. In determining which category is appropriate, the Committee will look to the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Committee may seek additional clarification before categorizing the request.

(1) A *commercial use requester* is one who requests records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation.

(2) *Representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience, including organizations that disseminate solely on the internet. The term ''news'' means information that is about current events or that would be of current interest to the public. A non-affiliated journalist who demonstrates a solid basis for expecting publication through a news media entity, such as a publishing contract or past publication record, will be considered as a representative of the news media.

(3) *Educational institution* is any school that operates a program of

scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. The Committee may seek verification from the requester that the request is in furtherance of scholarly research.

(1) *Noncommercial scientific institution* is an institution that is not operated on a ''commercial'' basis, as defined in paragraph (d)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.

(2) Please refer to table 1 to this section to determine what fees apply for different categories of users.

(e) *Nonproductive search.* Fees for search and review may be charged even if no responsive documents are located or if the request is denied.

(f) *Aggregated requests.* A requester may not file multiple requests at the same time, solely in order to avoid payment of fees. If the Committee reasonably believes that a requester is separating a single request into a series of requests for the purpose of evading the assessment of fees, the Committee may aggregate any such requests and charge accordingly. It is considered reasonable for the Committee to presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(g) *Waiver or reduction of fees.* A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents, as set forth in § 271.12(e), shall not begin until either a waiver has been granted or, if the waiver is denied, until the requester has agreed to pay the applicable fees.

(1) The Committee shall grant a waiver or reduction of fees where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. In making this determination, the Committee will consider the following factors:

(i) Whether the subject of the records would shed light on identifiable operations or activities of the Government with a connection that is direct and clear, not remote or attenuated; and

(ii) Whether disclosure of the information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about Government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public must be considered. The Committee will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. A commercial interest includes any commercial, trade, profit, or litigation interest.

(2) A request for a waiver or reduction of fees shall include:

(i) A clear statement of the requester's interest in the documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit for such use;

(iii) A statement of how the public will benefit from such use and from the Committee's release of the documents;

(iv) A description of the method by which the information will be disseminated to the public; and

(v) If specialized use of the information is contemplated, a statement of the requester's qualifications that are relevant to that use.

(3) The requester has the burden to present evidence or information in support of a request for a waiver or reduction of fees.

(4) The Committee shall notify the requester of its determination on the request for a waiver or reduction of fees. The requester may appeal a denial in accordance with § 271.14(a).

(5) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver must be granted for those records.

(6) A request for a waiver or reduction of fees should be made when the request for records is first submitted to the Committee and should address the criteria referenced in paragraphs (g)(1) through (5) of this section. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester must pay any costs incurred up to the date the fee waiver request was received.

(h) *Restrictions on charging fees.* (1) If the Committee fails to comply with the FOIA's time limits in which to respond to a request, the Committee may not charge search fees, or, in the instances of requests from requesters described in paragraphs (d)(2) through (4) of this section, will not charge duplication fees, except as permitted under paragraphs (h)(2) through (4) of this section.

(2) If the Committee has determined that unusual circumstances exist, as described in 5 U.S.C. 552(a)(6)(B), and has provided timely written notice to the requester and subsequently responds within the additional 10 working days provided in § 271.12(e)(3), the Committee may charge search fees, or in the case of requesters described in paragraphs (d)(2) through (4) of this section, may charge duplication fees.

(3) If the Committee has determined that unusual circumstances exist, as described in 5 U.S.C. 552(a)(6)(B), and more than 5,000 pages are necessary to respond to the request, the Committee may charge search fees, or, in the case of requesters described in paragraphs (d)(2) through (4) of this section, may charge duplication fees, if the Committee has:

(i) Provided timely written notice of unusual circumstances to the requester in accordance with the FOIA; and

(ii) Discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii).

(4) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(i) *Employee requests.* In connection with any request by an employee, former employee, or applicant for employment, for records for use in prosecuting a grievance or complaint of discrimination against the Committee, fees shall be waived where the total charges (including charges for information provided under the Privacy Act of 1974 (5 U.S.C. 552a)) are $50 or less; but the Committee may waive fees in excess of that amount.

(j) *Special services.* The Committee may agree to provide, and set fees to recover the costs of, special services not covered by the FOIA, such as certifying records or information and sending records by special methods such as express mail or overnight delivery.

TABLE 1 TO § 271.16—FEES

Type of requester	Search costs per hour	Review costs per hour	Duplication costs
Commercial	Clerical/Technical staff $20 Professional/Supervisory staff $40 Manager/Senior professional staff $65. Computer search, including computer search time, output, operator's salary Direct Costs.	Clerical/Technical staff $20 Professional/Supervisory staff $40 Manager/Senior professional staff $65.	Photocopy per standard page .10. Other types of duplication Direct Costs.
Educational; or Non-commercial scientific; or News media.	Costs waived	Costs waived	First 100 pages *free,* then: Photocopy per standard page .10. Other types of duplication Direct Costs.
All other requesters	First 2 hours *free,* then: Clerical/Technical staff $20 Professional/Supervisory staff $40 Manager/Senior professional staff $65. Computer search, including computer search time, output, operator's salary Direct Costs.	Costs waived	First 100 pages *free,* then: Photocopy per standard page .10. Other types of duplication Direct Costs.

Subpart C—Subpoenas, Orders Compelling Production, and Other Process

§ 271.20 Subpoenas, orders compelling production, and other process.

(a) *Advice by person served.* Any person, whether or not an officer or employee of the Committee, of the Board, or of a Federal Reserve Bank, who is served with a subpoena, order, or other judicial or administrative process requiring the production of exempt information of the Committee or requiring the person's testimony regarding such Committee information in any proceeding, shall:

(1) Promptly inform the Committee's General Counsel of the service and all relevant facts, including the documents, information, or testimony demanded, and any facts relevant to the Committee in determining whether the material requested should be made available;

(2) Inform the entity issuing the process of the substance of this part; and

(3) At the appropriate time, inform the court or tribunal that issued the process of the substance of this part.

(b) *Appearance by person served.* Unless authorized by the Committee or as ordered by a Federal court in a judicial proceeding in which the Committee has had the opportunity to appear and oppose discovery, any person who is required to respond to a subpoena or other legal process concerning exempt Committee information shall attend at the time and place required and respectfully decline to disclose or to give any testimony with respect to the information, basing such refusal upon the provisions of this part. If the court or other body orders the disclosure of the information or the giving of testimony, the person having the information shall continue to decline to disclose such information and shall promptly report the facts to the Committee for such action as the Committee may deem appropriate.

Federal Open Market Committee.

Matthew M. Luecke,

Deputy Secretary of the Committee.

[FR Doc. 2020–22463 Filed 10–14–20; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 390

RIN 3064–AF36

Removal of Transferred OTS Regulations Regarding Application Processing Procedures of State Savings Associations

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice of proposed rulemaking (NPR), the Federal Deposit Insurance Corporation (FDIC) proposes to rescind and remove certain regulations transferred to the FDIC from the Office of Thrift Supervision (OTS) in 2011 pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These regulations generally concern the supervision and governance of State savings associations, including the application processing procedures for certain applications, notices and filings by State savings associations. In addition to the removal of our regulations, the FDIC proposes to make technical changes to our regulations that do not currently apply to State savings associations. Following the rescission, the filing

regulations pertaining to State savings associations and all other FDIC-supervised institutions will be substantially the same. The FDIC invites comments on all aspects of this proposed rulemaking.

DATES: Comments must be received on or before November 16, 2020.

ADDRESSES: You may submit comments, identified by RIN 3064–AF36, by any of the following methods:

- *Agency website: https://www.fdic.gov/regulations/laws/federal/.* Follow instructions for submitting comments on the agency website.
- *Email: Comments@fdic.gov.* Include RIN 3064–AF36 on 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:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW, building (located on F Street) on business days between 7 a.m. and 5 p.m.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/,* including any personal information provided.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure.

Please note: All comments received will be posted generally without change to *https://www.fdic.gov/regulations/laws/federal/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Donald Hamm, Special Advisor, (202) 898–3528, *dhamm@fdic.gov;* or Shelli Coffey, Review Examiner, (312) 382–7539, *scoffey@fdic.gov,* Risk Management Supervision; Andrew B. Williams II, Counsel, (202) 898–3591, *andwillimas@fdic.gov,* Legal Division.

SUPPLEMENTARY INFORMATION:

I. Policy Objective

The policy objective of the proposed rule is to remove unnecessary and duplicative regulations in order to simplify and improve the public's understanding of the rule, and to promote parity between State savings associations and State nonmember banks by applying the same filing requirements to both classes of institutions. Thus, as further detailed in this section, the FDIC is proposing to rescind and remove, from the Code of Federal Regulations (CFR), 12 CFR part 390, subpart F (subpart F).

As discussed below, the FDIC proposes to make technical changes to certain sections of part 303. The rescission of subpart F, with the accompanying revisions to 12 CFR 303, would simplify and streamline the FDIC's regulations by removing unnecessary provisions that are adequately provided for in other existing statutes and regulations.

II. Background

A. The Dodd-Frank Act

The Dodd-Frank Act, signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies.[1] Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,[2] the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act[3] provides the manner of treatment of all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Pursuant to section 316(c) of the Dodd-Frank Act,[4] on June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[5]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act[6] granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (FDI Act)[7] and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act[8] revised the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act[9] to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations, as well as for State nonmember banks and insured State-licensed branches of foreign banks.

As noted, on July 14, 2011, operating pursuant to this authority, the FDIC's Board of Directors issued a list of regulations of the former OTS that the FDIC would enforce with respect to State savings associations. On that same date, the FDIC Board reissued and re-designated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[10] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS regulations and might later recommend incorporating the transferred OTS regulations into other FDIC regulations, amending them, or rescinding them, as appropriate.[11]

B. 12 CFR part 516—Application Processing Procedures

A subset of the regulations transferred to the FDIC from the OTS concern application processing procedures. The OTS regulations, formerly found at 12 CFR part 516, 516.1 through 516.290, were transferred to the FDIC with only nomenclature changes and now comprise part 390, subpart F. Each provision of part 390, subpart F is discussed in Part III of this Supplementary Information section, below.

[1] Pub. L. 111–203, 124 Stat. 1376 (2010).
[2] Codified at 12 U.S.C. 5411.
[3] Codified at 12 U.S.C. 5414(b).
[4] Codified at 12 U.S.C. 5414(c).
[5] 76 FR 39247 (July 6, 2011).
[6] Codified at 12 U.S.C. 5412(b)(2)(B)(i)(II).
[7] 12 U.S.C. 1811 *et seq.*
[8] Codified at 12 U.S.C. 5412(c)(1).
[9] 12 U.S.C. 1813(q).
[10] 76 FR 47652 (Aug. 5, 2011).
[11] *See* 76 FR 47653.

C. Part 390, Subpart F—Application Processing Procedures

The FDIC has conducted a careful review and comparison of subpart F and other Federal regulations and statutes concerning Application Processing Procedures of State savings associations. As discussed in Part III of the Proposal section, the FDIC proposes to rescind subpart F because the FDIC considers the provisions contained in subpart F to be unnecessary in light of the applicability of other provisions of Federal statutes and regulations, specifically part 303.

D. Part 303, Filing Procedures

The FDIC also proposes to make technical changes in certain sections of part 303, subparts A, K, and M. The proposed revisions would make those sections applicable on their terms to State savings associations.

III. The Proposal

Section 316(b)(3) of the Dodd-Frank Act in pertinent part, provides that the regulations of the former OTS, as they apply to State savings associations, will be enforceable by the FDIC until they are modified, terminated, set aside, or superseded in accordance with applicable law.[12] Consistent with the FDIC's stated intention to evaluate transferred OTS regulations before taking action on them, the FDIC conducted a careful review of subpart F and related Federal statutes, regulations, and statements of policy relevant to subordinate organizations of State savings associations. As discussed in this Proposal section, the FDIC proposes to rescind and remove subpart F in its entirety, because the provisions contained there are duplicative of substantially similar FDIC statutory or regulatory provisions, or guidance that produce substantially the same supervisory results.

Part 303 of the FDIC Rules and Regulations (12 CFR 303) provides a framework for filing requirements for various applications, notices, and requests (collectively, ''filings'' as defined in § 303.2(s)) (12 CFR 303.2(s)). Subpart A of part 303, Rules of General Applicability, prescribes the general procedures for submitting filings to the FDIC that are required by statute or regulation. This subpart also prescribes the procedures to be followed by the FDIC, applicants, and interested parties during the process of considering a filing, including public notices and comment when required. This subpart explains the availability of expedited processing for eligible depository institutions (defined in § 303.2(r)) for matters subject to expedited processing. Specific filings are detailed in subpart B through subpart M of part 303.

IV. Section-by-Section Analysis—Rescission of Subpart F

There are existing statutes and regulations that describe the application processing procedures of State savings associations, obviating the need for a new regulation, but requiring amendment of existing regulations upon rescission of subpart F. Accordingly, the FDIC proposes that § 390.100 through § 390.135, subpart F, be rescinded as unnecessary, redundant of, or otherwise duplicative of the provisions of law delineated in part 303, each discussed individually below.

A. Section 390.100—What does this subpart do?

Section 390.100 states that subpart F explains the FDIC's procedures for processing applications, notices, or filings for State savings associations under parts 390 and 391, and identifies several requests or applications that were not intended to be covered by subpart F. In addition, the section states that, where an FDIC regulation provides some of the application processing procedures or timeframes, the FDIC will apply the regulations in subpart F to the extent necessary to process the application.

Existing statutes and regulations that are applicable to insured State institutions, of which State savings associations are a subset, already ''prescribe the general procedures for submitting filings to the FDIC and the procedures to be followed by the FDIC, applicants and interested parties during the process of considering a filing.'' [13] Moreover, subpart F only applies to filings under parts 391 and 390 of the FDIC regulations. Part 391 and several subparts of part 390 have been rescinded, and the FDIC is in the process of rescinding the remainder of part 390. Therefore, the FDIC considers § 390.100 unnecessary and proposes that it be rescinded.

B. Section 390.101—Do the same procedures apply to all applications under this subpart?

Section 390.101 specifies the criteria for determining which filings receive expedited treatment and which receive standard treatment. Part 303, §§ 303.2(r) and 303.11(c), as well as the substantive subparts of part 303, when applicable, specify the criteria and conditions for expedited and standard processing, the removal of filings from expedited processing, and extension of time periods. Part 303 does not address expedited and standard processing in precisely the same way as subpart F, but generally addresses substantially similar concepts as to the type of treatment afforded to a matter type and under what circumstances, and the procedures to be followed. Therefore, the FDIC considers § 390.101 unnecessary and duplicative, and proposes that it be rescinded.

C. Section 390.102—How does the FDIC compute time periods under this subpart?

Section 390.102 addresses computation of time periods for State savings associations. Computation of time under part 303 is contained in § 303.4 and, though not worded in the same way, computes time periods in a substantially similar manner. Therefore, the FDIC considers § 390.102 unnecessary and proposes that it be rescinded.

D. Section 390.103—Must I meet with the FDIC before I file my application?

Section 390.103 addresses pre-filing meetings for filings to acquire control of State savings associations. Pre-filing meetings are not addressed in FDIC regulations, but are addressed, as appropriate, in the Applications Procedures Manual (APM) under Notice of Acquisition of Control (refer to pages 5.5–6 of the APM), which can be referenced at *https://www.fdic.gov/regulations/applications/resources/apps-proc-manual/section-05-changeincontrol.pdf.* As a result, the FDIC considers § 390.103 unnecessary and proposes that it be rescinded.

E. Section 390.104—What information must I include in my draft business plan?

Section 390.104 addresses business plan requirements. Part 303 does not require a specific format for a business plan submitted with applications; nor do the FDIC's regulations address specific business plan content requirements. Business plans, when required or requested, are generally addressed through pre-filing communications with the applicant. Information regarding business plan content is available in the interagency charter and federal deposit insurance application form, a valuable resource for determining business plan requirements, found at *www.fdic.gov/formsdocuments/interagencycharter-insuranceapplication.pdf.* The Handbook for Organizers—Applying for Deposit Insurance includes sections on

[12] 12 U.S.C. 5414(b)(3).

[13] 12 CFR 303.1.

developing a business plan and business plan content, and can be referenced at *www.fdic.gov/resources/supervision-and-examinations/bank-applications/depositinsurance/*. As a result, the FDIC considers § 390.104 unnecessary and proposes that it be rescinded.

F. Section 390.105—What type of application must I file?

Section 390.105 addresses the scope and form for expedited and standard processing, directs the applicant to sources for required information, including the substantive matter provisions of parts 390 and 391, and permits requests to waive information requirements. The FDIC's part 303 operates in a similar manner in many respects. Section 303.3 addresses the form for filings, generally, and is supplemented by the appropriate subparts of part 303 and specific filing requirements, as appropriate. The subparts are based on the type of filing, and address the form of filing. The part 303 regulations also provide for expedited and standard processing, as appropriate. The subparts specify whether a matter receives expedited processing.[14]

In addition, § 390.105 addresses waiver requests for State savings associations. Under § 303.12, The FDIC Board may waive the applicability of any regulation in Title 12, Chapter III, including part 303. In addition, various sections within part 303 applicable to savings associations also address waiver requests, including: §§ 303.85(a)(2), 303.102(c)(1), and 303.102(c)(2).

In light of part 303's treatment of the same substantive areas, the FDIC considers § 390.105 unnecessary and proposes that it be rescinded.

G. Section 390.106—What information must I provide with my application?

Section 390.106 addresses content of filings for State savings associations, and advises applicants that they may obtain relevant information from the appropriate FDIC region. The section also requires the applicant to conform to specific form conventions for the filing and specifies inclusion of all exhibits and other pertinent documents with the original and copies.

As indicated earlier, unlike § 390.106, the FDIC has several regulations that specify information a filing should contain. Additionally, rather than requiring that filings be submitted in a certain way, § 303.3 of the FDIC's regulations provides that instructions for submitting filings may be obtained from any FDIC regional director.

The FDIC considers the part 303 processes to provide the applicant with the appropriate requirements for a filing while permitting flexibility as to form. Accordingly, the FDIC considers § 390.105 unnecessary and proposes that it be rescinded.

H. Section 390.107—May I keep portions of my application confidential?

Section 390.107 addresses application confidentiality for State savings associations and identifies certain information that will not be considered confidential. Section 303.8(b) identifies certain information that will generally be treated as confidential, and provides that the applicant may request that information be treated as confidential.[15] The section provides that the FDIC may determine on its own initiative that information should be treated as confidential. Therefore, the FDIC considers § 390.107 unnecessary and proposes that it be rescinded.

I. Section 390.108—Where do I file my application?

Section 390.108 provides locations to use in filing applications, specifically providing regional office addresses. Section 303.3 directs applicants to transmit filings to the appropriate regional office unless specifically stated otherwise. Section 303.2 defines the appropriate office, while the specific addresses are maintained on the FDIC's public website.[16] Therefore, the FDIC considers § 390.108 unnecessary and proposes that it be rescinded.

J. Section 390.109—What is the filing date of my application?

Section 390.109 explains the means to determine an application's filing date, the date from which time periods for action by the FDIC and applicant begin. Under § 303.4, processing time periods are computed, unless otherwise provided, from the date on which ''a substantially complete filing is received by the FDIC or the day after publication begins.'' Because part 303 provides an appropriate and consistent method for determining the date on which the filing processing period begin, the FDIC considers § 390.109 unnecessary and proposes that it be rescinded.

K. Section 390.110—How do I amend or supplement my application?

Section 390.110 discusses amending or supplementing an application. It requires the filing of amendments or supplemental information at the appropriate FDIC regional office, along with the number of copies required by § 390.108. It also requires that the amendment or supplemental information meet the requirements contained in § 390.106(b).

The FDIC has no similar rule under part 303, but believes that the rule is unnecessary because, as noted in the APM, the FDIC's practice has been to allow supplemental filings to be submitted to the appropriate FDIC regional office. This approach allows appropriate flexibility based on the application. Accordingly, the FDIC proposes that § 390.110 be rescinded.

L. Section 390.111—Who must publish a public notice of an application; Section 390.112—What information must I include in my public notice; Section 390.113—When must I publish the public notice; Section 390.114—Where must I publish the public notice; Section 390.115—What language must I use in my publication?

Sections 390.111 through 390.115 address public notice requirements, and apply when FDIC regulations require an applicant to follow the public notice procedures.[17] Public notice requirements are encompassed in part 303 of the FDIC regulations, including in § 303.7 and throughout various subparts and sections of part 303 such as those for deposit insurance in § 303.23, branches (domestic and foreign) in §§ 303.44 and 303.184(c), mergers in § 303.65, and change in bank control in § 303.87. Section 303.7 lists the filings that require public notices.

Section 390.112 addresses the information that is required to be contained in public notices. A comparison of §§ 390.112 and 303.7(c) demonstrates that the two provisions are virtually identical. Section 390.113 requires that a public notice be published no earlier than seven days before and no later than the date of filing of the application. Unlike § 390.113, § 303.7(a) provides that public notices will be given pursuant to the appropriate subpart for the type of application involved. In addition, unlike § 390.113, time intervals at which public notice must be given for an application vary with the specific subparts of part 303. The FDIC prefers the degree of specificity contained in the public notice provisions in part 303 over the general public notice requirement contained in § 390.113.

Both § 390.114 of subpart F and part 303 require providing the public notice

[14] *See e.g.* 12 CFR 303.122 and 12 CFR 362.4(b)(5).

[15] *See also,* generally, 12 CFR part 309.

[16] Part 303 does not require that certain filings be made or provided by the applicant to FDIC headquarters.

[17] 12 CFR 390.111.

in a newspaper of general circulation in the communities indicated in the particular rule. Section 390.115 requires that public notices be published in a newspaper printed in the English language and, upon FDIC determination, simultaneous publication in other languages. The FDIC does not have a similar procedural rule, however, the FDIC's practice is consistent with § 390.115. The FDIC believes, however, that this subject is better addressed on a case-by-case basis between the applicant and the appropriate FDIC regional office.

Based on the above analysis, the FDIC considers §§ 390.11, 390.112, 390.114 and 390.115 unnecessary and proposes that they be rescinded.

M. Section 390.116—Comment procedures; Section 390.117—Who may submit a written comment; Section 390.118—What information should a comment include; Section 390.119—Where are comments filed; Section 390.120—How long is the comment period?

Sections 390.116 through 390.120 address the procedures to submit public comments. Under part 303, public notice procedures are found at § 303.9 and throughout various subparts and sections of part 303, specifically for deposit insurance in § 303.23, branches (domestic and foreign) in §§ 303.44 and 303.184(c), mergers in § 303.65, and for change in bank control in § 303.87.

Section 390.117 permits any person to submit a written comment supporting or opposing an application. Section 303.9(a) is substantially the same.

Section 390.118(a) specifies the type of information that should be contained in a comment. Section 390.118(b) allows a commenter to include in its comment a request for a meeting under § 390.122 and, as part of the request, requires a description of the nature of the issues or facts to be discussed and why written submissions are insufficient. The FDIC has no provision in part 303 similar to § 390.118; however, the FDIC believes the benefit, if any, is minimal and that the potential burden on commenters of such a detailed rule may outweigh any benefit. The FDIC is also concerned that such a rule may discourage the filing of comments.

The regulations in subpart F and part 303 regarding where comments should be filed are virtually identical.

Section 390.120 generally requires that comments be filed within 30 calendar days after the publication of the initial public notice and provides the FDIC may consider late-filed comments if it determines that the comment will assist in the disposition of the application. The FDIC's part 303 regulations place deadlines for public comments in the relevant subpart for the particular type of filing at issue. Based on the type of filing involved, public comments are generally solicited for 15–30 days.[18] The FDIC believes that the public comment period required by § 390.120 is duplicative, in substance, of the regulations contained in part 303. In addition, the FDIC believes the comment periods provided in part 303 are preferable to the single comment period contained in § 390.120 because they are better calibrated to the types of filings that are at issue.

Based on the above, the FDIC considers §§ 390.116, 390.117, 390.118, 390.119, and 390.120 to be unnecessary and proposes that they be rescinded.

N. Section 390.121—Meeting procedures; Section 390.122—When will the FDIC conduct a meeting on an application; Section 390.123—What procedures govern the conduct of the meeting; Section 390.124—Will FDIC approve or disapprove an application at a meeting; Section 390.125—Will a meeting affect application processing time frames?

Sections 390.121 through 390.125 contain meeting procedures for filings. Section 390.122, addresses the FDIC authority to call a meeting, limitation of the issues to be discussed, and notice of the meeting to the commentators and applicants. Section 390.123 allows the FDIC to conduct a meeting in any format and states the Administrative Procedure Act, the Federal Rules of Evidence, the Federal Rules of Civil Procedure and the FDIC's Rules of Practice and Procedure do not apply to meetings under the section. Section 390.124 indicates that the FDIC will not approve or deny an application at a meeting under §§ 390.121 through 390.125. Section 390.125 provides that, if a meeting is held, the FDIC may suspend all time frames for determining that the application is substantially complete and the application approval time frames in §§ 390.126 through 390.135. Time periods resume when the FDIC determines that a record has been developed that sufficiently supports a determination on the issues considered during the meeting.

Meetings are addressed generally in FDIC regulations found at §§ 303.6 and 303.10. The FDIC may examine or investigate and evaluate facts related to any filing to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances. Section 303.10(l) is less detailed than § 390.122 in certain respects; however, the FDIC prefers the level of flexibility it provides to the FDIC, applicants, and other interested parties. Section 303.10 distinguishes between hearings and informal proceedings. Generally, a hearing is a more formal proceeding and is usually only granted if the FDIC determines that written submissions would be insufficient or that a hearing otherwise would be in the public interest. An informal proceeding, under the rule, is a less formal proceeding, and § 303.10(l) provides that it may take any form. Like § 390.123(b), § 303.10(h)(3) provides that the Administrative Procedure Act, the Federal Rules of Evidence, the Federal Rules of Civil Procedure and the FDIC's Rules of Practice and Procedure do not apply to hearings. Section 303.10(l) does not provide authority to approve or disapprove a filing at an informal proceeding (similar to § 390.124).

The FDIC has no similar rule in its part 303 regulations to § 390.125 and does not believe one is necessary because under part 303, unlike the former OTS regulations, processing time frames run from the date a substantially complete application is received, not from the date an application is filed. Because the processing time frames under the part 303 regulation run from the date that the FDIC determines the application is substantially complete, there is no need to stop and restart the processing time in connection with a meeting.

Based on the analysis above, the FDIC considers §§ 390.121, 390.122, 390.123, 390.124, and 390.125 to be unnecessary and proposes that they be rescinded.

O. Section 390.126—If I file a notice under expedited treatment, when may I engage in the proposed activities?

Section 390.126 addresses expedited treatment, including removal of the filing to standard processing, additional information requests, suspension of the processing period, and when the applicant can proceed with the activity if the FDIC has not acted. Expedited processing and related matters are encompassed in FDIC regulations found at § 303.11(c) and, as applicable, the substantive subparts of § 303, such as §§ 303.122 and 303.142. Sections 303.3 and 303.11(e), as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. The FDIC considers § 390.126 duplicative and

[18] See *e.g.* 12 CFR 303.23(a) (30 days following date of publication); 12 CFR 303.44(b) (within 15 days after the date of the last publication required by the section); and 12 CFR 303.65(d) (30 days after the first publication of the notice).

unnecessary, and proposes that it be rescinded.

P. Section 390.127—What will the FDIC do after I file my application and Section 390.128—If the FDIC requests additional information to complete my applications, how will it process my application?

Sections 390.127 and 390.128 address application completeness, including a sequence of filing, FDIC response, requests for additional information, waiver and extension requests, and the consequences of various responses by the applicant and the FDIC. The procedures for processing a filing under part 303, while essentially addressing the same issues, are simpler and easier to navigate than those of § 390.127. That is due, in large part, to the use of the substantially complete filing procedure of part 303, which eliminates the necessity for the complex sequence of actions in subpart F. Sections 303.3 and 303.11(e), as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. The FDIC considers §§ 390.127 and 390.128 unnecessary and proposes that they be rescinded.

Q. Section 390.129—Will the FDIC conduct an eligibility examination?

Section 390.129 addresses eligibility examinations, as well as the authority of the FDIC to require such examinations and to request additional information. The FDIC does not believe that a specific eligibility examination provision is needed. Under § 303.6, the FDIC may examine or investigate and evaluate facts related to any filing to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances. The FDIC utilizes field investigations when processing deposit insurance applications, and may conduct eligibility examinations when processing certain federal to state conversion applications that are filed pursuant to 12 U.S.C. 1464(i)(5). Sections 303.3 and 303.11(e), as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. Therefore, the FDIC considers § 390.129 unnecessary and proposes that it be rescinded.

R. Section 390.130—What may the FDIC require me to do after my application is deemed complete?

Section 390.130(a) addresses FDIC requests for additional information from State savings associations in order to resolve or clarify issues presented by the filing. Section 390.130(b) provides that if the FDIC determines that a major issue of law or a change in circumstances arose after the application was filed, and the issue or change in circumstances substantially affects the application, the FDIC may notify the applicant that the application is deemed incomplete, and require the applicant to submit additional information under the procedures contained in § 390.128. The FDIC also may, to the extent necessary, require the applicant to publish a new notice under § 390.131.

The FDIC's part 303 regulations authorize the FDIC to request additional information from an applicant until the time it makes a decision on an application, and delays the beginning of the processing period until receipt of a substantially complete filing, and the FDIC has not found it necessary to incorporate the § 390.130 concept into a regulation. The FDIC believes that the possibility of a major change in law or circumstances following the acceptance of a filing as substantially complete does not warrant coverage by a special regulation and that those issues may be addressed under part 303 in its current form.

The FDIC considers § 390.130 unnecessary and proposes that it be rescinded.

S. Section 390.131—Will the FDIC require me to publish a new public notice?

Section 390.131 sets forth the circumstances under which the FDIC may require a State savings association applicant subject to the publication requirements to publish new public notices. Section 303.7(f) states the FDIC may determine on a case-by-case basis that unusual circumstances surrounding a particular filing warrant modification of the publication requirements. Accordingly, the FDIC considers § 390.131 unnecessary and proposes that it be rescinded.

T. Section 390.132—May the FDIC suspend processing of my application?

Section 390.132 authorizes the FDIC to suspend an application by a State savings association for the reasons stated therein. Part 303 has no similar provision. However, the FDIC believes that situations envisioned by § 390.132 can either be effectively addressed on a case-by-case basis without need of a regulation, or that a regulation is not needed because the processing period under part 303 does not begin until the FDIC receives a substantially complete filing and, thus, no suspension is necessary. Accordingly, the FDIC considers § 390.132 unnecessary and proposes that it be rescinded.

U. Section 390.133—How long is the FDIC review period

Under § 390.33(a), the applicable FDIC review period is 60 days after the date the application is deemed complete. Section 390.133(b) provides that, if an applicant submits more than one application in connection with a proposed action, or if two or more applicants submit related applications, the review period for all applications would be the time frame for the application with the longest review period. Section 390.133(c) addresses extensions of the review period. Section 390.133(c)(1) allows the FDIC to extend the review period for up to 30 calendar days for any reason. To do so, the FDIC must notify the applicant in writing of the extension before the end of the applicable review period. Also, under § 390.133(c)(2), the FDIC can extend the review period of any application if the application presents a significant issue of law or policy that requires additional time to resolve and must notify the applicant in writing. The FDIC must issue its written extension before the review period expires, including any extension granted under paragraph (c)(1) of the section.

The FDIC's part 303 regulations contain provisions that bear on the same issues and are similar in substantive effect as the § 390.133 provisions. The processing time period for notices and applications, which varies by type of filing, may be extended for most matters under part 303 processing. Section 303.11(d) states that, when the FDIC is considering related transactions, one or more of which have expedited processing, the longest processing time will govern all related transactions. The FDIC prefers the review time frames specified in the appropriate subparts of part 303 for each particular filing, rather than a single time frame for all filings, given the varying significance and complexity of the various types of filings. Therefore, the FDIC considers § 390.133 unnecessary and proposes that it be rescinded.

V. Section 390.134—How will I know if my application has been approved?

Section 390.134 requires the FDIC to approve or deny an application before the expiration of the applicable review period, including any extensions, and notify the applicant, in writing, of its decision. If the FDIC does not act under paragraph (a)(1) of the section, the application is approved. However, for this section to be applicable, the FDIC

must fail to extend the review period as allowed under § 390.133(c).

In comparison to § 390.134, § 303.11 provides that the FDIC may approve, conditionally approve, deny, or not object to a filing after appropriate review and consideration of the record. The FDIC will promptly notify the applicant and any person who makes a written request of the final disposition of a filing. If the FDIC denies a filing, the FDIC will immediately notify the applicant in writing of the reasons for the denial. Contrary to § 390.134, § 303.11 does not include an automatic approval for an application if the FDIC fails to approve or deny it. However, the substantial ability of the FDIC to extend the processing period under subpart F, to a great extent, renders any difference with part 303 immaterial. In addition, the FDIC does not consider ''automatic'' or ''default'' approvals (other than as already specified in the part 303 regulations) to be an appropriate method for making decisions on applications.

Based on the analysis above, the FDIC considers § 390.134 unnecessary and proposes that it be rescinded.

W. Section 390.135—What will happen if the FDIC does not approve or disapprove my application within two calendar years after the filing date?

Section 390.135 addresses withdrawal if an application is not approved or denied within two calendar years. The FDIC will notify the applicant in writing that the application is withdrawn under those circumstances, unless the FDIC determines that the applicant is actively pursuing a final FDIC determination.

FDIC regulations do not address withdrawal if an application is not acted on within two calendar years.[19] The Applications Overview section of the APM (refer to pages 1.1–3), referenced at *https://www.fdic.gov/regulations/applications/resources/apps-proc-manual/section-01-01-overview.pdf,* states that the FDIC's goal is to act on filings as promptly as practical, while allowing appropriate time for review and evaluation. It is also, generally, the FDIC's practice to provide an applicant with an opportunity to withdraw its application if FDIC staff propose an unfavorable recommendation. For all filings, whether for banks or savings associations, the FDIC has established timeframes for processing applications that are consistent with statutes, regulations, or internal business rules for expedited and standard processing. These timeframes have been issued publicly through Financial Institution Letter 81–2018, posted to the FDIC's public website and incorporated into the APM under the Applications Overview (refer to pages 1.1–3), which is referenced at *https://www.fdic.gov/regulations/applications/resources/apps-proc-manual/section-01-01-overview.pdf.*

The FDIC considers § 390.135 to be unnecessary and proposes that it be rescinded.

V. Revision of Certain Sections of Part 303

A. Section 303.7—Public notice requirements

Section 5 of the FDI Act,[20] generally and in part, provides that any depository institution engaged in the business of receiving deposits other than trust funds, upon application to and examination by the FDIC and approval by its Board of Directors, may become an insured depository institution. The term ''depository institution'' means any bank or savings association pursuant to section 3(c)(1) of the FDI Act.[21] Subpart B—Deposit insurance, of part 303 of the FDIC regulations, sets forth the procedures for applying for deposit insurance by certain applicants, including for a proposed depository institution under section 5 of the FDI Act, and applies to savings associations.[22] Section 303.23(a) of subpart B states that, in addition to other requirements, the applicant ''shall publish a notice as prescribed in § 303.7 in a newspaper of general circulation in the community in which the main office of the depository institution is or will be located.''

Subpart F of part 390 of the FDIC regulations addresses public notice requirements, stating that §§ 390.111 through 390.115 apply whenever a FDIC regulation requires an applicant to follow the public notice procedures.[23] The FDIC proposes to rescind §§ 390.111 through 390.115 because part 303 substantively addresses the same requirements, including, for deposit insurance applications, §§ 303.7, subpart A, and 303.23, subpart B.

Section 303.7 of the FDIC regulations, a part of subpart A—Rules of General Applicability, addresses public notice requirements for filings with respect to mergers, changes in control, and requests for deposit insurance. With one exception, § 303.7 makes no distinction between banks and savings associations. However, § 303.7(c)(1)(i) states, in part: ''[i]n the case of an application for deposit insurance for a de novo *bank* (emphasis added), include the names of all organizers or incorporators.'' In order to clarify that the provision is applicable to savings associations, consistent with section 5 of the FDI Act and part 303, including subpart B—Deposit Insurance, and to make the requirement consistent for both types of depository institutions, the FDIC proposes to revise the provision to replace ''bank'' with ''depository institution,'' a term used elsewhere in the section.

B. Section 303.15—Certain limited liability companies deemed incorporated under State law

Pursuant to section 5 of the FDI Act, the FDIC may approve deposit insurance for certain depository institutions. One of the statutory requirements for a State bank to be eligible for Federal deposit insurance is that it must be ''incorporated under the laws of any State.''[24] That requirement effectively limited the approval of deposit insurance to State banks chartered under the traditional corporate form, despite the creation and increased use of limited liability entities other than corporations, such as limited liability companies (LLCs). Section 303.15(a) of the FDIC regulations was promulgated to provide that a bank chartered as an LLC under State law would be deemed ''incorporated'' if it met four requirements, thus permitting the entity to be eligible to apply and be approved for deposit insurance.[25] To be deemed incorporated, the LLC must possesses the four traditional corporate characteristics of perpetual succession, centralized management, limited liability, and free transferability of interests.[26]

Section 303.15(b) further provides that, for purposes of the FDI Act and the FDIC regulations, the terms ''stockholder,'' ''shareholder,'' ''director,'' ''officer,'' ''voting stock,'' ''voting shares,'' and ''voting securities,'' for banks chartered as LLCs, shall encompass or have substantially the same meaning as those terms have for banks chartered as corporations. The definition of State savings association

[19] Section 343(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) requires the federal banking agencies to take final action on applications before the end of the one-year period beginning the day after a substantially complete filing is received. Section 343(b) of the Riegle Act provides that the applicant may grant a waiver of this one-year limitation. Since the Riegle Act is not prescribed in FDIC Regulations, it is not material for purposes of part 390, subpart F.

[20] 12 U.S.C. 1815.

[21] 12 U.S.C. 1813(c)(1).

[22] 12 CFR 303.20.

[23] 12 CFR 390.111.

[24] 12 U.S.C. 1813(a)(2).

[25] *See* 68 FR 7308, February 13, 2003.

[26] 12 CFR 303.15(a)(1) through (4). *See also,* 68 FR 7308.

under the FDI Act, which uses the phrase ''organized and operating according to the laws of the State'' instead of ''incorporated,'' does not limit State savings associations to the corporate charter form (absent a state requirement).[27] However, in order to clarify that the terms in § 303.15(b) apply to savings association chartered as LLCs as they do for banks so chartered, the FDIC proposes to revise references to ''bank'' in § 303.15(b) to ''depository institution.'' The impact of the revisions would be to make the terms ''stockholder,'' ''shareholder,'' ''director,'' ''officer,'' ''voting stock,'' ''voting shares,'' and ''voting securities,'' with respect to savings associations chartered as LLCs, encompass or have substantially the same meaning with respect to savings associations chartered as LLCs as for those chartered as corporations.

C. Subpart K—Prompt Corrective Action: Section 303.204—Applications for acquisitions, branching, and new lines of business; Section 303.205—Applications for bonuses and increased compensation for senior executive officers

Part 303 of the FDIC's regulations includes procedures to implement the filing requirements for certain activities or transactions relative to undercapitalized or weaker depository institutions, and implements certain elements of section 38 of the FDI Act.[28] Section 38 applies to all insured depository institutions. Among other things, section 38 generally prohibits an insured depository institution, without application and approval, from engaging in acquisitions, branching, or new lines of business, if the institution is undercapitalized or weaker, significantly undercapitalized, or critically undercapitalized.[29] It also prohibits an insured depository institution, without application and approval, from payment of bonuses or increased compensation to senior executive officers, if the institution is significantly or critically undercapitalized, or is undercapitalized and has failed to submit or implement an acceptable capital restoration plan.[30]

Sections 303.204 and 303.205 of the FDIC regulations implement the above provisions of section 38. Section 303.204 requires any insured State nonmember bank and any insured branch of a foreign bank that is undercapitalized or significantly undercapitalized, and any critically undercapitalized insured depository institution, to submit an application to engage in acquisitions, branching, or new lines of business. This section clarifies that new lines of business include ''any new activity exercised which, although it may be permissible, has not been exercised by the institution.'' It also specifies the content of the filing, including information regarding whether the institution's primary federal regulator has accepted the institution's capital restoration plan, and whether the institution has implemented that plan.

Section 303.205 requires any insured State nonmember bank or insured branch of a foreign bank that is (i) significantly undercapitalized or critically undercapitalized, or (ii) is undercapitalized and has failed to submit or implement an acceptable capital restoration plan, to submit an application to pay a bonus or increase compensation to any senior executive officer. The section specifies the content of the filing, including information regarding the acceptance and implementation of the institution's capital restoration plan.

Although section 38 and other sections of subpart K of part 303 by their terms apply to all insured depository institutions, § 303.204, in part, and § 303.205 apply by their terms only to insured State nonmember banks and insured branches of foreign banks. The FDIC proposes to revise §§ 303.204 and 303.205 to make those sections expressly apply to State savings associations to the same extent as they do to insured State nonmember banks. Those sections would be revised to add ''insured State savings associations.''

D. Section 303.249—Management official interlocks

Part 348 [31] of the FDIC regulations implements the Deposit Insurance Management Interlocks Act (Interlocks Act).[32] The purpose of the Interlocks Act and part 348 are to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations when the management interlock likely would have an anti-competitive effect.[33] The Interlocks Act is applicable to both insured State nonmember banks and State savings associations, and part 348 applies to management officials of FDIC-supervised institutions and their affiliates. With regard to insured State nonmember banks and State savings associations, the Interlocks Act provides the FDIC with administrative and enforcement authority under section 3206, as well as authority to prescribe regulations to carry out the Interlocks Act.[34]

Under section 13(k) of the FDI Act, and notwithstanding any provision of State law, the FDIC may authorize dual service that would otherwise be prohibited by the Interlocks Act upon determining that severe financial conditions threaten the stability of a significant number of savings associations, or of savings associations possessing significant financial resources, and that such authorization would lessen the risk to the FDIC.[35] Subpart F of part 390 does not apply to a transaction under section 13(k) of the FDI Act.[36]

As discussed above, the FDIC transferred various OTS regulations into FDIC regulations. One of the transferred OTS regulations governed OTS oversight of management official interlocks in the context of State savings associations. The OTS regulation, formerly found at 12 CFR part 563f, was transferred to the FDIC with only minor, nonsubstantive changes, and was found in the FDIC's regulations at 12 CFR part 390, subpart V (part 390, subpart V), entitled ''Management Official Interlocks.'' Before the transfer of the OTS regulations and continuing today as noted above, the FDIC's regulations contained part 348. After review and comparison of part 390, subpart V, and part 348, effective January 20, 2016, the FDIC rescinded part 390, subpart V, because the FDIC found it to be substantially redundant to existing part 348, considering technical conforming edits to part 348.[37]

However, § 303.249 of the FDIC regulations addresses the ''procedures to be followed by an insured State nonmember *bank* (emphasis added) to seek the approval of the FDIC to establish an interlock pursuant to'' the Interlocks Act, section 13(k) of the FDI Act, and part 348 of the FDIC regulations.[38] The FDIC proposes to revise § 303.249(a) to insert, following ''bank'' in the language quoted immediately above, ''or an insured State savings association.'' The revision would clarify that State savings associations may use the procedures contained in § 303.249 to apply for

[27] 12 U.S.C. 1813(b)(3).

[28] 12 U.S.C. 1831o.

[29] See 12 U.S.C. 1831*o*(e)(4).

[30] *See* 12 U.S.C. 1831*o*(f)(4). 12 U.S.C. 1831*o*(f) contains additional, discretionary restrictions that may be imposed by a financial regulator.

[31] 12 CFR 349.

[32] 12 U.S.C. 3201–3208.

[33] 12 CFR 349.1(b).

[34] 12 U.S.C. 3206, 3207.

[35] 12 U.S.C. 1823(k)(1)(A)(v).

[36] 12 CFR 390.100(b)(1).

[37] 80 FR 79252 (Dec. 21, 2015).

[38] 12 CFR 303.249(a).

approval to establish interlocks as provided therein.

VI. Expected Effects

As of March 31, 2020, the FDIC supervised 3,309 depository institutions, of which 35 (1.1 percent) were State savings associations.[39] The proposed rule would primarily affect regulations that govern State savings associations. As previously discussed, the proposed rule would, if adopted, rescind part 390, subpart F, because most of its elements are duplicative of substantively similar provisions of FDIC regulations, principally part 303. Additionally, the proposed rule would amend certain elements of part 303 so that the provisions are applicable to State savings associations. In doing so, the proposed rule would make elements of part 390, subpart F, substantively duplicative of the amended elements of part 303, and, therefore, unnecessary. As such, the FDIC does not believe the proposed rule will have substantive effects on State savings associations.

Section 390.100 sets forth application processing procedures for State savings associations. However, existing statutes[40] and regulations already ''prescribe the general procedures for submitting filings to the FDIC and the procedures to be followed by the FDIC, applicants and interested parties during the process of considering a filing''[41] for FDIC-supervised institutions, including State savings associations. Therefore, rescinding § 390.100 is not expected to have any substantive effects on State savings associations.

Section 390.101 specifies the criteria for determining which filings receive expedited treatment and which receive standard treatment. State savings associations are already subject to substantively similar requirements in §§ 303.2(r) and 303.11(c), as well as the substantive subparts of part 303 of the FDIC regulations. Therefore, rescinding § 390.101 is not expected to have any substantive effects on State savings associations.

Section 390.102 addresses the computation of time periods for State savings associations. State savings associations are subject to regulations that address the computation of relevant time periods at § 303.4 of the FDIC regulations. Therefore, rescinding § 390.101 is not expected to have any substantive effects on State savings associations.

Section 390.103 addresses pre-filing meetings and FDIC contacts for filings to acquire control of State savings associations. Pre-filing meetings are not addressed in FDIC regulations, but are addressed in the Applications Procedures Manual (APM), in which a substantively similar description of pre-filing meetings is given. Additionally, the APM states that a Case Manager will be assigned by the FDIC to the application in order to facilitate communication and engagement with the applicant. Therefore, the FDIC believes that rescinding § 390.103 is unlikely to have any substantive effects on State savings associations or change in control applicants.

Section 390.104 addresses certain requirements for business plans submitted by State savings associations under subpart F, which permits the FDIC to require additional business plan information during processing of the filing. Under part 303, business plans are required for certain filings, though the FDIC may request additional information for any filing. In this regard, the FDIC's review processes include, as appropriate, pre-filing and other activities to ensure institutions' understanding of the FDIC's filing requirements and information needs. In certain cases, the content for business plans is addressed in filing forms or other FDIC resources. For example, the Inter-agency Charter and Deposit Insurance Application Form contains detailed instructions for the development of the business plan; and those instructions may assist institutions when submitting business plans as part of other filings. The FDIC has also provided a Handbook for Organizers—Applying for Deposit Insurance, which aids all applicants for deposit insurance and includes sections on developing a business plan and business plan content. Generally, the FDIC believes it is appropriate to provide an institution with flexibility to tailor the content of the business plan to reflect its unique circumstances, strategies, and challenges. Therefore, in light of the discussion above, the FDIC believes that rescinding § 390.104 is unlikely to have any substantive effects on State savings associations or change in control applicants.

Section 390.105 addresses expedited and standard processing, as well as waiver requests for State savings associations. Expedited and standard processing, as well as waiver requirements, are encompassed in FDIC regulations applicable to State savings associations found throughout various subparts and sections of part 303. Therefore, the FDIC believes that rescinding § 390.105 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.106 addresses the content of filings for State savings associations. It directs State savings associations to the applicable forms and the content requirements. The required content of filings is encompassed in FDIC regulations applicable to State savings associations throughout various subparts and sections of part 303. Therefore, the FDIC believes that rescinding § 390.106 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.107 addresses application confidentiality for State savings associations. FDIC regulations found at § 303.8 of the FDIC regulations and applicable to FDIC-supervised institutions, including State savings associations, includes confidential treatment regulations that are substantively similar to those in § 390.107. Therefore, the FDIC believes that rescinding § 390.107 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.108 addresses where to file applications, specifically providing regional office addresses. General application filing procedures for all FDIC-supervised institutions, including State savings associations, are encompassed in regulations found at § 303.3 of the FDIC regulations. Further, although specific regional office addresses are not included in the regulation, they are available on the FDIC's public website. Therefore, the FDIC believes that rescinding § 390.108 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.109 explains the application filing date. The FDIC does not have substantively similar regulations governing the filing date of an application. However, FDIC regulations operate on the basis of the date on which a substantially complete filing is submitted. Further, the FDIC's APM, which is accessible to all FDIC-supervised institutions, including State savings associations, addresses the date on which an application is considered to be substantively complete. Therefore, the FDIC believes that rescinding § 390.109 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.110 discusses amending or supplementing an application. The FDIC does not have substantively similar regulations governing amending or supplementing an application. However, the FDIC relies on determinations as to when an

[39] Call Report data, March 2020.

[40] 12 U.S.C. 1831a.

[41] 12 CFR 303.1.

application is substantially complete. In addition, the FDIC's APM, which is applicable to all FDIC-supervised institutions, including State savings associations, addresses both substantially complete filings and those not substantially complete, as well as how to supplement information. Further, the APM states that an applicant may modify and update an application throughout the review process until final disposition, and that applicants often supplement their applications throughout the review process. Therefore, the FDIC believes that rescinding § 390.110 is unlikely to have any substantive effects on State savings associations or future applicants.

Sections 390.111 through 390.115 address public notice requirements. FDIC-supervised institutions, including State savings associations, are subject to substantively similar public notice requirements in § 303.7 of the FDIC regulations and throughout various subparts and sections of part 303. Therefore, the FDIC believes that rescinding §§ 390.111 through 390.115 is unlikely to have any substantive effects on State savings associations or future applicants.

Sections 390.116 through 390.120 address procedures for submission of public comments. FDIC-supervised institutions, including State savings associations, are subject to substantively similar requirements regarding procedures for submission of public comments in § 303.9 of the FDIC regulations and throughout various subparts and sections of part 303. Therefore, the FDIC believes that rescinding §§ 390.116 through 390.120 is unlikely to have any substantive effects on State savings associations or future applicants.

Sections 390.121 through 390.125 contain meeting procedures. Meetings are addressed generally in FDIC regulations found at 12 CFR 303.6 and 12 CFR 303.10 for FDIC-supervised institutions, including State savings associations. Although §§ 303.6 and 303.10 of the FDIC regulations are generally less specific than §§ 390.121 through 390.125, the FDIC believes the language in § 303.6 is generally inclusive of the substance of §§ 390.121 through 390.125, by stating that ''[t]he FDIC may examine or investigate and evaluate facts related to any filing under this chapter to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances.'' Therefore, the FDIC believes that rescinding §§ 390.121 through 390.125 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.126 addresses expedited treatment, including removal of the filing to standard processing, additional information requests, suspension of the processing period, and when the applicant can proceed with the activity if the FDIC has not acted. FDIC-supervised institutions, including State savings associations, are subject to substantively similar requirements regarding expedited treatment in § 303.11(c) of the FDIC regulations, as well as §§ 303.122 and 303.142. Sections 303.3 and 303.11(e), as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. Therefore, the FDIC believes that rescinding § 390.126 is unlikely to have any substantive effects on State savings associations or future applicants.

Sections 390.127 and 390.128 addresses application completeness. The FDIC does not have corresponding regulations addressing application completeness. Instead, the application processing time periods under part 303 are triggered by the FDIC's receipt of a substantially complete filing.[42] The FDIC believes that the substantially complete filing step of part 303 enables the procedures for processing a filing under part 303, while essentially addressing the same issues, to be simpler and easier to navigate than those of §§ 390.127 and 390.128. Sections 303.3 and 303.11(e) of the FDIC regulations, as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. The FDIC's APM, which aids all FDIC-supervised institutions, including State savings associations, addresses both substantially complete filings and those not substantially complete. Therefore, the FDIC believes that rescinding §§ 390.127 and 390.128 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.129 addresses eligibility examinations, as well as the authority of the FDIC to require such examinations and to request additional information. Under § 303.6 of the FDIC regulations, the FDIC may examine or investigate and evaluate facts related to any filing to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances. Sections 303.3 and 303.11(e), as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. Therefore, the FDIC believes that a separate eligibility determination provision is unneeded, and rescinding § 390.129 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.130 addresses potential FDIC requests for additional information or actions from applicants. FDIC-supervised institutions, including State savings associations, are subject to substantively similar requirements regarding potential FDIC requests for additional information or actions from applicants through various subparts and sections of part 303. Therefore, the FDIC believes that rescinding § 390.130 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.131 explains requirements to publish new public notices. FDIC-supervised institutions, including State savings associations, are subject to substantively similar requirements regarding publishing new public notices in § 303.7(f) of the FDIC regulations. Therefore, the FDIC believes that rescinding § 390.131 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.132 addresses suspension of an application. Part 303 has no such provision. However, the FDIC believes that situations envisioned by § 390.132 can either be effectively addressed on a case-by-case basis without need of a regulation, or that a regulation is not needed because the processing period under part 303 does not begin until the FDIC receives a substantially complete filing and, thus, no suspension is necessary. Therefore, the FDIC believes that rescinding § 390.132 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.133 addresses the applicable review period for an application. The FDIC's part 303 regulations contain provisions that bear on the same issues and are similar in substantive effect as the § 390.133 provisions. Thus, while part 303 addresses review periods in a different manner than subpart F, the FDIC believes that the substantive effect is similar and that rescinding § 390.133 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.134 requires the FDIC to approve or deny an application before the expiration of the applicable review period, including any extensions, and notify the applicant, in writing, of its decision. If the FDIC does not act under

[42] 12 CFR 303.304.

paragraph (a)(1) of the section, the application is deemed approved. The FDIC's part 303 procedures do not contain such a requirement for applications (as opposed to some notice filings). However, when read in conjunction with § 390.133, the FDIC has significant, though not complete, discretion under subpart F to extend the review period or applications until a determination is issued. The substantial ability of the FDIC to extend the processing period under subpart F, to a great extent, renders any difference with part 303 immaterial. As such, the application review periods and notification procedures for State savings associations are subject to substantively similar requirements under both subpart F and part 303. Therefore, the FDIC believes that rescinding § 390.134 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.135 addresses withdrawal if an application is not acted on within two calendar years. The FDIC does not have substantively similar regulations addressing withdrawal if an application is not acted on. However, the FDIC's APM, which aids all FDIC-supervised institutions, including State savings associations, states that the FDIC's goal is to act on filings as promptly as practical, while allowing appropriate time for review and evaluation. Additionally, the FDIC has established timeframes for processing each type of filing, which have been published in Financial Institution Letter 81–2018.[43] It is also, generally, the FDIC's practice to provide an applicant with an opportunity to withdraw its application if FDIC staff propose an unfavorable recommendation. Therefore, the FDIC believes that rescinding § 390.135 is unlikely to have any substantive effects on State savings associations or future applicants.

The proposed rule would amend certain elements of part 303, specifically §§ 303.7(c)(1)(i) and 303.15(b)(1)–(4), so that the provisions are applicable to State savings associations. In so doing, the proposed rule would make elements of part 390, subpart F, substantively duplicative of the amended elements of part 303, and, therefore, unnecessary.

The proposed rule would amend §§ 303.204 and 303.205 of part 303's subpart K (Prompt Corrective Action). Section 303.204 requires any insured State nonmember bank and any insured branch of a foreign bank that is undercapitalized or significantly undercapitalized, and any critically undercapitalized insured depository institution, to submit an application to engage in acquisitions, branching, or new lines of business. Section 303.205 requires any insured State nonmember bank or insured branch of a foreign bank that is (i) significantly undercapitalized or critically undercapitalized, or (ii) is undercapitalized and has failed to submit or implement an acceptable capital restoration plan, to submit an application to pay a bonus or increase compensation to any senior executive officer. The proposed rule would make these sections applicable to State savings associations. The provisions of section 38 of the FDI Act,[44] which establishes the statutory authority for §§ 303.204 and 303.205, contain the restrictions at issue and are applicable to all insured depository institutions. Thus, the proposed rule should not have a material impact on State savings associations.

Section 303.249 of the FDIC regulations addresses the ''procedures to be followed by an insured State nonmember bank to seek the approval of the FDIC to establish an interlock pursuant to'' the Interlocks Act, section 13(k) of the FDI Act, and part 348 of the FDIC regulations. The proposed rule would amend § 303.249(a) to apply to State savings associations. Although the proposed amendment would set forth more explicit requirements for State savings associations seeking approval for establishing an interlock, State savings associations would not realize any effects because they are already subject to the Interlocks Act, and part 348. Therefore, State savings associations would currently need to undertake similar procedures, and provide substantively similar information, to those outlined in § 303.249.

By removing duplicative or unnecessary regulations, the FDIC believes that the proposed rule will benefit State savings associations by clarifying regulations and improving the ease of references.

VII. Alternatives

The FDIC has considered alternatives to the rule, but believes the amendments represent the most appropriate option for covered institutions. As discussed previously, the Dodd-Frank Act transferred to the FDIC certain powers, duties, and functions formerly performed by the OTS. The FDIC's Board reissued and redesignated certain transferred regulations from the OTS, but noted that it would evaluate and might later, as appropriate, rescind, amend, or incorporate the regulations into other FDIC regulations.

The FDIC has evaluated the existing regulations related to Application Processing Procedures. The FDIC considered the status quo alternative of retaining the current regulations, but believes it would be procedurally complex and unnecessary for FDIC-supervised institutions to continue to refer to the separate sets of regulations. Therefore, the FDIC is proposing to amend and rescind the regulations.

VIII. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking, and specifically requests comments on the following question:

Question 1: What impact, if any, do you foresee in the FDIC's proposal to rescind subpart F and amend certain sections of part 303? Please substantiate your response.

Written comments must be received by the FDIC no later than November 16, 2020.

IX. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The proposed rule would rescind and remove from FDIC regulations subpart F and make technical revisions to certain sections of part 303. The proposed rule will not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[45] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total

[43] *www.fdic.gov/news/financial-institution-letters/2018/fil18081.html.*

[44] 12 U.S.C. 1831o.

[45] 5 U.S.C. 601, *et seq.*

assets of less than or equal to $600 million.[46] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of March 31, 2020, the FDIC supervised 3,309 insured depository institutions, of which 2,548 are considered small banking organizations for the purposes of RFA. The proposed rule primarily affects regulations that govern State savings associations.[47] There are 33 State savings associations considered to be small banking organizations for the purposes of the RFA.[48]

As previously discussed, the proposed rule would, if adopted, rescind part 390, subpart F, because most of its elements are duplicative of substantively similar provisions of FDIC regulations, specifically part 303. Additionally, the prosed rule would amend §§ 303.7(c)(1)(i) and 303.15(b)(1)–(4) of part 303 so that the provisions are applicable to State savings associations. In doing so, the proposed rule would make elements of part 390, subpart F, substantively duplicative of the amended elements of part 303, and, therefore, unnecessary.

The proposed rule would amend §§ 303.204 and 303.205 to make the provisions applicable to all insured depository institutions, including small, State savings associations. The revisions to §§ 303.204 and 303.205 provide a procedure for State savings associations to apply to the FDIC for relief from the restrictions of section 38 of the FDI Act.[49]

Finally, the proposed rule would amend § 303.249(a) to make the provisions applicable to all insured depository institutions, including small, State savings associations. The FDIC believes that this proposed amendment will not have any substantive effects on small, State savings associations because it will not result in any substantive change in the procedures for, or content associated with seeking approval for establishing an interlock. Thus, the FDIC does not believe the proposed rule will substantially impact small, FDIC-supervised institutions or future applicants.

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

Question 2: The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[50] requires each Federal banking agency to use plain language in all of its proposed and final regulations published after January 1, 2000. As a federal banking agency subject to the provisions of this section, the FDIC has sought to present the proposed rule to rescind subpart F and make technical revisions to certain sections of part 303 in a simple and straightforward manner.

Question 3: The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposal easier to understand.

D. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[51] The FDIC, along with the other federal banking agencies, submitted a Joint Report to Congress on March 21, 2017, (EGRPRA Report) discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures that will be taken to address issues that were identified. As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as subpart f, this proposal complements other actions the FDIC has taken, separately and with the other federal banking agencies, to further the EGRPRA mandate.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR parts 303 and 390 as follows:

PART 303—FILING PROCEDURES

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

Authority: 12 U.S.C. 378, 1463, 1467a, 1813, 1815, 1817, 1818, 1819(a) (Seventh and Tenth), 1820, 1823, 1828, 1831i, 1831e, 1831o, 1831p–1, 1831w, 1831z, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5412; 15 U.S.C. 1601–1607.

■ 2. Revise § 303.7(c)(1) to read as follows:

§ 303.7 Public notice requirements.

* * * * *

(c) * * *

(1) The public notice referred to in paragraph (a) of this section shall consist of the following:

(i) In the case of an application for deposit insurance for a de novo depository institution, include the names of all organizers or incorporators. In the case of an application to establish a branch, include the location of the proposed branch or, in the case of an application to relocate a branch or main office, include the current and proposed address of the office. In the case of a merger application, include the names of all parties to the transaction. In the case of a notice of acquisition of control, include the name(s) of the acquiring

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

[47] FDIC Call Report, March 31, 2020.

[48] *Id.*

[49] 12 U.S.C. 1831o.

[50] Public Law 106–102, 113 Stat. 1338, 1471 (codified at 12 U.S.C. 4809).

[51] Public Law 104–208, 110 Stat. 3009 (1996).

parties. In the case of an application to relocate an insured branch of a foreign bank, include the current and proposed address of the branch.

(ii) Type of filing being made;

(iii) Name of the depository institution(s) that is the subject matter of the filing;

(iv) That the public may submit comments to the appropriate FDIC regional director;

(v) The address of the appropriate FDIC office where comments may be sent (the same location where the filing will be made);

(vi) The closing date of the public comment period as specified in the appropriate subpart; and

(vii) That the nonconfidential portions of the application are on file in the appropriate FDIC office and are available for public inspection during regular business hours; photocopies of the nonconfidential portion of the application file will be made available upon request.

* * * * *

■ 3. Revise § 303.15(b) to read as follows:

§ 303.15 Certain limited liability companies deemed incorporated under State law.

* * * * *

(b) For purposes of the Federal Deposit Insurance Act and this Chapter,

(1) Each of the terms ''stockholder'' and ''shareholder'' includes an owner of any interest in a depository institution chartered as an LLC, including a member or participant;

(2) The term ''director'' includes a manager or director of a depository institution chartered as an LLC, or other person who has, with respect to such a depository institution, authority substantially similar to that of a director of a corporation;

(3) The term ''officer'' includes an officer of a depository institution chartered as an LLC, or other person who has, with respect to such a depository institution, authority substantially similar to that of an officer of a corporation; and

(4) Each of the terms ''voting stock,'' ''voting shares,'' and ''voting securities'' includes ownership interests in a depository institution chartered as an LLC, as well as any certificates or other evidence of such ownership interests.

■ 4. Revise § 303.204 to read as follows:

§ 303.204 Applications for acquisitions, branching, and new lines of business.

(a) *Scope.* (1) Any insured State nonmember bank, any insured State savings association, and any insured branch of a foreign bank which is undercapitalized or significantly undercapitalized, and any insured depository institution which is critically undercapitalized, shall submit an application to engage in acquisitions, branching or new lines of business.

(2) A new line of business will include any new activity exercised which, although it may be permissible, has not been exercised by the institution.

(b) *Content of filing.* Applications shall describe the proposal, state the date the institution's capital restoration plan was accepted by its primary federal regulator, describe the institution's status in implementing the plan, and explain how the proposed action is consistent with and will further the achievement of the plan or otherwise further the purposes of section 38 of the FDI Act. If the FDIC is not the applicant's primary federal regulator, the application also should state whether approval has been requested from the applicant's primary federal regulator, the date of such request and the disposition of the request, if any. If the proposed action also requires applications pursuant to section 18 (c) or (d) of the FDI Act (mergers and branches) (12 U.S.C. 1828 (c) or (d)), such applications should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*).

■ 5. Revise § 303.205(a) to read as follows:

§ 303.205 Applications for bonuses and increased compensation for senior executive officers.

(a) *Scope.* Any insured State nonmember bank, insured State savings association, or insured branch of a foreign bank that is significantly or critically undercapitalized, or any insured State nonmember bank, any insured State savings association, or any insured branch of a foreign bank that is undercapitalized and which has failed to submit or implement in any material respect an acceptable capital restoration plan, shall submit an application to pay a bonus or increase compensation for any senior executive officer.

* * * * *

■ 6. Revise § 303.249(a) to read as follows:

§ 303.249 Management official interlocks.

(a) *Scope.* This section contains the procedures to be followed by an insured State nonmember bank or an insured State savings association to seek the approval of FDIC to establish an interlock pursuant to the Depository Institutions Management Interlocks Act (12 U.S.C. 3207), section 13 of the FDI Act (12 U.S.C. 1823(k)) and part 348 of this chapter.

* * * * *

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 7. The authority citation for part 390 is revised to read as follows:

Authority: 12 U.S.C. 1819.

Subpart G also issued under 12 U.S.C. 2810 *et seq.,* 2901 *et seq.;* 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

Subpart O also issued under 12 U.S.C. 1828.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

Subpart Y also issued under 12 U.S.C. 1831o.

Subpart F—[Removed and Reserved]

■ 8. Remove and reserve subpart F, consisting of §§ 390.100 through 390.135.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about September 15, 2020.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2020–21000 Filed 10–14–20; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0851; Product Identifier 2020–NM–081–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 A318 series airplanes; Model A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, and A319–133 airplanes; Model A320–211, A320–212, A320–214, A320–216, A320–231, A320–232, and A320–233 airplanes; and Model A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, and A321–232 airplanes. This proposed AD was prompted by reports that certain oxygen supply solenoid

valves are a potential source of increased flow resistance within the flightcrew oxygen system. This proposed AD would require a detailed inspection (flow test) of certain solenoid valves, and replacement if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 30, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0851.

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–2020–0851; 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: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views about this proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0851; Project Identifier 2020–NM–081–AD'' at the beginning of your 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 received, without change, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received by the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this NPRM because of those comments.

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 2020–0104, dated May 7, 2020 (''EASA AD 2020–0104'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318–111, A318–112, A318–121, and A318–122 airplanes; Model A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, and A319–133 airplanes; Model A320–211, A320–212, A320–214, A320–216, A320–231, A320–232, and A320–233 airplanes; and Model A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, and A321–232 airplanes.

This proposed AD was prompted by reports that oxygen supply solenoid valves having certain part numbers and a certain year of manufacture, are a potential source of increased flow resistance within the flightcrew oxygen system. The FAA is proposing this AD to address increased flow resistance within the flightcrew oxygen system, which could lead to a reduced flow of oxygen supply to the flightcrew oxygen masks, and in combination with in-flight depressurization, smoke in the flight deck, or a smoke evacuation procedure, could lead to flightcrew hypoxia and loss of useful consciousness, resulting in loss of control of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0104 describes procedures for doing a detailed inspection (flow test) of certain solenoid valves using the flightcrew oxygen masks and replacing any solenoid valve that fails the flow test with a serviceable part. 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 evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2020–0104 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0104 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0104 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 2020–0104 that is required for compliance with EASA AD 2020–0104 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0851 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 1,100 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
3 work-hours × $85 per hour = $255	$0	$255	$280,500

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTION

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	*	$85

* The FAA has received no definitive data that would enable the agency to provide parts cost estimates for the on-condition replacement specified in this proposed AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this 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–2020–0851; Product Identifier 2020–NM–081–AD.

(a) Comments Due Date

The FAA must receive comments by November 30, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category.

(1) Model A318–111, A318–112, A318–121, and A318–122 airplanes.

(2) Model A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, and A319–133 airplanes.

(3) Model A320–211, A320–212, A320–214, A320–216, A320–231, A320–232, and A320–233 airplanes.

(4) Model A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, and A321–232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by reports that certain oxygen supply solenoid valves are a potential source of increased flow resistance within the flightcrew oxygen system. The FAA is issuing this AD to address increased flow resistance within the flightcrew oxygen system, which could lead to a reduced flow of oxygen supply to the flightcrew oxygen masks, and in combination with in-flight depressurization, smoke in the flight deck, or a smoke evacuation procedure, could lead to flightcrew hypoxia and loss of useful consciousness, resulting in loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0104, dated May 7, 2020 (''EASA AD 2020–0104'').

(h) Exceptions to EASA AD 2020–0104

(1) Where EASA AD 2020–0104 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0104 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2020–0104 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@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 2020–0104 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) For information about EASA AD 2020–0104, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0851.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

Issued on September 18, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–22741 Filed 10–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0907; Product Identifier 2017–SW–072–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Airbus Helicopters Model AS350B3 helicopters. This proposed AD would require modifying the electrical system of the throttle twist grip, inspecting the routing of a microswitch electrical harness, and correcting the electrical harness routing if it is incorrect. This proposed AD was prompted by reports of the engine remaining in idle when the twist grip was turned from the ''forced idle'' position to the ''flight'' position. The actions of this proposed AD are intended to address an unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 30, 2020.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *https://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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–2020–0907; 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 proposed AD, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, 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 service information identified in this proposed rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972- 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: George Schwab, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

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 file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments received.

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 George Schwab, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued a series of ADs, most recently EASA AD No. 2017–0035, dated February 20, 2017 (EASA AD 2017–0035), to correct an unsafe condition for Airbus Helicopters (formerly Eurocopter) Model AS 350 B3 helicopters with ARRIEL 2B engines installed. EASA advises of an initial report of the microswitch pin jammed in the pushed-in position resulting in the engine remaining in idle when the twist grip had been turned back to the ''flight'' position during an autorotation training exercise. This condition could also occur during governor failure training when the twist grip is turned in the low flow rate direction. EASA also advises of two later reports of this condition, with one of those reports related to an incorrectly routed electrical harness. EASA advises that this condition, if not detected and corrected, could lead to reduced control of the helicopter.

EASA initially issued AD No. 2006–0094, dated April 21, 2006, which required repetitive testing of the microswitch and established a life limit for the microswitch. Subsequent EASA AD action required reducing that life limit, inspecting the travel of the collective lever, performing an additional check of the collective lever for free travel, and installing a terminating action modification that was available for certain helicopter configurations. That modification gave priority to the HydroMechanical Unit (HMU) flight position when the microswitch failed to operate correctly at forced idle. EASA most recently issued AD 2017–0035, which prompted this AD action, to include all of the previous AD requirements and expand the terminating action modification to other helicopter configurations.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA is proposing this AD because the FAA evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. AS350–67.00.43, Revision 3, dated June 16, 2016, which specifies procedures, based on different configurations, to modify the electrical operation to give priority to the HMU flight position when the microswitch does not operate correctly at forced idle (corresponds to Airbus Helicopters Modification (MOD) 073357). This service information also specifies instructions to inspect the routing of microswitch electrical harness number ''53K''.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA also reviewed Eurocopter ASB No. 05.00.49, Revision 3, dated March 8, 2012. This service information specifies procedures, for helicopters without MOD 073357 installed, for repetitive testing of the microswitch, a life limit for the microswitch, inspecting the travel of the collective lever, and verifying correct wiring harness installation.

Proposed AD Requirements

This proposed AD would require, based on helicopter configuration, modifying the electrical system of the throttle twist grip. This proposed AD would also require inspecting the routing of a microswitch electrical harness, and depending on the routing of that electrical harness, correcting the routing.

Differences Between This Proposed AD and the EASA AD

The EASA AD specifies a repetitive test of the microswitch, a life limit for the microswitch, and inspecting the travel of the collective lever, until the terminating action of modifying the electrical system of the throttle twist grip and inspecting the routing of a microswitch electrical harness are completed. This proposed AD would only require modifying the electrical system of the throttle twist grip and inspecting the routing of a microswitch electrical harness. The EASA AD specifies performing that terminating action in a compliance time of calendar months. This proposed AD would require performing the required actions before the next practice autorotation, before the next simulated governor failure, or within 330 hours time-in-service, whichever occurs first.

Costs of Compliance

The FAA estimates that this proposed AD would affect 517 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this proposed AD. Labor costs are estimated at $85 per work-hour.

Modifying the electrical system and inspecting the electrical harness routing would take about 30 work-hours and parts would cost about $9,692 for an estimated cost of $12,242 per helicopter and $6,329,114 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this 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, 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 Helicopters: Docket No. FAA–2020–0907; Product Identifier 2017–SW–072–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model AS350B3 helicopters, certificated in any category, with a Turbomeca ARRIEL 2B engine installed.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of the electrical operation of the throttle twist grip, which can prevent switching from ''IDLE'' mode to ''FLIGHT'' mode. During autorotation training or during governor failure training (when the throttle grip is turned in the low flow direction), this condition prohibits recovery from a practice autorotation and compels the pilot to continue the autorotation to the ground. This condition could result in unintended touchdown to the ground at a flight-idle power setting, damage to the helicopter, and injury to occupants.

(c) Comments Due Date

The FAA must receive comments by November 30, 2020.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Before the next practice autorotation, before the next simulated governor failure, or within 330 hours time-in-service, whichever occurs first, modify the electrical operation of the throttle twist grip to give priority to the HydroMechanical Unit flight position when the microswitch does not operate correctly at forced idle (corresponds to Airbus Helicopters Modification (MOD) 073357) as follows:

(1) For helicopters without MOD 073087 and without MOD 073135 installed:

(i) Install box ''69K'' on the Full Authority Digital Engine Control plate, relay ''81K'' on frame X1310, install fuses on the console end comprising circuit-breaker panels ''31 ALPHA'' and ''32 ALPHA,'' and modify the electrical wiring by following the Accomplishment Instructions, paragraph 3.B.2.a. of Airbus Helicopters Alert Service Bulletin No. AS350–67.00.43, Revision 3, dated June 16, 2016 (ASB AS350–67.00.43), except you are not required to discard parts.

(ii) Inspect the routing of microswitch electrical harness ''53K'' for correct installation by following paragraph 3.B.2.e. of ASB AS350–67.00.43. If the wiring routing is incorrect, before further flight, correct the wiring routing by following paragraph 3.B.2.f. of ASB AS350–67.00.43.

(2) For helicopters with MOD 073087 (series) and without MOD 073135 installed:

(i) Install relays ''54K'' and ''81K'' on frame X1310 and modify the electrical wiring by following paragraph 3.B.2.b. of ASB AS350–67.00.43.

(ii) Inspect the routing of microswitch electrical harness ''53K'' for correct installation by following paragraph 3.B.2.e. of ASB AS350–67.00.43. If the wiring routing is incorrect, before further flight, correct the wiring routing by following paragraph 3.B.2.f. of ASB AS350–67.00.43.

(3) For helicopters with MOD 073087 (retrofit) and without MOD 073135 installed:

(i) Install relay ''81K'' on frame X1310 and modify the electrical wiring by following paragraph 3.B.2.c. of ASB AS350–67.00.43.

(ii) Inspect the routing of microswitch electrical harness ''53K'' for correct installation by following paragraph 3.B.2.e. of ASB AS350–67.00.43. If the wiring routing is incorrect, before further flight, correct the wiring routing by following paragraph 3.B.2.f. of ASB AS350–67.00.43.

(4) For helicopters with MOD 073087 and with MOD 073135 installed:

(i) Install relay ''81K'' on frame X1310 and modify the electrical wiring by following paragraph 3.B.2.d. of ASB AS350–67.00.43.

(ii) Inspect the routing of microswitch electrical harness ''53K'' for correct installation by following paragraph 3.B.2.e. of ASB AS350–67.00.43. If the wiring routing is incorrect, before further flight, correct the wiring routing by following paragraph 3.B.2.f. of ASB AS350–67.00.43.

(5) For helicopters with MOD 073084 and with MOD 073222 installed:

(i) Install relay ''81K'' on frame X1310 and modify the electrical wiring by following paragraph 3.B.2.g. of ASB AS350–67.00.43, except you are not required to scrap parts.

(ii) Inspect the routing of microswitch electrical harness ''53K'' for correct installation by following paragraph 3.B.2.e. of ASB AS350–67.00.43. If the wiring routing is incorrect, before further flight, correct the wiring routing by following paragraph 3.B.2.f. of ASB AS350–67.00.43.

(6) For helicopters with optional Autopilot ''81K'' and without MOD 073222 installed:

(i) Position relay ''81K'' on frame X1310 by following paragraph 3.B.2.h. of ASB AS350–67.00.43.

(ii) Inspect the routing of microswitch electrical harness ''53K'' for correct installation by following ASB AS350–67.00.43, step 3.B.2.e. If the wiring routing is incorrect, before further flight, correct the wiring routing by following paragraph 3.B.2.f. of ASB AS350–67.00.43.

(f) Special Flight Permits

Special flight permits are prohibited.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: George Schwab, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

(1) Eurocopter Alert Service Bulletin No. 05.00.49, Revision 3, dated March 8, 2012, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD No. 2017–0035, dated February 20, 2017. You may view the EASA AD on the internet at *https://www.regulations.gov* in the AD Docket.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 7697, Engine Control System Wiring.

Issued on October 6, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–22744 Filed 10–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Office of the Under Secretary for Economic Affairs

15 CFR Part 1500

[Docket No.: 200901–0230]

RIN 0605–AA56

Concrete Masonry Products Research, Education and Promotion Order; Referendum Procedures

AGENCY: Under Secretary for Economic Affairs, United States Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to the Concrete Masonry Products Research, Education, and Promotion Act of 2018 (the Act), the Department of Commerce (Department) solicits comments on proposed procedures for conducting a referendum to determine whether manufacturers of concrete masonry units favor the issuance of a proposed Concrete Masonry Products Research, Education, and Promotion Order (proposed order). The purpose of the proposed order is to strengthen the position of the concrete masonry products industry in the domestic marketplace; maintain, develop, and expand markets and uses for concrete masonry products in the domestic marketplace; and promote the use of concrete masonry products in construction and building. The Department published the proposed order in the **Federal Register** on August 24, 2020. The Act requires industry to approve the proposed order via a referendum. If industry approves the proposed order, the Secretary of Commerce (Secretary) will issue a final order and appoint a Board to carry out the duties prescribed by that order, which would include an industry-funded research, education, and promotion program. The Department also would follow these procedures for any subsequent referendum under the Act. This proposal also announces the intent of the Department to request approval by the Office of Management and Budget (OMB) of two new information collection requests (ICRs) to support implementation of the referendum.

DATES: The Department must receive comments November 16, 2020.

ADDRESSES: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://beta.regulations.gov/docket/DOC-2020-0003* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. The supporting economic analysis is also available for comment on regulations.gov.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. The Department reserves the right to publish relevant comments, unedited and in their entirety. Do not include personal information, such as account numbers or Social Security numbers, or names of other individuals. Do not submit confidential business information, or otherwise proprietary, sensitive or protected information. We will not post or consider comments that contain profanity, vulgarity, threats, or other inappropriate language or like content.

Pursuant to the Paperwork Reduction Act (PRA), send to the above address comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information. In addition, send comments concerning the information collection to *OIRA_Submission@omb.eop.gov* or online at *https://www.reginfo.gov/public/do/PRAMain.*

FOR FURTHER INFORMATION CONTACT: Mr. Michael Thompson, Communications for the Commerce Checkoff Implementation Program, Office of the Under Secretary for Economic Affairs, telephone: (202) 482–0671 or via electronic mail: *mthompson1@doc.gov*.

I. Legal Background

Pursuant to the Concrete Masonry Products Research, Education, and Promotion Act of 2018, 15 U.S.C. 8701 *et seq.,* the Department is enacting a research, education, and promotion program (commonly referred to as a checkoff program) for concrete masonry products. The Act specifically authorizes the Secretary to conduct the referendum, and states that ''[referenda . . . shall be conducted in a manner determined by the Secretary.'' 15 U.S.C. 8706(c)(1). The Act also authorizes the Secretary to ''issue such regulations as may be necessary to carry out [the Act] and the power vested in the Secretary under [the Act].'' 15 US.C. 8713.

The Department's actions to bring the program to fruition will include: (1) implementing an order that will effectuate the purpose of the Act; (2) conducting a referendum among the industry to determine whether the industry approves of being subject to the implementing order; and, upon an affirmative vote on the order, (3) issuing

the order and establishing a Board that will carry out the provisions of the order; and (4) performing continuing oversight of the Board and program. An industry group, the *CMU Checkoff Initiative,* submitted a proposed order to the Secretary on April 15, 2020. The proposed order was made available for comment in a separate proposed rule published in the **Federal Register** on August 24, 2020, at 85 FR 52059. [1]

Under the Act, the Secretary must conduct the referendum among eligible manufacturers during the 60-day period before the proposed order becomes effective. 15 U.S.C. 8706(a)(1). The Department interprets this to mean that the referendum would be conducted entirely within the 60-day period preceding the effective date of the order, but specifically requests comments on this interpretation. The order shall become effective only if the Secretary determines that the order has been approved by a majority ''yes'' vote by both: (1) The total number of concrete masonry unit manufacturers voting; and (2) manufacturers who operate a majority of the machine cavities operated by the manufacturers voting in the referendum. 15 U.S.C. 8706(a)(2).

A manufacturer will be considered eligible to vote if the manufacturer has manufactured concrete masonry products during a period of at least 180 days prior to the first day of the 30-day period during which voting in the referendum will occur. 15 U.S.C. 8706(b)(2). The Act directs the Secretary to conduct the referendum ''among [eligible] manufacturers . . . subject to assessments under section 8705 of this title.'' As explained below, only manufacturers of concrete masonry units are subject to assessment under the Act.

The Act and the proposed order distinguish between concrete masonry products and concrete masonry units. The Act defines concrete masonry products to include a broader category of products, including concrete masonry units, as well as hardscape products such as concrete pavers and segmental retaining wall units, manufactured on a block machine using dry-cast concrete. Concrete masonry units are a type of concrete masonry product with an actual width of 3 inches or greater that are manufactured from dry-cast concrete using a block machine, including concrete block and related concrete units used in masonry applications. Under the Act and the proposed order, only manufacturers of concrete masonry units are required to pay an initial rate of assessment of $0.01 per concrete masonry unit sold. 15 U.S.C. 8705(c)(1).

The Act does not define the phrase ''subject to assessment'' and therefore, the Secretary must interpret the statute to determine whether all manufacturers of concrete masonry products should participate in the referendum, or whether only manufacturers of concrete masonry units should participate. The phrase ''subject to assessment'' could mean: (1) Meeting only the eligibility requirement described above (that is, having manufactured concrete masonry products during the 180-day period prior to voting), or (2) both meeting the eligibility requirement and being subject to the initial rate of assessment. Under interpretation (1), the referendum would be conducted among all manufacturers who had manufactured concrete masonry products during the 180-day period prior to voting. Under interpretation (2), because the initial rate of assessment is applied only to concrete masonry units sold, the referendum would be conducted among all manufacturers who had manufactured concrete masonry units during the 180-day period prior to voting.

Where a statute leaves a gap or is ambiguous, courts will typically look to see whether the agency's interpretation was reasonable in light of the text, nature, and purpose of the statute. *See, e.g., Cuozzo Speed Techs., LLC* v. *Lee,* 136 S. Ct. 2131, 2134 (U.S. June 20, 2016). In the absence of a statutory definition, courts ''construe a statutory term in accordance with its ordinary or natural meaning.'' *FDIC* v. *Meyer,* 510 U.S. 471, 476 (1994). The most relevant definition of ''subject to'' is ''affected by or possibly affected by'' something.[2] Only manufacturers of concrete masonry units will actually have to pay, or be affected by, the initial rate of assessment. The Department believes, therefore, that the most natural reading of the statute is that only concrete masonry unit manufacturers are ''subject to'' assessment and therefore eligible to participate in the referendum.

This reading is also consistent with the stated purpose of the Act as described in 15 U.S.C. 8701. Senate Report 115–218 includes the Congressional Budget Office's (CBO) estimate concerning the Act's impacts, and notes the following assumption:

> The bill [S. 374] would apply to producers of both concrete block and concrete pavers, but CBO expects that only producers of concrete block would participate in the referendum. Because there is little differentiation among concrete blocks across manufacturers, all producers of concrete blocks would benefit from an industry-wide research and promotion program. Manufacturers of concrete pavers, on the other hand, are able to distinguish their products in ways that allow consumers to recognize individual brands. Consequently, those producers have little incentive to participate in an industry-wide marketing effort. Based on information from manufacturers of concrete pavers, CBO expects that those producers would not participate in the referendum.

Senate Report 115–218, at 4 (Mar. 22, 2018).

Based upon both the language and the overarching purpose of the statute, and because concrete masonry unit manufacturers are currently the only manufacturers who have an incentive to participate in this program, the Department interprets the Act to mean that only manufacturers subject to the initial rate of assessment are ''subject to assessment,'' in accordance with interpretation (2). Therefore, for the initial referendum, an eligible manufacturer would be a manufacturer of concrete masonry units that is subject to the initial rate of assessment, that is, $0.01 per concrete masonry unit sold by a manufacturer. *See* 15 U.S.C. 8705(c)(1).

II. Summary of Proposed Rule

The Department would conduct the referendum. Each manufacturer eligible to vote in the referendum would be entitled to one vote. *See* 15 U.S.C. 8706(b)(1). For the order to go into effect, there must be a majority ''yes'' vote by both: (1) The total number of concrete masonry unit manufacturers voting; and (2) manufacturers who operate a majority of the machine cavities operated by the manufacturers voting in the referendum. *See* 15 U.S.C. 8706(a)(2). Manufacturers would be required to register by midnight of the day prior to the start of the referendum period in order to vote. *See* 15 U.S.C. 8706(c)(2). the Department would use Employer Identification Numbers to identify unique manufacturers.

The referendum would be conducted by an agent, who would determine the referendum period and would provide notification to interested voters to allow them to register prior to the referendum period, as required by the Act. *See* 15 U.S.C. 8706(c)(2). The agent would provide registration forms and ballots to eligible voters and would provide reasonable public notice of the referendum. *See* 15 U.S.C. 8706(c)(4). The agent would also collect and review

[1] *https://www.federalregister.gov/documents/2020/08/24/2020-17515/concrete-masonry-products-research-education-and-promotion-order.*

[2] ''Subject to.'' *Merriam-Webster.com Dictionary,* Merriam-Webster, *https://www.merriam-webster.com/dictionary/subject%20to.* Accessed 20 Jun. 2020.

all ballots and determine whether any ballots are invalid and should not be counted. Finally, the agent would prepare a report on the referendum and announce the results to the public. The Department would use these same procedures for any subsequent referendum under the Act. For any new proposed order, voter eligibility would be based on the scope of such proposed order.

III. Request for Comments

The Department invites comments on these procedures for conducting the referendum to determine whether manufacturers of concrete masonry units favor issuance of the proposed order.

Classification

Executive Order 12866

This rulemaking is not a significant regulatory action under Executive Order 12866.

Executive Order 13771

This rule is not subject to the requirements of Executive Order 13771, because its likely impact is *de minimis.*

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as defined in Executive Order 13132.

Regulatory Flexibility Act: Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), first enacted in 1980 and codified at 5 U.S.C. 600–611, was intended to place the burden on the government to review all new regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization can have a bearing on its ability to comply with Federal regulations. Major goals of the RFA are: (1) To increase agency awareness and understanding of the impact of their regulations on small business; (2) to require that agencies communicate and explain their findings to the public; and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. When an agency publishes a proposed regulatory action, it must either: (1) Certify that the action will not have a significant adverse impact on a substantial number of small entities, and support such a certification declaration with a factual basis, demonstrating this outcome, or, (2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

The IRFA for the proposed referendum procedures follows below.

Basis and Purpose of the Rule

This action is taken under the authority of the Act, which authorizes a research, education, and promotion program for concrete masonry products, also known as a checkoff program. The checkoff program would be established by an order issued by the Secretary that is subject to approval by an industry referendum. The program would then be carried out by a Board, which would develop research and education programs as well as efforts to promote concrete masonry products in domestic markets. Board activities would be funded by assessments on manufacturers of concrete masonry products, based on the number of masonry units sold each quarter. A proposed order submitted by industry to the Department on April 15, 2020, triggered a referendum deadline of approximately 8 months from submission. The objectives of, and legal basis for, the proposed rule is discussed earlier in the preamble and are not repeated here.

Number of Affected Entities

The proposed order applies to products manufactured on concrete block machines and used for construction. As indicated by the data below and confirmed by industry experts, the industry is dominated by small entities.

The U.S. Small Business Administration size standard to qualify as a small business in this industry is 500 or fewer employees.[3] According to Census data, there were 430 firms and 686 establishments engaged in concrete block and brick manufacturing in 2017.[4] Of these, 401 firms, or 93 percent, employed fewer than 500 employees, and these small firms accounted for 514 establishments, or 75 percent of all establishments, and about 62 percent of industry employment.[5]

TABLE 3—BLOCK AND BRICK MANUFACTURERS 2017 BY BUSINESS SIZE

Size of business by number of employees	Number of firms	Number of establishments	Employment	Estimated receipts ($mils)	Annual payroll ($mils)
Total	430	686	16,575	4,682	814
0–4	92	92	173	56	9
5–9	66	66	432	97	19
10–19	83	87	1,168	277	56
20–99	116	152	3,851	922	185
100–499	44	117	4,607	1,506	251
500+	29	172	6,344	1,823	293

Source: U.S. Census Bureau 2017 County Business Patterns and 2017 Economic Census, Table US_6digitnaics_2017, released 01/06/2020.

[3] *See* ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes'' on the U.S. Small Business Administration website.

[4] A firm is a business organization consisting of one or more domestic establishments in the same state and industry that were specified under common ownership or control and an establishment is a single physical location at which business is conducted or services or industrial operations are performed. See ''Statistics of U.S. Businesses Glossary'' on the U.S. Census Bureau website.

[5] *See* ''2017 SUSB Annual Data Tables by Establishment Industry'' on the U.S. Census Bureau website. For more information, see the County Business Patterns methodology on the Census website.

Costs to Affected Entities

This action would impose a reporting burden on eligible manufacturers of concrete masonry units. To participate in the referendum, eligible manufacturers would register with the Department in advance of the referendum period. Eligible manufacturers would have the opportunity to complete and submit a ballot to the Department indicating whether or not they favor implementation of the proposed order. The specific burdens for registration and the ballot are detailed later in this document in the section titled ''Paperwork Reduction Act''.

The Department estimates that the respondent burden of the referendum is 0.5 hours for registration and 0.25 hours to complete the ballot and that approximately 690 small businesses will be affected. This results in a total estimated burden on small businesses of 517.5 hours. According to the Bureau of Labor Statistics, the median pay for industrial production managers is $50.71 per hour.[6] Thus, the Department estimates that the cost to firms of participating in the referendum will average $38.03.

Paperwork Reduction Act

The information collection requests (''ICRs'') in these proposed referendum procedures have been submitted for approval to OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This section describes the new ICRs and the estimated time to fulfill each requirement. There are two new ICRs associated with the proposed referendum procedures—one dealing with the voter registration process and a second with the ballot that voters will use during the referendum.

(1) Registration. The Act requires manufacturers who wish to participate in the referendum to register in advance of the referendum period. The Secretary will need adequate information from all interested voters to determine whether they are eligible to participate in the referendum. The Department will restrict the information request to that information needed to ensure eligibility of the requester to participate in the referendum. Types of information will include name, contact information (address, phone number, email), status as a manufacturer of concrete masonry units, affirmation of having manufactured concrete masonry units within 180 days prior to the beginning of the referendum period, the number of cavities in operation, their Employer Identification Number, and similar identifying information.

Estimated burden: 0.5 hour per application.

Respondents: Manufacturers of concrete masonry units.

Estimated Number of Respondents: 690.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 345 hours.

(2) Ballot. To conduct a referendum the Department will issue ballots to allow eligible voters to participate. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter. The Department will restrict the information request to that information needed to determine a voter's eligibility. Information will include the name and address of the manufacturer, status as a manufacturer of concrete masonry units, affirmation that they have manufactured concrete masonry units within 180 days of the beginning of the referendum period, manufacturer Employer Identification Number, the number of cavities the manufacturer has in operation, and similar verification information.

Estimated Burden: 0.25 hour per ballot.

Respondents: Manufacturers of concrete masonry units.

Estimated Number of Respondents: 690.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 172.5 hours.

As part of its continuing effort to reduce paperwork and respondent burden, the Department invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act. The Department solicits comments concerning: Whether these ICRs are necessary for the proper performance of the functions of the Department, including whether the information has practical utility; the accuracy of the Department's estimates of the burden of the ICRs; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. The information collection request may be viewed on the *Reginfo.gov* website. Organizations and individuals desiring to submit comments on the collection of information requirements should see the **ADDRESSES** section of this notice. The final rule will respond to any public comments on the ICRs contained in this proposal. Notwithstanding any other provision of the law, no person is required to respond to, and no person will be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

National Environmental Policy Act

This proposed rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 1500

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Concrete masonry promotion, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Under Secretary for Economic Affairs proposes to amend 15 CFR part 1500, proposed to be added August 24, 2020, at 85 FR 52059, as set forth below:

PART 1500—CONCRETE MASONRY RESEARCH, EDUCATION, AND PROMOTION

■ 1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 8701–8717.

■ 2. Add subpart B to read as follows:

Subpart B—Referendum Procedures

Sec.
1500.100 General.
1500.101 Definitions.
1500.102 Voting.
1500.103 Instructions.
1500.104 Agents.
1500.105 Ballots.
1500.106 Referendum report.
1500.107 Confidential information.
1500.108 OMB control number.

Subpart B—Referendum Procedures

§ 1500.100 General.

Agents will conduct a referendum in accordance with this subpart.

§ 1500.101 Definitions.

In addition to the definitions found in subpart A of this part, the following definitions apply:

[6] *See* the *Occupational Outlook Handbook* on the Bureau of Labor Statistics website, *https://www.bls.gov/ooh/.*

Agent means the individual or individuals the Secretary designates to conduct the referendum.

Eligible manufacturer means any person who is currently a manufacturer of concrete masonry units and has manufactured a concrete masonry unit within 180 days of the referendum period.

Employer Identification Number means the number generally issued to businesses by the U.S. Department of Treasury. An Employer Identification Number (EIN) is also known as a Federal Tax Identification Number and is used to identify a business entity. For more information on EINs and how to apply go to *https://www.irs.gov/businesses.*

Lead Executive means the individual or individuals the Secretary designates to oversee the conduct of the referendum.

Referendum period means the period of time, not less than 30 days, that the Secretary or his agent determines appropriate for conducting the referendum.

Registration means the form and process eligible manufacturers who wish to vote must complete and follow in order to vote. Voters must register by midnight of the day prior to the beginning of the referendum period.

§ 1500.102 Voting.

(a) Each eligible manufacturer shall be entitled to cast one vote.

(b) The order shall become effective only if the Secretary determines that the order has been approved by a majority of manufacturers voting who also represent a majority of the machine cavities in operation of those manufacturers voting in the referendum.

(c) In order to vote, a manufacturer must register by midnight of the day prior to the start of the referendum period.

(d) For referendum purposes the Department will use Employer Identification Numbers (EIN) to identify unique manufacturers.

(e) The Secretary does not authorize proxy voting. However, an officer or employee of an eligible manufacturer, an administrator, executor, or trustee of an eligible entity may cast a ballot on behalf of such entity provided that any individual so voting shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executor, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of an agent, the individual shall submit adequate evidence of such authority.

(f) Voters are to cast ballots by the means specified by the Secretary.

(g) If the Department requests, manufacturers shall provide proof of sales, proof of cavities in operation, or any other such proof the Department deems necessary to establish voting eligibility. Failure to provide the requested proof to the Department will result in ineligibility to participate in the referendum.

§ 1500.103 Instructions.

The agent(s) shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Secretary. The Secretary may prescribe additional instructions, consistent with the provisions of this subpart, to govern the procedure to be followed by the agent(s). Such agent(s) shall:

(a) Determine the period during which voters may cast ballots;

(b) Provide notification to allow interested voters to register in advance of the referendum period. The Department will restrict the information requested to that information needed to ensure eligibility of request or to participate in the referendum. Types of information will include name, contact information (address, phone number, email), status as a manufacturer of concrete masonry units, affirmation of having manufactured concrete masonry units within 180 days prior to the beginning of the referendum period, the number of cavities in operation, their Employer Identification Number, and similar identifying information;

(c) Provide ballots and related material to voters for use in the referendum. The ballot shall provide for recording essential information, including information needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter. The Department will restrict the information requested to that information needed to determine a voter's eligibility. Information will include the name and address of the manufacturer, status as a manufacturer of concrete masonry units, affirmation that they have manufactured concrete masonry units within 180 days of the beginning of the referendum period, manufacturer Employer Identification Number, the number of cavities the manufacturer has in operation, and similar verification information;

(d) Give reasonable public notice of the referendum:

(1) By using available media or public information sources, without incurring advertising expense, to publicize the dates, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to webinars and other such media vehicles; and

(2) By such other means as the agent may deem advisable;

(e) Send to eligible manufacturers whose names and addresses are known to the agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed order. Agents will not refuse a ballot to any person who claims to be eligible to vote;

(f) At the end of the referendum period, collect, open, number, and review the ballots and tabulate the results in the presence of the Lead Executive authorized to monitor the referendum process;

(g) Prepare a report on the referendum; and

(h) Announce the results to the public.

§ 1500.104 Agents.

The Secretary may appoint agent(s) to conduct the referendum. Agent(s) may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions under this subpart. The agent authorizes each individual so appointed to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1500.105 Ballots.

The agent(s) shall accept all ballots cast. However, if an agent determines a need for additional review for any reason, the agent shall endorse above the voter's signature on the ballot with a statement to the effect that the ballot needs additional scrutiny. The agent will attach to the ballot information regarding the reasons for additional review, the results of any investigations made with respect to the review, and the final disposition of the review. Agents will not count ballots found to be invalid on the basis that:

(a) The ballot is blank, missing a vote, has no signature;

(b) Both voting boxes are marked in the vote section;

(c) The ballot is in a state that agents cannot determine the vote; or

(d) The ballot has a name that is different on the ballot from that of the registered voter. (However, agents will accept power of attorney votes with proper documentation.)

§ 1500.106 Referendum report.

Unless otherwise directed, the Lead Executive shall prepare and submit to the Secretary a report on the results of the referendum, the manner in which the agent(s) conducted the referendum,

the kind of public notice given, and other information the Lead Executive finds pertinent to the analysis of the referendum and its results.

§ 1500.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1500.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* is OMB control number xxxx.

Dated: September 4, 2020.

Kenneth White,

Senior Policy Analyst, Under Secretary for Economic Affairs.

[FR Doc. 2020–20035 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–20–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 201

[Docket No. 2020–11]

Exemptions To Permit Circumvention of Access Controls on Copyrighted Works

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Copyright Office is conducting the eighth triennial rulemaking proceeding under the Digital Millennium Copyright Act (''DMCA''), concerning possible temporary exemptions to the DMCA's prohibition against circumvention of technological measures that control access to copyrighted works. In this proceeding, the Copyright Office is considering petitions for the renewal of exemptions that were granted during the seventh triennial rulemaking along with petitions for new exemptions to engage in activities not currently permitted by existing exemptions. On June 22, 2020, the Office published a notification of inquiry requesting petitions to renew existing exemptions and comments in response to those petitions, as well as petitions for new exemptions. Having carefully considered the comments received in response to that notification, in this notice of proposed rulemaking (''NPRM''), the Office announces its intention to recommend each of the existing exemptions for readoption. This NPRM also initiates three rounds of public comment on the newly-proposed exemptions. Interested parties are invited to make full legal and evidentiary submissions in support of or in opposition to the proposed exemptions, in accordance with the requirements set forth below.

DATES: Initial written comments (including documentary evidence) and multimedia evidence from proponents and other members of the public who support the adoption of a proposed exemption, as well as parties that neither support nor oppose an exemption but seek to share pertinent information about a proposal, are due December 14, 2020. Written response comments (including documentary evidence) and multimedia evidence from those who oppose the adoption of a proposed exemption are due February 9, 2021. Written reply comments from supporters of particular proposals and parties that neither support nor oppose a proposal are due March 10, 2021. Commenting parties should be aware that rather than reserving time for potential extensions of time to file comments, the Office has already established what it believes to be the most generous possible deadlines consistent with the goal of concluding the triennial proceeding in a timely fashion.

ADDRESSES: The Copyright Office is using the *regulations.gov* system for the submission and posting of comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. The Office is accepting two types of comments. First, commenters who wish briefly to express general support for or opposition to a proposed exemption may submit such comments electronically by typing into the comment field on regulations.gov. Second, commenters who wish to provide a fuller legal and evidentiary basis for their position may upload a Word or PDF document, but such longer submissions must be completed using the long-comment form provided on the Office's website at *https://www.copyright.gov/1201/2021.* Specific instructions for submitting comments, including multimedia evidence that cannot be uploaded through regulations.gov, are also available on that web page. If a commenter cannot meet a particular submission requirement, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov,* Kevin R. Amer, Deputy General Counsel, by email at *kamer@copyright.gov,* or Terry Hart, Assistant General Counsel, by email at *tehart@copyright.gov.* Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION: On June 22, 2020, the Office published a notification of inquiry requesting petitions to renew current exemptions, oppositions to the renewal petitions, and petitions for newly proposed exemptions in connection with the eighth triennial section 1201 rulemaking.[1] In response, the Office received thirty-two renewal petitions, eight comments in opposition to renewal of a current exemption, and seven comments supporting renewal of a current exemption.[2] These comments are discussed further below. In addition, the Office received twenty-six petitions for new exemptions or expansion of previously granted exemptions.

With this NPRM, the Office sets forth the exemptions that it intends to recommend for readoption without the need for further development of the administrative record, and outlines the proposed classes for new exemptions for which the Office initiates three rounds of public comment.

I. Standard for Evaluating Proposed Exemptions

As the notification of inquiry explained, for a temporary exemption from the prohibition on circumvention to be granted through the triennial rulemaking, it must be established that ''persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition . . . in their ability to make noninfringing uses under [title 17] of a particular class of copyrighted works.''[3] To define an appropriate class of copyrighted works, the Office begins with the broad

[1] 85 FR 37399 (June 22, 2020).

[2] The comments received in response to the notification of inquiry are available at *https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=COLC-2020-0010* and on the Copyright Office website. Renewal petitions are available at *https://www.copyright.gov/1201/2021/petitions/renewal/,* and petitions for new exemptions are available at *https://www.copyright.gov/1201/2021/petitions/proposed/.* References to renewal petitions and comments are by party name (abbreviated where appropriate) and a brief identification of the previously granted exemption, followed by either ''Renewal Pet.,'' ''Supp.'' (for comments supporting an exemption), or ''Opp.'' (for comments opposing an exemption). References to petitions for new exemptions are by party name (abbreviated where appropriate), the Office's proposed class number, and ''Pet.''

[3] 17 U.S.C. 1201(a)(1)(C).

categories of works identified in 17 U.S.C. 102 and then refines them by other criteria, such as the technological protection measures (''TPMs'') used, distribution platforms, and/or types of uses or users.[4]

In evaluating the evidence, the statutory factors listed in section 1201(a)(1)(C) are weighed: (i) The availability for use of copyrighted works; (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes; (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research; (iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and (v) such other factors as the Librarian considers appropriate.[5] After developing a comprehensive administrative record, the Register makes a recommendation to the Librarian of Congress concerning whether exemptions are warranted based on that record.

The Office has previously articulated the substantive legal and evidentiary standard for the granting of an exemption under section 1201(a)(1) multiple times, including in video and PowerPoint tutorials, its 2017 policy study for Congress on section 1201, and in prior recommendations of the Register concerning proposed classes of exemptions, each of which is accessible from the Office's section 1201 rulemaking web page at *https://www.copyright.gov/1201/*. In considering whether to recommend an exemption, the Office must inquire: ''*Are users of a copyrighted work adversely affected by the prohibition on circumvention in their ability to make noninfringing uses of a class of copyrighted works, or are users likely to be so adversely affected in the next three years?*''[6] This inquiry breaks down into the following elements:

- The proposed class includes at least some works protected by copyright.
- The uses at issue are noninfringing under title 17.
- Users are adversely affected in their ability to make such noninfringing uses or, alternatively, users are likely to be adversely affected in their ability to make such noninfringing uses during the next three years. This element is analyzed in reference to section 1201(a)(1)(C)'s five statutory factors.
- The statutory prohibition on circumventing access controls is the cause of the adverse effects.[7]

The Register will consider the Copyright Act and relevant judicial precedents when analyzing whether a proposed use is likely to be noninfringing.[8] When considering whether such uses are being adversely impacted by the prohibition on circumvention, the rulemaking focuses on ''distinct, verifiable, and measurable impacts'' compared to ''*de minimis* impacts.''[9] Taking the administrative record as a whole, the Office will consider whether the preponderance of the evidence shows that the conditions for granting an exemption have been met.[10]

II. Review of Petitions To Renew Existing Exemptions

As with the previous rulemaking proceeding, the Office is using a streamlined process for recommending readoption of previously-adopted exemptions to the Librarian. As the Office explained in its 2017 policy study, the ''Register must apply the same evidentiary standards in recommending the renewal of exemptions as for first-time exemption requests,'' and the statute requires that ''a determination must be made specifically for each triennial period.''[11] The Office further determined that ''the statutory language appears to be broad enough to permit determinations to be based upon evidence drawn from prior proceedings, but only upon a conclusion that this evidence remains reliable to support granting an exemption in the current proceeding.''[12] The Office first instituted this streamlined renewal process in the seventh triennial rulemaking, which concluded in 2018.[13] The process elicited requests to renew each of the exemptions that had been previously exempted, none of which were meaningfully contested.[14] As a result, the Office was able to recommend renewal of all previously granted exemptions.[15] The streamlined renewal process was praised by participants during the ensuing rulemaking phases.[16]

Following the same procedure that was successfully implemented in the last cycle, for this rulemaking, the Office solicited petitions for the renewal of exemptions as they are currently formulated, without modification. As noted, streamlined renewal is based upon a determination that, due to a lack of legal, marketplace, or technological changes, the factors that led the Office to recommend adoption of the exemption in the prior rulemaking will continue into the forthcoming triennial period.[17] That is, the same facts and circumstances underlying the previously-adopted regulatory exemption may be relied on to renew the exemption. Accordingly, to the extent that any renewal petition proposed uses beyond the current exemption, the Office disregarded those portions of the petition for purposes of considering the renewal of the exemption, and instead focused on whether it provided sufficient information to warrant readoption of the exemption in its current form.

The Office received thirty-two petitions to renew existing exemptions, including at least one petition to renew each currently-adopted exemption. Each

[4] *See* H.R. Rep. No. 105–551, pt. 2, at 38 (1998) (''Commerce Comm. Report''); U.S. Copyright Office, Section 1201 Rulemaking: Seventh Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Acting Register of Copyrights 13–14 (2018) (''2018 Recommendation''); U.S. Copyright Office, Section 1201 of Title 17, at 26, 108–10 (2017), *https://www.copyright.gov/policy/1201/section-1201-full-report.pdf* (''Section 1201 Study''); *see also* 82 FR 49550, 49551 (Oct. 26, 2017) (same).

[5] 17 U.S.C. 1201(a)(1)(C).

[6] Section 1201 Study at 114.

[7] *Id.* at 115; *see also id.* at 115–27.

[8] *Id.* at 115–17. While controlling precedent directly on point is not required to justify an exemption, there is no ''rule of doubt'' favoring an exemption when it is unclear that a particular use is fair or otherwise noninfringing. *See* U.S. Copyright Office, Section 1201 Rulemaking: Sixth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 15 (2015) (''2015 Recommendation'').

[9] Commerce Comm. Report at 37; *see also* Staff of H. Comm. on the Judiciary, 105th Cong., Section-by-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4th, 1998, at 6 (Comm. Print 1998) (using the equivalent phrase ''substantial adverse impact'') (''House Manager's Report''); *see also, e.g.,* Section 1201 Study at 119–21 (discussing same and citing application of this standard in five prior rulemakings).

[10] *See* 17 U.S.C. 1201(a)(1)(C) (asking whether users ''*are, or are likely to be* in the succeeding 3-year period, adversely affected by the prohibition [on circumvention] in their ability to make noninfringing uses'') (emphasis added); Section 1201 Study at 111–12; *see also Sea Island Broad. Corp.* v. *FCC,* 627 F.2d 240, 243 (D.C. Cir. 1980) (noting that ''[t]he use of the 'preponderance of evidence' standard is the traditional standard in civil and administrative proceedings''); 70 FR 57526, 57528 (Oct. 3, 2005); 2018 Recommendation at 18; 2015 Recommendation at 13–14; U.S. Copyright Office, Section 1201 Rulemaking: Fifth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 6 (2012) (''2012 Recommendation''); U.S. Copyright Office, Section 1201 Rulemaking: Second Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 19–20 (2003).

[11] Section 1201 Study at 142, 145.

[12] *Id.* at 143.

[13] 2018 Recommendation at 17.

[14] *Id.* at 22.

[15] *Id.* at 19.

[16] *See, e.g., id.* at 19 n.80 (collecting transcript testimony from 2018 rulemaking).

[17] Section 1201 Study at 143–44.

petition to renew an existing exemption included an explanation summarizing the basis for claiming a continuing need and justification for the exemption. In each case, petitioners also signed a declaration stating that, to the best of their personal knowledge, there has not been any material change in the facts, law, or other circumstances set forth in the prior rulemaking record such that renewal of the exemption would not be justified.

The Office received fifteen comments in response to the renewal petitions; seven of these supported renewal of a specific exemption. Eight raised discrete concerns with specific petitions, but none opposed the verbatim readoption of an existing regulatory exemption. Rather, many of these comments address whether the petitions received were sufficient for the Office to consider renewal of the full scope of an exemption, rather than themselves disputing the reliability of the previously-analyzed administrative record.[18] These comments are specifically addressed in the context of the relevant exemption below.

The Office has generally not required petitions to speak to each and every type of use, but rather generally aver that the overall conditions persist.[19] Requiring a fulsome showing would undermine the goal of the streamlined process. The impetus for instituting the streamlined process was to create a more efficient process for unopposed exemptions, and the Office was mindful in shaping the streamlined renewal process to avoid recreating the requirements of the full rulemaking process.[20] In outlining potential mechanics in its Section 1201 Study, the Office envisioned brief filings,[21] with a ''minimal'' evidentiary showing required.[22] The Office has previously advised that it is sufficient for petitioners to declare that ''there had not been any material change in the facts, law, or other circumstances set forth in the prior rulemaking record such that renewal of the exemption would not be justified.'' [23] In the current proceeding, the Office explained that it expects petitioners would need only ''a paragraph or two'' to explain the need for renewal and that documentary evidence at this stage of the process is accepted but not necessary.[24] Petitioners must also ''sign a declaration attesting to the continued need for the exemption and the truth of the explanation provided in support'' and attest that ''there has not been any material change in the facts, law, or other circumstances set forth in the prior rulemaking record . . . that originally demonstrated the need for the selected exemption, such that renewal of the exemption would not be justified.'' [25] That attestation also serves as a basis for the Office to evaluate whether the entirety of the prior administrative record supporting a given exemption continues to obtain. The Office thus concludes that the petitions received are formally and substantively sufficient for the Office to consider in evaluating whether renewal of the existing exemptions is appropriate.

To the extent a commenter questions whether there is a continued need for a specific exempted use or otherwise believes that the scope of an exemption should be narrowed, that commenter should come forward and oppose the exemption. As explained in the notification of inquiry, opposition to a renewal request asks opponents to provide evidence that would make it ''reasonable for the Office to conclude that the prior rulemaking record and any further information provided in the renewal petition are insufficient to support recommending renewal of an exemption.'' [26] The Office will then consider such statements and, as appropriate, will notice the issue for subsequent comment phases to ensure the administrative record remains reliable in light of current developments. But in this rulemaking, the Office has not received comments actually disputing whether there is a continued basis for any exemptions.

In the next rulemaking, the Office may consider whether to include a mechanism for petitioners to disclaim types of uses or other aspects of an exemption if they believe only partial renewal is appropriate. As detailed below, after reviewing the petitions for renewal and comments in response, the Office concludes that it has received a sufficient petition to renew each existing exemption, and it does not find any meaningful opposition to such renewal. Accordingly, the Office intends to recommend readoption of all existing exemptions in their current form.

A. Audiovisual Works—Criticism and Comment—Universities and K–12 Educational Institutions

Multiple organizations petitioned to renew the exemption for motion pictures [27] for educational purposes by college and university or K–12 faculty and students (codified at 37 CFR 201.40(b)(1)(ii)(A)).[28] The petitions demonstrated the continuing need and justification for the exemption, stating that educators and students continue to rely on excerpts from digital media for class presentations and coursework. Peter Decherney, Katherine Sender, John Jackson, Console-ing Passions, the American Association of University Professors (''AAUP''), International Communication Association (''ICA''), Library Copyright Alliance (''LCA''), and Society for Cinema and Media Studies (''SCMS'') (collectively ''Joint Educators I'') provide several examples of professors using DVD clips in the classroom; for example, ''Cornell University Communication professor Lee Humphreys samples short segments of movies and television shows for her lectures in her 'Media Communication' class'' and has ''shifted from using clips from YouTube because she wants to show higher quality clips and to avoid

[18] *See, e.g.,* DVD Copy Control Ass'n (''DVD CCA'') & Advanced Access Content Sys. Licensing Adm'r (''AACS LA'') AV Educ. Opp'n at 4 (''the failure of any proponent to provide any example of use by K–12 students should result in the Copyright Office finding in this streamlined renewal process that the exemption may not be renewed as to such uses''); DVD CCA & AACS LA Nonfiction Multimedia Ebooks Opp'n at 2 (''To the extent the proponents are requesting renewal of the full exemption, the failure to provide any example of use of this expansion to all nonfiction works beyond film analysis should render the exemption's expanded nonfiction uses ineligible for the streamlined renewal process''); ESA, MPA & RIAA Noncom. Video Opp'n at 1 (''the Register should . . . carefully scrutinize OTW's petition, and all of the streamlined renewal petitions, to consider whether the examples of alleged exemption use provided in the petitions fall within the parameters of the existing exemptions'').

[19] *See* 85 FR at 37401 (''The petitioner must provide a brief explanation summarizing the basis for claiming a continuing need and justification for the exemption. The required showing is meant to be minimal.''); Section 1201 Study at 144 (''The Office believes that the evidentiary showing required in a declaration can be minimal, as the aim is only to show that the harm that existed when the exemption was first granted continues to occur or would return but for the exemption, thus providing a sufficient justification for the Office to rely upon the prior rulemaking record in making a new recommendation supporting renewal of the exemption. Moreover, this approach appears consistent with relevant case law upholding determinations based upon a single sworn affidavit.'').

[20] Section 1201 Study at 144 (also noting that ''some stakeholders expressed wariness that, in practice, a short-form filing might recreate the requirements of the current rulemaking'').

[21] *See id.* at 143 (Office will request ''parties seeking renewal of an exemption to submit a short declaration outlining the continuing need for an exemption''); *see also id.* at 144 (referring to ''a short-form filing'').

[22] *Id.* at 144.

[23] 2018 Recommendation at 18.

[24] 85 FR at 37401.

[25] *Id.*

[26] *Id.* at 37402; *see also* 2018 Recommendation at 18.

[27] Unless otherwise noted, all references to motion pictures as a category include television programs and videos.

[28] Joint Educators I AV Educ. Renewal Pet.; Brigham Young Univ. & Brigham Young Univ.—Idaho (collectively, ''BYU'') AV Educ. Renewal Pet.

showing the attached advertisements to her students.'' [29] In addition, co-petitioner Peter Decherney declares that he ''continues to teach a course on Multimedia Criticism'' where his students ''produce short videos analyzing media.'' [30] Indeed, Joint Educators I broadly suggest that the ''entire field'' of video essays or multimedia criticism ''could not have existed in the United States without fair use and the 1201 educational exemption.'' [31] Through these submissions, petitioners demonstrated personal knowledge and experience with regard to this exemption based on their representation of thousands of digital and literacy educators and/or members supporting educators and students, combined with past participation in the section 1201 triennial rulemaking.

DVD CCA and AACS LA filed comments that do not object to the renewal of this exemption but ask the Office to address several purported deficiencies in the renewal petitions.[32] Because DVD CCA and AACS LA expressly disclaim opposition to streamlined renewal of this exemption, the Office does not treat the concerns raised as meaningful opposition. It does, however, provide brief additional comment on the points raised by DVD CCA and AACS LA regarding the sufficiency of the petition. Regarding the lack of evidence of use of the exemption by K–12 educators or students, DVD CCA and AACS LA argue that ''the failure of any proponent to provide any example of use by K–12 students should result in the Copyright Office finding in this streamlined renewal process that the exemption may not be renewed as to such uses.'' [33] As explained above, petitioners need not address every possible use covered by an exemption when seeking to renew an exemption, and the Office has concluded that the petition was submitted in a sufficient manner.[34]

A similar conclusion applies to DVD CCA and AACS LA's complaint that ''the users ignore the threshold requirement to consider alternatives to circumvention.'' [35] DVD CCA and AACS LA are correct in noting that, although the 2018 rulemaking eliminated prior language limiting the exemption to circumstances where ''close analysis'' of video is required, it retained the requirement that the user ''reasonably believe[ ] that non-circumventing alternatives are unable to produce the required level of high-quality content.'' [36] From their comment, it appears that DVD CCA and AACS LA believe that the ''close analysis'' requirement should be reinstated, but wish to reiterate a ''lack of opposition'' to the exemption in light of recognition that schools are currently ''wrestling with implementing distance learning.'' [37]

The Office has examined the record and finds the petitions sufficient. As explained above, it does not follow that petitioners seeking renewal must provide an ''explanation why screen capture technology could not suffice to capture and show'' for each and every one of the film clips they seek to use.[38] Petitioners made that showing in the prior rulemaking, and their renewal petition attests that there has been no material change in the facts. Indeed, Joint Educators I reference the need of a communication professor to embed clips in PowerPoint rather than played from YouTube ''because she wants to show higher quality clips and to avoid showing the attached advertisements to her students.'' [39] The same petition also provides multiple examples asserting a continued need to make use of the exemption for purposes of engaging in film analysis, precisely the kind of pedagogy that has been discussed in connection with the prior ''close analysis'' limitation.[40] This is sufficient. It then becomes opponents' burden to establish a basis for concluding that the prior findings no longer obtain. DVD CCA and AACS LA AV have provided no such evidence here.

Based on the information provided in the renewal petitions and the lack of meaningful opposition, the Office believes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Office intends to recommend renewal of this exemption.

B. Audiovisual Works—Criticism and Comment—Massively Open Online Courses (''MOOCs'')

Brigham Young University and Peter Decherney, Katherine Sender, John Jackson, Console-ing Passions, ICA, LCA, and SCMS (collectively ''Joint Educators II'') petitioned to renew the exemption for motion pictures for educational uses in MOOCs (codified at 37 CFR 201.40(b)(1)(ii)(B)).[41] No oppositions were filed against readoption of this exemption. The petition demonstrated the continuing need and justification for the exemption, stating that instructors continue to rely on the exemption to develop, provide, and improve MOOCs, as well as increase the number of (and therefore access to) MOOCs in the field of film and media studies—with Joint Educators II noting that the ''exemption has never been so relevant as it is now during the COVID–19 pandemic and the universal shift of our education systems to online learning.'' [42]

In response to the renewal petition, DVD CCA and AACS LA filed a comment noting that they did not oppose renewal of the exemption but asking the Office to address what they described as the ''apparent failure of the proponents'' to employ technological measures preventing retention and redistribution of MOOC content.[43] The comment suggests that this does not reflect any changed circumstances, and notes that the Office suggested in the seventh rulemaking that the proper method to air DVD CCA and AACS LA's concerns would be to oppose the renewal.[44] Again, they have not done so. The Office declines to address whether any user's activities may or may not be consistent with the exemption. The relevant exemption language is not in dispute, and interpreting compliance with or eligibility for the exemption is outside the scope of this proceeding. If DVD CCA and AACS LA believe that the exemption should be adjusted or eliminated in light of abuse or difficulty in complying with the condition that

[29] Joint Educators I AV Educ. Renewal Pet. at 3.

[30] *Id.*

[31] *Id.*

[32] DVD CCA & AACS LA AV Educ. Opp'n.

[33] *Id.* at 4.

[34] To the extent the eighth rulemaking has received information relating to whether the exemption remains necessary for K–12 educational activities, Joint Educator's petition for expansion of this exemption also suggests it continues to be necessary, especially in light of the ongoing pandemic. *See* Decherney, Sender, Jackson, Stein, Gaglani, Wisbauer, Berg, Siddiqui, Robertson, Console-ing Passions, AAUP, ICA, LCA & SCMS (collectively ''Joint Educators III) Class 1 Pet. at 2.

[35] DVD CCA & AACS LA AV Educ. Opp'n at 7.

[36] 37 CFR 201.40(b)(1).

[37] DVD CCA & AACS LA AV Educ. Opp'n at 6–7.

[38] *Id.* at 6.

[39] Joint Educators I AV Educ. Renewal Pet. at 3.

[40] *See also, e.g.,* 2015 Recommendation at 92 (citing examples where high-definition quality is necessary, including close analysis of ''*The Wizard of Oz* (to highlight prop wires and other 'stage-like' elements), *Citizen Kane* (to appreciate depth of field, chiaroscuro effects, and subtle narrative elements), Jacques Tati's *Playtime* (to better approximate the intended 70mm viewing experience and appreciate the film's very detailed and complex composition), and *Saving Private Ryan* (to experience the enhanced color and contrast effect of bleach bypass film processing, hyper-realism, and complex soundscapes)'').

[41] BYU AV Educ. MOOCS Renewal Pet.; Joint Educators AV Educ. MOOCs Renewal Pet.

[42] Joint Educators II AV Educ. MOOCs Renewal Pet. at 3.

[43] DVD CCA & AACS LA AV Educ. MOOCs Opp'n at 1.

[44] *Id.* at 2 n.3.

exemption beneficiaries reasonable technological measures, the proper response would be to submit an opposition to this exemption so the Office can determine whether fuller airing through notice and comment to evaluate this issue is appropriate.

Based on the information provided in the renewal petition and the lack of opposition, the Office believes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Office intends to recommend renewal of this exemption.

C. Audiovisual Works—Criticism and Comment—Digital and Media Literacy Programs

LCA and Professor Renee Hobbs petitioned to renew the exemption for motion pictures for educational uses in nonprofit digital and media literacy programs offered by libraries, museums, and other nonprofits (codified at 37 CFR 201.40(b)(1)(ii)(C)).[45] No oppositions were filed against readoption of this exemption. The petition demonstrated the continuing need and justification for the exemption, and petitioners demonstrated personal knowledge and experience with regard to this exemption. For example, the petition stated that librarians across the country have relied on the current exemption and will continue to do so for their digital and media literacy programs.[46]

Based on the information provided in the renewal petitions and the lack of opposition, the Office believes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Office intends to recommend renewal of this exemption.

D. Audiovisual Works—Criticism and Comment—Multimedia E-Books

Multiple petitioners jointly sought to renew the exemption for the use of motion picture excerpts in nonfiction multimedia e-books (codified at 37 CFR 201.40(b)(1)(i)(C)).[47] The petition demonstrated the continuing need and justification for the exemption. In addition, the petitioners demonstrated personal knowledge through Professor Buster's continued work on an e-book series based on her lecture series, ''Deconstructing Master Filmmakers: The Uses of Cinematic Enchantment,'' which, they said, ''relies on the availability of high-resolution video not available without circumvention of technological protection measures.'' [48]

In response, DVD CCA and AACS LA filed a comment that did not object to renewal of an exemption limited to ''e-books offering filming analysis,'' but did object to renewing the existing exemption as it is currently formulated.[49] DVD CCA and AACS LA asserted that the renewal petition failed to ''provide any example of use of this expansion to all nonfiction works beyond film analysis.'' [50] As a result, they argue that the evidence is only sufficient to support an exemption for use in e-books offering film analysis.

As noted above, however, in making a petition to renew an exemption, it is sufficient for petitioners to declare that to their knowledge, ''there had not been any material change in the facts, law, or other circumstances set forth in the prior rulemaking record such that renewal of the exemption would not be justified.'' [51] Petitioners are not required to provide examples that pertain to every type of use covered by the exemption. To the extent an opponent of renewal seeks to narrow an exemption, it should ''provide evidence that would allow the Acting Register to reasonably conclude that the prior rulemaking record and any further information provided in the petitions are insufficient for her to recommend renewal without the benefit of a further developed record.'' [52]

In this case, the Office determined in the 2018 proceeding that the record was sufficient to justify recommending an exemption that includes nonfiction uses beyond film analysis.[53] The Office concludes that the renewal petition, which seeks renewal of the exemption as previously adopted, is sufficient to support renewal. Although DVD CCA and AACS LA note that the statements in the renewal petition are limited to examples related to e-books offering film analysis, this opposition does not amount to evidence in the form of legal, marketplace, or technological changes that render the prior rulemaking record insufficient to support recommending renewal.

Based on the information provided in the renewal petition and the lack of opposition, the Office believes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Office intends to recommend renewal of this exemption.

E. Audiovisual Works—Criticism and Comment—Filmmaking

Multiple organizations petitioned to renew the exemption for motion pictures for uses in documentary films or other films where use is in parody or for a biographical or historically significant nature (codified at 37 CFR 201.40(b)(1)(i)(A)).[54] The petitions summarized the continuing need and justification for the exemption, and the petitioners demonstrated personal knowledge and experience with regard to this exemption. For example, the International Documentary Association, Film Independent, and Kartemquin Educational Films (collectively ''Joint Filmmakers'')—which represent thousands of independent filmmakers across the nation—stated that TPMs such as encryption continue to prevent filmmakers from accessing needed material, and that this is ''especially true for the kind of high fidelity motion picture material filmmakers need to satisfy both distributors and viewers.'' [55] Petitioners state that they personally know many filmmakers who have found it necessary to rely on this exemption and will continue to do so.[56]

DVD CCA and AACS LA filed comments that did not oppose renewal of the exemption but did object to the characterization of the exemption filed by the filmmaking proponents.[57] Specifically, DVD CCA and AACS LA noted that the exemption is limited to criticism or comment, documentary filmmaking, or any filmmaking that would make use of a clip in a parody or for its biographical or historical nature; in their view, petitioners suggest the exemption covers all fair use or noninfringing uses.[58] The Office does not find it necessary to opine on the characterization of the petitions by DVD CCA and AACS LA and believes that petitioners' declarations have met the minimal showing sufficient to support renewal of the exemption without modification.

Based on the information provided in the renewal petitions and the lack of opposition, the Office believes that the conditions that led to adoption of this exemption are likely to continue during

[45] LCA & Hobbs AV Educ. Nonprofits Renewal Pet.

[46] *Id.*

[47] Buster, Authors Alliance & AAUP Nonfiction Multimedia E-Books Renewal Pet.

[48] *Id.* at 3.

[49] DVD CCA & AACS LA Nonfiction Multimedia E-Books Opposition Pet.

[50] *Id.* at 2.

[51] 2018 Recommendation at 18.

[52] *Id.*

[53] *Id.* at 64.

[54] Joint Filmmakers Documentary Films Renewal Pet.; New Media Rights (''NMR'') Documentary Films Renewal Pet.

[55] Joint Filmmakers Documentary Films Renewal Pet. at 3.

[56] *Id.;* NMR Documentary Films Renewal Pet. at 3.

[57] DVD CCA & AACS LA Documentary Filmmaking Opp'n.

[58] *Id.* at 2.

the next triennial period. Accordingly, the Office intends to recommend renewal of this exemption.

F. Audiovisual Works—Criticism and Comment—Noncommercial Videos

Two organizations petitioned to renew the exemption for motion pictures for uses in noncommercial videos (codified at 37 CFR 201.40(b)(1)(i)(B)).[59] The petitions demonstrated the continuing need and justification for the exemption, and the petitioners demonstrated personal knowledge and experience with regard to this exemption. For example, one of the petitioners, the Organization for Transformative Works (''OTW''), has advocated for the noncommercial video exemption in past triennial rulemakings, and has heard from ''a number of noncommercial remix artists'' who have used the exemption and anticipate needing to use it in the future.[60] OTW included an account from an academic stating that footage ripped from DVDs and Blu-ray was preferred for ''vidders'' (noncommercial remix artists) because ''it is high quality enough to bear up under the transformations that vidders make to it.'' [61] Similarly, NMR stated that its staff personally knows ''many video creators that have found it necessary to rely on this exemption during the current triennial period'' and who intend to make these types of uses in the next triennial period.[62]

OTW contends that ''the exemption should be renewed using the relatively simple language defining the exempted class from the 2008 rulemaking, covering both DVDs and Blu-Ray (and streaming where necessary) 'when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use.' '' [63] OTW asserts that this change would not constitute ''an expansion of the existing exemption, but a more understandable restatement.'' [64] Two comments, one from DVD CCA and AACS LA and the other from the Entertainment Software Association (''ESA''), Motion Picture Association (''MPA''), and Recording Industry Association of America (''RIAA'') did not object to the renewal of the exemption for noncommercial videos but did object to the proposed change in the language sought by OTW, arguing that it involves a modification of the current exemption.[65] The Office agrees that OTW's proposed modifications are appropriately addressed as part of the full rulemaking proceeding, and therefore the Office has included this request with the proposed classes discussed below.[66]

Based on the information provided in the renewal petitions and the lack of opposition, the Office believes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Office intends to recommend renewal of this exemption.

G. Audiovisual Works—Accessibility

Multiple organizations petitioned to renew the exemption for motion pictures for the provision of captioning and/or audio description by disability services offices or similar units at educational institutions for students with disabilities (codified at 37 CFR 201.40(b)(2)(i)(A)).[67] No oppositions were filed against readoption of this exemption.

The petition demonstrated the continuing need and justification for the exemption, and the petitioners demonstrated personal knowledge and experience. For example, Brigham Young University asserts that its disability services offices ''sometimes need to create accessible versions of motion pictures'' to accommodate its students with disabilities.[68] Both petitions stated that there is a need for the exemption going forward; indeed, one group of petitioners states that ''the need is likely to increase significantly in light of the ongoing COVID–19 pandemic as many educational institutions shift to online learning and the use of digital multimedia by faculty increases.'' [69]

Based on the information provided in the renewal petition and the lack of opposition, the Office believes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Office intends to recommend renewal of this exemption.

H. Literary Works—Accessibility

Multiple organizations petitioned to renew the exemption for literary works distributed electronically (*i.e.,* e-books), for use with assistive technologies for persons who are blind, visually impaired, or have print disabilities (codified at 37 CFR 201.40(b)(3)).[70] No oppositions were filed against readoption of this exemption. The petitions demonstrated the continuing need and justification for the exemption, stating that individuals who are blind, visually impaired, or print disabled are significantly disadvantaged with respect to obtaining accessible e-book content because TPMs interfere with the use of assistive technologies.[71] Petitioners noted that the record underpinning this exemption ''has stood and been re-established in the past six triennial reviews, dating back to 2003,'' and that the ''accessibility of ebooks is frequently cited as a top priority'' by its members.[72] In addition, petitioners noted the unique challenges COVID–19 poses to the blind, visually impaired, and print disabled due to limited physical access to libraries and the shift to virtual learning.[73] Finally, the petitioners demonstrated personal knowledge and experience with regard to the assistive technology exemption; they are all organizations that advocate for the blind, visually impaired, and print disabled.

Based on the information provided in the renewal petitions and the lack of opposition, the Office believes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Office intends to recommend renewal of this exemption.

I. Literary Works—Medical Device Data

Hugo Campos petitioned to renew the exemption covering access to patient data on networked medical devices (codified at 37 CFR 201.40(b)(4)).[74] No oppositions were filed, and Consumer

[59] NMR Noncom. Videos Renewal Pet.; OTW Noncom. Videos Renewal Pet.

[60] OTW Noncom. Videos Renewal Pet. at 3.

[61] *Id.*

[62] NMR Noncom. Videos Renewal Pet. at 3.

[63] OTW Noncom. Videos Renewal Pet. at 4.

[64] *Id.*

[65] DVD CCA & AACS LA Noncom. Videos Opp'n; ESA, MPA & RIAA Noncom. Videos Opp'n.

[66] The Office notes that much of the language that has been added to the exemption since 2008 was sought by proponents of the exemption, *e.g.,* the addition of a reference to the statutory definition of motion pictures was sought by EFF. *See* 2012 Recommendation at 105. In some cases, the addition of such language was supported by OTW itself. *See, e.g., id.* at 110 (adding clarification that commissioned videos are included within exemption if ultimate use is noncommercial, a proposal that was supported by OTW).

[67] Ass'n of Transcribers and Speech-to-Text Providers (''ATSP''), Ass'n on Higher Educ. and Disability (''AHEAD'') & LCA Captioning Renewal Pet.; BYU Captioning Renewal Pet.

[68] BYU Captioning Renewal Pet. at 3.

[69] ATSP, AHEAD & LCA Captioning Renewal Pet. at 3.

[70] Am. Council for the Blind (''ACB''), Am. Fed'n for the Blind (''AFB''), Nat'l Fed'n of the Blind (''NFB''), LCA, American Association of Law Libraries (''AALL''), Benetech/Bookshare, and HathiTrust Assistive Technologies Renewal Pet.

[71] *Id.* at 3.

[72] *Id.* at 3–4.

[73] *Id.* at 4.

[74] Campos Medical Devices Renewal Pet.

Reports submitted a comment in support.[75] Mr. Campos's petition demonstrated the continuing need and justification for the exemption, stating that patients continue to need access to data output from their medical devices to manage their health.[76] Mr. Campos demonstrated personal knowledge and experience with regard to this exemption, as he is a patient needing access to the data output from his medical device and is a member of a coalition whose members research, comment on, and examine the effectiveness of networked medical devices.

Based on the information provided in the renewal petition and the lack of opposition, the Office believes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Office intends to recommend renewal of this exemption.

J. Computer Programs—Unlocking

Multiple organizations petitioned to renew the exemption for computer programs that operate cellphones, tablets, mobile hotspots, or wearable devices (*e.g.,* smartwatches), to allow connection of a new or used device to an alternative wireless network (''unlocking'') (codified at 37 CFR 201.40(b)(5)).[77] No oppositions were filed against the petitions seeking to renew this exemption; Consumer Reports filed in support of renewal.[78] The petitions demonstrate the continuing need and justification for the exemption, stating that consumers of the enumerated products continue to need to be able to unlock the devices so they can switch network providers. For example, ISRI stated that its members continue to purchase or acquire donated cell phones, tablets, and other wireless devices and try to reuse them, but that wireless carriers still lock devices to prevent them from being used on other carriers.[79] In addition, the petitioners demonstrated personal knowledge and experience with regard to this exemption. CCA and ISRI represent companies that rely on the ability to unlock cellphones. Both petitioners also participated in past 1201 triennial rulemakings relating to unlocking lawfully-acquired wireless devices.

Based on the information provided in the renewal petitions and the lack of opposition, the Office believes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Office intends to recommend renewal of this exemption.

K. Computer Programs—Jailbreaking

Multiple organizations petitioned to renew the exemptions for computer programs that operate smartphones, tablets and other portable all-purpose mobile computing devices, smart TVs, or voice assistant devices to allow the device to interoperate with or to remove software applications (''jailbreaking'') (codified at 37 CFR 201.40(b)(6)–(8)).[80] The petitions demonstrate the continuing need and justification for the exemption, and that petitioners had personal knowledge and experience with regard to this exemption. For example, regarding smart TVs specifically, the Software Freedom Conservancy (''SFC'') asserts that it has ''reviewed the policies and product offerings of major Smart TV manufacturers (Sony, LG, Samsung, etc.) and they are substantially the same as those examined during the earlier rulemaking process.''[81] The petitions state that, absent an exemption, TPMs applied to the enumerated products would have an adverse effect on noninfringing uses, such as being able to install third-party applications on a smartphone or download third-party software on a smart TV to enable interoperability.[82] For example, EFF's petition outlined its declarant's experience with instances where it was necessary to replace the software on a smartphone, smart TV, and tablet.[83] Consumer Reports filed a comment in support of the exemption,[84] and no one opposed renewal.

Based on the information provided in the renewal petitions and the lack of meaningful opposition, the Office believes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Office intends to recommend renewal of this exemption.

L. Computer Programs—Repair of Motorized Land Vehicles

Multiple organizations petitioned to renew the exemption for computer programs that control motorized land vehicles, including farm equipment, for purposes of diagnosis, repair, or modification of a vehicle function (codified at 37 CFR 201.40(b)(9)).[85] The petitions demonstrated the continuing need and justification for the exemption. For example, the Motor & Equipment Manufacturers Association (''MEMA'') stated that over the past three years, its membership ''has seen firsthand that the exemption is helping protect consumer choice and a competitive market, while mitigating risks to intellectual property and vehicle safety.''[86] The Auto Care Association (''ACA'') stated that ''[u]nless this exemption is renewed, the software measures manufacturers deploy for the purpose of controlling access to vehicle software will prevent Auto Care members from lawfully assisting consumers in the maintenance, repair, and upgrade of their vehicles.''[87] SEMA stated that it ''is unaware of any factor, incident or reason to change the exemption and the need for the exemption remains valid and imperative.''[88] The petitioners demonstrated personal knowledge and experience with regard to this exemption; each either represents or gathered information from individuals conducting repairs or businesses that manufacture, distribute, and sell motor vehicle parts, and perform vehicle service and repair. Consumer Reports filed in support of the petition.[89]

Although not opposing readoption of this exemption, the Alliance for Automotive Innovation (''AAI'') submitted comments raising concerns with the ACA and MEMA petitions.[90] Specifically, the AAI argued that the two petitions ''mischaracterize the scope of the existing exemption and appear to argue for an expanded exemption, rather than for renewal of the existing exemption as it is 'currently formulated, without modification.' ''[91] It states that both ACA and MEMA suggest ''that the existing exemption permits third party repair shops to circumvent access controls on vehicle software in order to provide commercial repair services.''[92] AAI asserts that ''[p]roviding a commercial service that

[75] Consumer Reports Medical Devices Supp.

[76] Campos Medical Devices Renewal Pet. at 3.

[77] Competitive Carriers Ass'n (''CCA'') Unlocking Renewal Pet.; Inst. of Scrap Recycling Industries (''ISRI'') Unlocking Renewal Pet.

[78] Consumer Reports Unlocking Supp.

[79] ISRI Unlocking Renewal Pet. at 3.

[80] EFF Jailbreaking Renewal Pet.; NMR Jailbreaking Renewal Pet.; SFC Jailbreaking Renewal Pet.

[81] SFC Jailbreaking Renewal Pet. at 3.

[82] EFF Jailbreaking Renewal Pet. at 3; NMR Jailbreaking Renewal Pet. at 3; SFC Jailbreaking Renewal Pet. at 3.

[83] EFF Jailbreaking Renewal Pet. at 3–4.

[84] Consumer Reports Jailbreaking Supp.

[85] ACA Vehicle Repair Renewal Pet.; Am. Farm Bureau Fed'n Vehicle Repair Renewal Pet.; Consumer Tech. Ass'n Vehicle Repair Renewal Pet.; MEMA Vehicle Repair Renewal Pet.; Specialty Equip. Mkt. Ass'n (''SEMA'') Vehicle Repair Renewal Pet.

[86] MEMA Vehicle Repair Renewal Pet. at 3.

[87] ACA Vehicle Repair Renewal Pet. at 3.

[88] SEMA Vehicle Repair Renewal Pet. at 3.

[89] Consumer Reports Vehicle Repair Supp.

[90] AAI Vehicle Repair Opp'n.

[91] *Id.* at 1.

[92] *Id.* at 2.

requires circumventing access controls or copy controls (*e.g.,* using or providing certain engine tuning software) is indisputably trafficking in an unlawful service under Sections 1201(a)(2) and (b) and, therefore, is clearly outside the scope of the existing exemption.'' [93]

The Office addressed the relationship of this exemption to the anti-trafficking provisions in some detail in the 2018 Recommendation. In response to petitioners' requests, the Office recommended removal of the language in the prior repair exemption requiring that circumvention be ''undertaken by the authorized owner.'' [94] That change, the Office explained, was intended to ''account[] for the possibility that certain third parties may qualify as 'user[s]' eligible for an exemption from liability under section 1201(a)(1).'' [95] In making this recommendation, which the Librarian accepted, the Office declined to express any ''view as to whether particular examples of assistance do or do not constitute unlawful circumvention services''—specifically, ''whether vehicle or other repair services may run afoul of the anti-trafficking provisions when engaging in circumvention on behalf of customers.'' [96] The Office adheres to this position and accordingly expresses no view as to the activities described by ACA and MEMA.

Based on the information provided in the renewal petitions and the lack of opposition to the specific exemption, the Office believes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Office intends to recommend renewal of this exemption.

M. Computer Programs—Repair of Smartphones, Home Appliances, and Home Systems

Multiple organizations petitioned to renew the exemption for computer programs that control smartphones, home appliances, or home systems, for diagnosis, maintenance, or repair of the device or system (codified at 37 CFR 201.40(b)(10)).[97] The petitions demonstrated the continuing need and justification for the exemption. For example, EFF, the Repair Association, and iFixit asserted that ''[m]anufacturers of these devices continue to implement technological protection measures that inhibit lawful repairs, maintenance, and diagnostics, and they show no sign of changing course.[98] Consumer Reports filed in support of the petition.[99]

In comments filed in response to the petitions, DVD CCA and AACS LA did not object to renewal of the exemption, but did request that the Office ''expressly . . . reject the implied assertion that some of the activity used as examples in the renewal petition . . . is permitted under the current exemption.'' [100] Specifically, they pointed to an example in which petitioners stated a purported need to ''repair any disrupted functionality'' in Sonos smart speakers for which the manufacturer had ceased to provide software updates.[101] DVD CCA and AACS LA contend that such activity does not constitute ''repair'' under the exemption because, under relevant licensing schemes, a manufacturer ''may outright deactivate one or more functions due to the product's TPM being compromised. These results are not the consequences of the product falling out of repair or breaking.'' [102]

DVD CCA and AACS LA do not appear to be arguing that the use of this example renders the renewal petitions insufficient with respect to home systems. The Office agrees that the sufficiency of the petitions do not depend on whether this specific example qualifies under the current exemption. Even if this example were excluded, the petitions attest to a continuing need for the exemption and the continued validity of the prior record.[103] To the extent DVD CCA and AACS LA are asking the Office to opine on examples of particular uses, such a request is beyond the scope of the renewal phase, though they are free to raise such concerns in the comment phase to the extent they relate to proposed expansions of the current rule.

Based on the information provided in the renewal petitions and the lack of opposition to renewal, the Office believes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Office intends to recommend renewal of this exemption.

N. Computer Programs—Security Research

Multiple organizations and security researchers petitioned to renew the exemption permitting circumvention for purposes of good-faith security research (codified at 37 CFR 201.40(b)(11)).[104] The petitioners demonstrated the continuing need and justification for the exemption, as well as personal knowledge and experience with regard to this exemption. For example, the petition from Professor J. Alex Halderman, the Center for Democracy and Technology (''CDT''), and the U.S. Technology Policy Committee of the Association for Computing Machinery (''ACM'') highlighted a number of concerns justifying the continuing need for the exemption, including the need to find and detect vulnerabilities in voting machines and other election systems, the increased proliferation of consumer Internet of Things devices, and the increasing reliance on digital systems combined with greater aggressiveness on the part of threat actors, including other nation states.[105] The petition from Professors Matt Blaze and Steven Bellovin asserted that in the past three years ''one of us has received threats of litigation from copyright holders in connection with his security research on software in voting systems.'' [106] Finally, MEMA stated that its membership ''experienced firsthand that the exemption is helping encourage innovation in the automotive industry while mitigating risks to intellectual property and vehicle safety.'' [107]

No oppositions were filed against readoption of this exemption, while Consumer Reports filed in support of renewal.[108] A petition seeking renewal of a separate exemption submitted by Hugo Campos, a member of a coalition of medical device patients and researchers, also noted support for this exemption.[109]

Based on the information provided in the renewal petitions and the lack of opposition, the Office believes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly,

[93] *Id.*

[94] 2018 Recommendation at 223–25.

[95] *Id.* at 225.

[96] *Id.*

[97] EFF Device Repair Renewal Pet.; EFF, Repair Ass'n & iFixit Device Repair Renewal Pet.

[98] EFF Device Repair Renewal Pet. at 3; EFF, Repair Ass'n & iFixit Device Repair Renewal Pet. at 3.

[99] Consumer Reports Device Repair Supp.

[100] DVD CCA & AACS LA Device Repair Opp'n at 1.

[101] *Id.* at 3.

[102] DVD CCA & AACS LA Device Repair Opp'n at 4.

[103] *See, e.g.,* EFF Device Repair Renewal Pet. at 3 (''Manufacturers of these devices continue to implement technological protection measures that inhibit lawful repairs, maintenance, and diagnostics, and they show no sign of changing course.'').

[104] Blaze & Bellovin Security Research Renewal Pet.; Halderman, CDT & ACM Security Research Renewal Pet.; MEMA Security Research Renewal Pet.

[105] Halderman, CDT & ACM Security Research Renewal Pet. at 4.

[106] Blaze & Bellovin Security Research Renewal Pet. at 3.

[107] MEMA Security Research Renewal Pet. at 3.

[108] Consumer Reports Security Research Supp.

[109] Campos Medical Device Renewal Pet. at 4.

the Office intends to recommend renewal of this exemption.

O. Computer Programs—Software Preservation

The Software Preservation Network (''SPN'') and LCA petitioned to renew the exemption for computer programs other than video games, for the preservation of computer programs and computer program-dependent materials by libraries, archives, and museums (codified at 37 CFR 201.40(b)(13)).[110] The petitions state that libraries, archives, and museums continue to need the exemption to preserve and curate software and materials dependent on software. For example, the petition asserts that ''researchers at UVA designed a project in order to access the 'Peter Sheeran papers'—a collection of drawings and plans from a local Charlottesville architecture firm,'' and that without the exemption, ''the outdated Computer Aided Design (''CAD'') software used to create many of the designs in the Sheeran papers may have remained inaccessible to researchers, rendering the designs themselves inaccessible, too.'' [111] In addition, the petitioners demonstrated personal knowledge and experience with regard to this exemption through past participation in the section 1201 triennial rulemaking relating to access controls on software, and/or representing major library associations with members that have relied on this exemption. Readoption of this exemption was unopposed.

Based on the information provided in the renewal petitions and the lack of opposition, the Office believes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Office intends to recommend renewal of this exemption.

P. Computer Programs—Video Game Preservation

SPN and LCA petitioned to renew the exemption for preservation of video games for which outside server support has been discontinued (codified at 37 CFR 201.40(b)(12)).[112] Consumer Reports supported the petition.[113] The petitions state that libraries, archives, and museums continue to need the exemption to preserve and curate video games in playable form. For example, the petition highlights the Georgia Tech University Library's Computing Lab, retroTECH, which has a significant collection of recovered video game consoles, made accessible for research and teaching uses pursuant to the exemption.[114] In addition, the Museum of Digital Arts and Entertainment in Oakland, California, relied on the exemption to restore a recent PC game, in collaboration with Microsoft and the original developers, despite potential DRM issues.[115] The petitioners demonstrated personal knowledge and experience with regard to this exemption through past participation in the section1201 triennial rulemaking, and/or through their representation of members that have relied on this exemption. Readoption of this exemption was unopposed.

Based on the information provided in the renewal petitions and the lack of opposition, the Office believes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Office intends to recommend renewal of this exemption.

Q. Computer Programs—3D Printing

Michael Weinberg petitioned to renew the exemption for computer programs that operate 3D printers to allow use of alternative feedstock (codified at 37 CFR 201.40(b)(14)).[116] No oppositions were filed against readoption of this exemption. The petition demonstrated the continuing need and justification for the exemption, and the petitioner demonstrated personal knowledge and experience. Specifically, Mr. Weinberg declared he is a member of the 3D printing community and has been involved with this exemption request during each cycle it has been considered by the Office.[117] In addition, the petition states that 3D printers continue to limit the types of materials used, and new companies and printers may consider implementing similar restrictions in the future, thereby requiring renewal of the exemption.[118]

Based on the information provided in the renewal petition and the lack of opposition, the Office believes that the conditions that led to adoption of this exemption are likely to continue during the next triennial period. Accordingly, the Office intends to recommend renewal of this exemption.

III. Analysis and Classification of Proposed New or Expanded Exemptions

Having addressed the petitions to renew existing exemptions, the Office now turns to the petitions for new or expanded exemptions. The Office received twenty-six petitions,[119] which it has organized into seventeen proposed classes, as described below. Before discussing those classes, the Office first explains the process and standards for submission of written comments.

A. Submission of Written Comments

Persons wishing to address proposed exemptions in written comments should familiarize themselves with the substantive legal and evidentiary standards for the granting of an exemption under section 1201(a)(1), which are also described in more detail on the Office's form for submissions of longer comments, available on its website. In addressing factual matters, commenters should be aware that the Office favors specific, ''real-world'' examples supported by evidence over speculative, hypothetical observations. In cases where the technology at issue is not apparent from the requested exemption, it can be helpful for commenters to describe the TPM(s) that control access to the work and method of circumvention.

Commenters' legal analysis should explain why the proposal meets or fails to meet the criteria for an exemption under section 1201(a)(1), including, without limitation, why the uses sought are or are not noninfringing as a matter of law. The legal analysis should also discuss statutory or other legal provisions that could impact the necessity for or scope of the proposed exemption. Legal assertions should be supported by statutory citations, relevant case law, and other pertinent authority. In cases where a class proposes to expand an existing exemption, participants should focus their comments on the legal and evidentiary bases for modifying the exemption, rather than the underlying exemption; as discussed above, the Office intends to recommend each current temporary exemption for renewal.

To ensure a clear and definite record for each of the proposals, commenters are required to provide a separate submission for each proposed class during each stage of the public comment period. Although a single comment may

[110] SPN & LCA Software Preservation Renewal Pet.

[111] *Id.* at 3.

[112] SPN & LCA Abandoned Video Game Renewal Pet.

[113] Consumer Reports Abandoned Video Game Supp.

[114] SPN & LCA Abandoned Video Game Renewal Pet. at 3.

[115] *Id.*

[116] Weinberg 3D Printers Renewal Pet.

[117] *Id.* at 3.

[118] *Id.*

[119] In addition, as noted, OTW's renewal petition seeks to amend the current regulatory language. The Office is treating that request as a petition for expansion.

not address more than one proposed class, the same party may submit multiple written comments on different proposals. The Office acknowledges that the requirement of separate submissions may require commenters to repeat certain information across multiple submissions, but the Office believes that the administrative benefits of creating a self-contained, separate record for each proposal will be worth the modest amount of added effort.

The first round of public comment is limited to submissions from proponents (*i.e.,* those parties who proposed new exemptions during the petition phase) and other members of the public who support the adoption of a proposed exemption, as well as any members of the public who neither support nor oppose an exemption but seek only to share pertinent information about a specific proposal.

Proponents of exemptions should present their complete affirmative case for an exemption during the initial round of public comment, including all legal and evidentiary support for the proposal. Members of the public who oppose an exemption should present the full legal and evidentiary basis for their opposition in the second round of public comment. The third round of public comment will be limited to supporters of particular proposals and those who neither support nor oppose a proposal, who, in either case, seek to reply to points made in the earlier rounds of comments. Reply comments should not raise new issues, but should instead be limited to addressing arguments and evidence presented by others.

B. The Proposed Classes

As noted above, the Office has reviewed and classified the proposed exemptions set forth in the twenty-seven petitions received in response to its notification of inquiry. Any exemptions adopted must be based on ''a particular class of works,'' [120] and each class is intended to ''be a narrow and focused subset of the broad categories of works . . . identified in Section 102 of the Copyright Act.'' [121] As explained in the Notice of Inquiry, the Office consolidates or groups related and/or overlapping proposed exemptions where possible to simplify the rulemaking process and encourage joint participation among parties with common interests (though collaboration is not required). Accordingly, the Office has categorized the petitions into seventeen proposed classes of works.

Each proposed class is briefly described below; additional information can be found in the underlying petitions posted on the Office website. As explained in the notification of inquiry, the proposed classes ''represent only a starting point for further consideration in the rulemaking proceeding, and will be subject to further refinement based on the record.'' [122] The Office further notes that it has not put forward precise regulatory language for the proposed classes, because any specific language for exemptions that the Register ultimately recommends to the Librarian will depend on the full record developed during this rulemaking. Indeed, in the case of proposed modifications to existing exemptions, as stated above, the Register may propose altering current regulatory language to expand the scope of an exemption, where the record suggests such a change is appropriate.

After examining the petitions, the Office has preliminarily identified some initial legal and factual areas of interest with respect to certain proposed classes. The Office stresses, however, that these areas are not exhaustive, and commenters should consider and offer all legal argument and evidence they believe necessary to create a complete record. These early observations are offered without prejudice to the Office's ability to raise other questions or concerns at later stages of the proceeding. Finally, ''where an exemption request resurrects legal or factual arguments that have been previously rejected, the Office will continue to rely on past reasoning to dismiss such arguments in the absence of new information.'' [123]

Proposed Class 1: Audiovisual Works—Criticism and Comment

Three petitions seek to expand the existing exemptions for circumvention of access controls protecting motion pictures on DVDs, Blu-ray discs, and digitally transmitted video for purposes of criticism and comment, including for educational purposes by certain users. Because these petitions raise some shared concerns, the Office has grouped them into one class, as it did during the seventh triennial proceeding. This grouping is without prejudice to possible further refinement of this class, including dividing it into subclasses based on specific uses.

First, as noted, OTW filed a renewal petition requesting that the exemption regarding the creation of noncommercial videos be amended to incorporate the language of the exemption for such uses adopted in the 2010 rulemaking.[124] That exemption permitted circumvention undertaken ''solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use.'' [125] Noting that the current exemption is longer than this formulation, OTW contends that ''the complexity of [the current] provisions substantially increases the difficulty of communicating and implementing the exemptions in practice.'' [126] In OTW's view, reverting to the 2010 language would not expand the scope of the existing rule but merely would help ''clarify the exemption for ordinary users.'' [127] The exemption, however, has been expanded since 2010, including by encompassing works on a Blu-ray disc or received via a digital transmission, and by including language clarifying that the exemption includes ''videos produced for a paid commission if the commissioning entity's use is noncommercial.'' [128] The Office seeks comment on whether, or to what extent, commenters believe the suggested language would alter the substance of the current provision. As part of that analysis, commenters should discuss the extent to which the evidence submitted in the prior rulemaking may be relied upon to support the proposed change.

Second, Joint Educators III seek to expand the current exemption for educational uses to allow a greater number of users to engage in ''online instructional learning.'' [129] They acknowledge that the existing exemption already covers the use of short clips in distance learning by certain users—college and university faculty and students, K–12 educators

[120] 17 U.S.C. 1201(a)(1)(B).

[121] Commerce Comm. Report at 38; *see also* Section 1201 Study at 109–10 (noting that while ''in some cases, [the Office] can make a greater effort to group similar classes together, and will do so going forward,'' ''in other cases, the Office's ability to narrowly define the class is what enabled it to recommend the exemption at all, and so the Office will continue to refine classes when merited by the record'').

[122] 85 FR at 37403.

[123] Section 1201 Study at 147; *see also* 79 FR 55687, 55690 (Sept. 17, 2014).

[124] OTW Noncomm. Videos Renewal Pet. at 3. OTW's petition refers to that proceeding as the ''2008 rulemaking,'' but the Office generally identifies each proceeding by its year of completion.

[125] 75 FR 43825, 43827 (2010).

[126] OTW Noncomm. Videos Renewal Pet. at 3.

[127] *Id.*

[128] 37 CFR 201.40(b)(1). *See* 2015 Recommendation at 103–06 (expanding exemption to include Blu-ray and digital transmission).

[129] Joint Educators III Class 1 Pet. at 2.

and students, and faculty of accredited massive open online courses (MOOCs).[130] Indeed, the 2018 Recommendation specifically described the exemption language pertaining to college and university and K–12 users as ''broad enough to encompass exempted uses under sections 110(1) and 110(2) (*i.e.,* face-to-face and distance teaching).'' [131] Joint Educators III, however, seek to expand the exemption to other online learning platforms that offer ''supplemental education, upskilling, retraining, recharging, and lifelong learning,'' such as Khan Academy, LinkedIn Learning, Osmosis.org and Code.org.[132] To enable these providers to exercise the exemption, they propose an expansion allowing ''educators and preparers of online learning materials to use short portions of motion pictures (including television shows and videos), as defined in 17 U.S.C. 101, for the purpose of criticism, comment, illustration and explanation in offerings for registered learners on online learning platforms when use of the film and media excerpts will contribute significantly to learning.'' [133]

Third, BYU requests to expand the class of eligible users to include ''college and university employees,'' instead of ''college and university faculty.'' [134] In addition, it seeks to broaden the permitted uses from ''criticism, comment, teaching, or scholarship'' to ''a noninfringing use under 17 U.S.C. 107, 110(1), 110(2), or 112(f).'' [135] BYU's proposal also would remove the current reference to screen-capture technology and the requirement that the exempted use be limited to ''short portions'' of motion pictures.[136]

With respect to both BYU's and Joint Educators III's petitions, the Office notes that certain proposals to remove the limitations on eligible users of this exemption were considered during the 2015 and 2018 rulemakings, and invites comment on any changed legal or factual circumstances with respect to these provisions.[137] In particular, the Office seeks specific examples where the presence of TPMs is resulting in an adverse effect on users who are not already included in the existing regulatory language. Further, with respect to BYU's request to expand the types of permitted uses, the Office notes that it has previously rejected similar proposed classes as overbroad.[138] And in the previous rulemaking, the Office declined a proposed exemption by BYU that would permit circumvention for nonprofit educational purposes in accordance with sections 110(1) and 110(2) and eliminate the ''criticism and comment'' limitation and references to screen-capture technology.[139] The Office invites comment on whether any changed circumstances warrant altering that determination.

Proposed Class 2: Audiovisual Works—Texting

SolaByte Corp. petitions for a new exemption to access ''licensed audio/video works stored on optical disc media for the purpose of creating short (10 seconds or less) A/V clips that enhance communication effectiveness and understanding when using TEXTing messages.'' [140] The proposed class ''[i]ncludes movies, TV shows, music video, other copyrighted works'' that are stored on ''[p]ackaged and replicated DVD or Blu-ray discs playable on computer or CE player hardware.'' [141] Eligible users would include persons ''who want to create expressive clips that convey their thoughts when texting.'' [142]

Because these proposed activities do not appear to be limited to criticism and comment or educational uses, the Office has classified this proposal as a separate proposed class. The Office seeks additional detail about the scope of the proposed exemption from SolaByte or others, such as whether the exemption would be available for commercial services. Commenters should describe with specificity the relevant TPMs and whether their presence is adversely affecting noninfringing uses, including identifying whether eligible users may access expressive clips through alternate channels that do not require circumvention and the legal basis for concluding that the proposed uses are likely to be noninfringing. Similarly, commenters should address any anticipated effect that circumvention of TPMs would have on the market for or value of the relevant copyrighted works, which appears to extend to the same broad swatch of motion pictures as Class 1.

Proposed Class 3: Audiovisual Works—Accessibility

ATSP, AHEAD, and LCA petition to expand the existing exemption relating to the creation of accessible versions of motion pictures for students with disabilities. They propose several changes to the existing exemption language, which includes the following requirements:

- Circumvention is undertaken by a disability services office or other unit of a kindergarten through twelfth-grade educational institution, college, or university engaged in and/or responsible for the provision of accessibility services to students, for the purpose of adding captions and/or audio description to a motion picture to create an accessible version as a necessary accommodation for a student or students with disabilities under an applicable disability law, such as the Americans With Disabilities Act, the Individuals with Disabilities Education Act, or Section 504 of the Rehabilitation Act;
- The educational institution unit has, after a reasonable effort, determined that an accessible version cannot be obtained at a fair price or in a timely manner; and
- The accessible versions are provided to students or educators and stored by the educational institution in a manner intended to reasonably prevent unauthorized further dissemination of a work.[143]

First, petitioners seek to expand the exemption ''to allow for the remediation of video for faculty and staff, as well as students.'' [144] They recommend that the current language be revised to read: ''to create an accessible version as a necessary accommodation for students, faculty, and staff with disabilities.'' [145] Second, to clarify that a covered educational institution unit (''EIU'') may create accessible versions ''proactively,'' petitioners suggest removing the phrase ''as a necessary accommodation'' and requiring only that the creation of an accessible version be ''consistent with'' an applicable disability law.[146] Third, petitioners ask the Office to clarify that the ''reasonable effort'' requirement applies ''only where an 'accessible version' is available that contains captions and descriptions of sufficient quality to satisfy applicable disability

[130] *Id.* at 2–3.

[131] 2018 Recommendation at 86.

[132] Joint Educators III Class 1 Pet. at 2.

[133] *Id.*

[134] BYU Class 1 Pet. at 2.

[135] *Id.*

[136] *Id.*

[137] 2018 Recommendation at 53–55; 2015 Recommendation at 102.

[138] *See* 2015 Recommendation at 100 (citing Recommendation of the Register of Copyrights in RM 2005–11, Rulemaking on Exemptions from Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies at 17–19 (Nov. 17, 2006) (''2006 Recommendation'')).

[139] 2018 Recommendation at 32, 52–53.

[140] SolaByte Class 2 Pet. at 2.

[141] *Id.*

[142] *Id.*

[143] 37 CFR 201.40(b)(2)(i).

[144] ATSP, AHEAD & LCA Class 3 Pet. at 2.

[145] *Id.*

[146] *Id.* at 3.

law.'' [147] The Office notes that in recommending the existing regulatory language, it stated that an EIU may proceed after reaching a conclusion ''that it must create an accessible version as a necessary accommodation for a student with disabilities.'' [148] Fourth, petitioners recommend qualifying the ''reasonable effort'' requirement in circumstances where ''no accessible version of a video included with a textbook exists, but a publisher might be willing to generate an accessible version of the video at extra cost,'' by eliminating this requirement when a publisher does not include an accessible version of materials with purchased materials.[149] The Office would welcome comment upon whether petitioners believe that the extra costs should be of an unreasonable amount, or whether they contend that every offer carrying additional cost should be dismissed, along with any thoughts from copyright owners or licensors on this issue. Finally, petitioners recommend ''altering the current exemption language to make clear that an EIU can reuse stored accessible versions instead of re-circumventing and re-remediating inaccessible media when complying with an accommodation request.'' [150]

The Office seeks comment on whether this exemption, including petitioners' suggested regulatory language, should be adopted.

Proposed Class 4: Audiovisual Works—Livestream Recording

FloSports, Inc. petitions for an exemption ''for circumvention of technology used in the digital storage of audiovisual works originating as a livestream of sports and other competitive events.'' [151] The exemption ''would enable a livestreaming service to provide individual viewers, via a virtual digital video recorder ('vDVR'), with access to a recording on a server for fair use purposes.'' [152]

The petition indicates that circumvention is necessary to alter the functioning of HTTP Live Streaming (''HLS''), ''a live-video streaming technique that enables high quality streaming of media content over the internet from web servers.'' [153] According to FloSports, the use of HLS to stream content ''results in only an ephemeral copy in addition to the live broadcast.'' [154] FloSports seeks to enable ''copies of the audio and video data files [to] be stored on a longer-term basis and synchronized for later replay by the viewer.'' [155] It states that ''[t]he cost and practical difficulty of obtaining synchronization licenses, combined with the cost and technical challenges of creating individualized audio and visual stored files for each viewer seeking to access the stored files, effectively control viewers access to the material for fair use purposes.'' [156]

FloSports contends that the recording of such material constitutes fair use on the following basis:

> Individual recordings of audiovisual performances, historically, had been used by directors of the groups in such recordings to instruct, teach, and otherwise educated [*sic*] the participants in the recordings on what went right, what went wrong, and how each could improve. Generally, the individual performances in the audiovisual streams this petition considers are a very small percentage of the entire copyrighted work (*e.g.,* all individual performances combined for an entire copyrighted broadcast). Further, there is no current market for educational recordings at the moment. Granting this exemption, or the performance of such a recording, would not adversely affect the market for the copyrighted recordings.[157]

The Office invites comment on this proposal but notes at the outset that the description of the proposed class in the petition is insufficiently clear to meet the statutory requirement to identify ''a *particular class* of copyrighted works.'' [158] While the petition generally describes the class as covering livestreams of ''sports and other competitive events,'' elsewhere it states that the relevant works are ''audiovisual recordings of musical performances as identified in 17 U.S.C. 102(a)(6) and 17 U.S.C. 106(a)(5).'' [159] It then states that the proposed class ''incorporates any and all works for which audiovisual recordings may be made and used as fair use. This includes individual school performances.'' [160] Given this inconsistent information, the Office is unable to determine whether, for example, the petition is intended to cover the use of copyrighted broadcasts owned by another party or simply musical or other works that may be captured in broadcasts owned by FloSports. Without further clarification, the petition does not seem to relate to a particular class of works.

Nor is it apparent to what extent the asserted adverse effects are attributable to ''[t]he cost and practical difficulty of obtaining synchronization licenses,'' [161] as opposed to TPMs. As noted, the Office will only recommend an exemption where causation has been established; that is, where the Office can conclude that the statutory prohibition on circumventing access controls is the cause of the adverse effects.[162]

Finally, the Office seeks additional information regarding the intended noninfringing uses, including whether it would be appropriate to clarify that the petition is directed at facilitating educational, noncommercial uses. Petitioner appears to operate a commercial livestreaming service,[163] and it is unclear whether this exemption is intended to facilitate growth in that market. In addition to factual development regarding the intended uses, the Office welcomes information on the legal basis for finding that such uses would be fair. For example, in connection with petitioner's statement that ''the individual performances in the audiovisual streams this petition considers are a very small percentage of the entire copyrighted work,'' [164] commenters should address the well-established principle that copying even a quantitatively ''insubstantial portion'' of a work may weigh against fair use where the material is qualitatively significant to that work.[165] These factual and legal issues should be described with sufficient particularity to enable the Office to determine whether the specific uses are likely to be fair. As it has done in the past, the Office is inclined to reject overbroad proposed classes such as ''fair use works'' or ''educational fair use works.'' [166] Absent such clarification, the Office will decline further consideration of the petition.[167]

[147] *Id.*

[148] 2018 Recommendation at 109–10.

[149] *Id.* The petition refers to a purchased textbook, but the Office queries if that was petitioner's intent, since the exemption concerns access to audiovisual works.

[150] *Id.*

[151] FloSports Class 4 Pet. at 2.

[152] *Id.*

[153] *Id.*

[154] *Id.*

[155] *Id.*

[156] *Id.*

[157] *Id.* at 3.

[158] 17 U.S.C. 1201(a)(1)(C) (emphasis added); *see supra* Section I.

[159] FloSports Class 4 Pet. at 2.

[160] *Id.*

[161] *Id.*

[162] *See* Section 1201 Study at 115 (''The statutory prohibition on circumventing access controls [must be] the cause of the adverse effects.'').

[163] *See Flosports, https://www.flosports.tv/join-now/* (advertising ''plans starting from $12.49/mo'') (last visited Oct. 8, 2020).

[164] FloSports Class 4 Pet. at 3.

[165] *See Harper & Row Publrs., Inc.* v. *Nation Enters.,* 471 U.S. 539, 564–65 (1985).

[166] *See* 2015 Recommendation at 100 (citing 2006 Recommendation at 17–19).

[167] *Cf.* 79 FR 73856, 73859 (Dec. 12, 2014) (declining to put forward exemption proposals that could not be granted as a matter of law).

Proposed Class 5: Audiovisual Works—Preservation

LCA proposes a new exemption to facilitate preservation of audiovisual works stored on DVDs or Blu-ray discs. a class that would include ''[m]otion pictures (including television shows and videos), as defined in 17 U.S.C. 101, where the motion picture is lawfully acquired on a DVD protected by the Content Scramble System, or on a Blu-ray disc protected by the Advanced Access Content System, and is no longer reasonably available in the commercial marketplace, for the purpose of lawful preservation of the motion picture, by a library, archives, or museum.'' [168] The petition is quite terse, consisting of a single sentence, and so the Office encourages proponents to develop the legal and factual administrative record in their initial submissions.

The Office seeks comment on whether this proposed exemption should be adopted, including any proposed regulatory language.

Proposed Class 6: Audiovisual Works—Space-Shifting

Somewhat related to LCA's petition, but not cabined to preservation activities conducted by libraries, archives, or museums, SolaByte proposes a broader exemption that would be available to ''[t]he legitimate owner of the DVD or blu-ray disc and licensee of the content'' for the purpose of ''making a usable personal back up copy.'' [169] The exemption ''would apply to any title of audio/visual works 5 years after its public release date.'' [170] SolaByte notes that ''[i]ncomplete licensing of titles by internet media service providers requires the owner of the disc to subscribe to multiple service providers at high personal cost to cover a fraction of their library titles.'' [171]

The Office seeks comment on whether this proposed exemption should be adopted, including any proposed regulatory language. The Office notes that in the 2006, 2012, 2015, and 2018 rulemakings, the Librarian rejected proposed exemptions for space-shifting or format-shifting, finding that the proponents had failed to establish under applicable law that space-shifting is a noninfringing use.[172] The Office invites comment on whether, in the past three years, there has been any change in the legal or factual circumstances bearing upon that issue.

Proposed Classes 7(a): Motion Pictures and 7(b): Literary Works—Text and Data Mining

Authors Alliance, AAUP, and LCA petition for an exemption ''for researchers to circumvent technological protection measures on lawfully accessed literary works distributed electronically as well as on lawfully accessed motion pictures, in order to deploy text and data mining techniques.'' [173] Petitioners believe that these two categories of works ''should be grouped together in a single exemption because they involve the same petitioners, the same proposed use, and implicate the same arguments for an exemption.'' [174] The proposed class includes both works embodied in physical discs and those transmitted digitally.[175] The users seeking access include ''researchers engaged in text and data mining in the humanities, social sciences, and sciences.'' [176]

For reasons of administrative efficiency, the Office has grouped these proposals into one category that encompasses two proposed classes pertaining to motion pictures and literary works, respectively (*i.e.,* Classes 7(a) and 7(b)). Commenters therefore may submit a single comment addressing one or both aspects of the petition. It is important to emphasize, however, that proponents are required to make the statutorily required showing with respect to each category of works. As discussed above, the statute requires that exemptions describe ''a *particular class* of copyrighted works.'' [177] Congress made clear that such a class may not encompass more than one of the categories of works set out in section 102; to the contrary, the ''particular class'' language refers to ''a *narrow and focused subset*'' of the section 102 categories.[178] This means that for each type of work for which an exemption is sought, petitioners must demonstrate an actual or likely adverse impact on a noninfringing use as a result of the statutory prohibition on circumvention. In the case of this proposal, to the extent proponents believe the relevant factual and legal issues are similar as to the two classes of works, the supporting comments should describe those matters in detail. For example, commenters may wish to address the extent to which there is overlap with respect to the types of TPMs applied to these works, the nature of the proposed research activities, the relevant markets for the works, and the availability of potential alternatives to circumvention.

Proposed Class 8: Literary Works—Accessibility

ACB, AFB, NFB, LCA, AALL, Benetech/Bookshare, and HathiTrust petition to expand the current exemption for the use of assistive technologies by visually impaired persons in connection with electronically distributed literary works. The current regulatory language applies to literary works, distributed electronically, that are protected by technological measures that either prevent the enabling of read-aloud functionality or interfere with screen readers or other applications or assistive technologies:

- When a copy of such a work is lawfully obtained by a blind or other person with a disability, as such a person is defined in 17 U.S.C. 121; provided, however, that the rights owner is remunerated, as appropriate, for the price of the mainstream copy of the work as made available to the general public through customary channels; or
- When such work is a nondramatic literary work, lawfully obtained and used by an authorized entity pursuant to 17 U.S.C. 121.[179]

The proposed exemption would amend this language to reflect recent changes to U.S. law to implement the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (''Marrakesh Treaty'').[180] These include updates to the Chaffee Amendment, codified at section 121 of title 17, and the newly adopted section 121A, which pertains to the import and export of works in accessible formats. Petitioners propose the following changes:

- Updating the description of eligible users from ''blind or other person with a disability'' to ''eligible person, as such a person is defined in 17 U.S.C. 121'';
- Updating the description of eligible works to ''literary works and previously published musical works that have been fixed in the form of text or notation''; and
- Adding the phrase ''or 121A'' to the end of 37 CFR 201.40(b)(3)(ii). As an

[168] LCA Class 5 Pet. at 2.

[169] SolaByte Class 6 Pet. at 2.

[170] *Id.*

[171] *Id.*

[172] *See* 83 FR 54010, 54026–27 (Oct. 26, 2018); 80 FR 65944, 65960 (Oct. 28, 2015); 77 FR 65260, 65276–77 (Oct. 26, 2012); 71 FR 68472, 68478 (Nov. 27, 2006).

[173] Authors Alliance, AAUP & LCA Class 6 Pet. at 2.

[174] *Id.*

[175] *Id.* at 3.

[176] *Id.*

[177] 17 U.S.C. 1201(a)(1)(C) (emphasis added); *see supra* Section I.

[178] Commerce Comm. Report at 38 (emphasis added).

[179] 37 CFR 201.40(b)(3).

[180] Marrakesh Treaty, art. 7, June 27, 2013, 52 I.L.M. 1312.

alternative, petitioners request clarification that exercising the rights described in section 121A does not implicate section 1201.[181]

In addition, petitioners request that the Office ''eliminate the reference to the price of 'mainstream' copies of works . . . and replace this term with a more inclusive phrase such as 'market price of an inaccessible copy.' '' [182]

The Office seeks comment on whether this proposed exemption, including petitioners' suggested regulatory language, should be adopted.

Proposed Class 9: Literary Works—Medical Device Data

Hugo Campos, a member of a coalition of medical device patients and researchers, requests two modifications to the current exemption permitting circumvention to access compilations of data generated by medical devices or corresponding personal monitoring systems. First, he seeks removal of the language limiting the exemption to devices ''that are wholly or partially implanted in the body.'' [183] He notes that ''[m]any current and upcoming devices obtain medical data about a patient without the need to be fully or partially implanted in the body,'' including smart watches, personal EKG monitors, and non-implanted glucose meters.[184] And he argues that ''there is no relevant difference between implanted and non-implanted devices with respect to copyright.'' [185]

Second, Mr. Campos requests that the exemption ''permit third parties to perform the circumvention, with permission, on behalf of the patient.'' [186] He notes that the Office and the Library ''have structured other exemptions so that the identity of the person doing the circumvention does not matter.'' [187]

The Office seeks comment on whether this proposed exemption should be adopted, including any proposed regulatory language. With respect to the request to permit third-party assistance, the Office notes that it has addressed this issue on several occasions, most recently in the 2018 Recommendation's discussion of the current exemptions for repair of software-enabled motor vehicles and devices. There, the Office recommended removal of the prior requirement that circumvention be ''undertaken by the authorized owner'' of the vehicle or device, noting participants' concern that such language ''improperly excludes other users with a legitimate interest in engaging in noninfringing diagnosis, repair, or modification activities.'' [188] But the Office emphasized the limited nature of the change:

> To be clear, removal of the ''authorized owner'' language should in no way be understood to suggest that the exemption extends to conduct prohibited by the anti-trafficking provisions; such an exemption is beyond the Librarian's authority to adopt. . . . The recommended revision simply accounts for the possibility that certain third parties may qualify as ''user[s]'' eligible for an exemption from liability under section 1201(a)(1). Such parties still will be required to consider whether their activities could separately give rise to liability under section 1201(a)(2) or (b). Given the legal uncertainty in this area, services electing to proceed with circumvention activity pursuant to the exemption do so at their peril.[189]

The Office invites comment on the extent to which this analysis may be relevant to the current proposal.

Proposed Class 10: Computer Programs—Unlocking

ISRI submitted two separate petitions to expand the current exemption for ''unlocking''—*i.e.,* connecting a wireless device to an alternative wireless network. The current exemption permits circumvention of the following lawfully acquired devices for unlocking purposes:

- Wireless telephone handsets (*i.e.,* cellphones);
- All-purpose tablet computers;
- Portable mobile connectivity devices, such as mobile hotspots, removable wireless broadband modems, and similar devices; and
- Wearable wireless devices designed to be worn on the body, such as smartwatches or fitness devices.[190]

In its first petition, ISRI seeks to add ''laptop computers (including chromebooks) with 4G LTE or 5G or other cellular connection capabilities'' to the list of covered devices.[191] In its second petition, ISRI seeks to remove the enumeration of devices altogether and extend the exemption to ''any other devices with 4G LTE or 5G or other cellular connection capabilities,'' including, but not limited to, ''Smart TVs, Internet of Things (IoT) devices, immersive extended reality (XR) headsets, desktop computers, and drones.'' [192]

The Office seeks comment on whether this proposed exemption should be adopted, including any proposed regulatory language. The Office notes that in the seventh triennial rulemaking it considered a similar petition to remove the list of enumerated device categories, but concluded that the proponents had failed to carry their burden of demonstrating adverse effects on noninfringing uses with respect to all types of wireless devices with cellular connection capability.[193] Comments responding to this petition should address the extent to which factual and legal issues pertaining to certain categories of devices may be relevant to wireless devices more generally.

Proposed Class 11: Computer Programs—Jailbreaking

Two petitions seek to expand or clarify the categories of devices covered by the exemptions for jailbreaking, which currently include smartphones and portable all-purpose mobile computing devices, smart televisions, and voice assistant devices.[194] SFC petitions for a new exemption to enable the installation of alternative firmware in ''routers and other networking devices.'' [195] EFF proposes a clarification of the current exemption regarding smart televisions. In EFF's view, it is ''unclear whether that exemption includes hardware devices that enable the viewing of video streams, along with other software applications, when such devices are not physically integrated into a television.'' [196] The petition refers to such hardware as ''streaming devices'' and cites ''the Roku line of products, the Amazon Fire TV Stick, and the Apple TV'' as examples.[197]

The Office seeks comment on whether these proposed exemptions should be adopted, including any proposed regulatory language to define the types of devices that would be covered.

Proposed Class 12: Computer Programs—Repair

Multiple organizations petition for new or expanded exemptions relating to diagnosis, repair, and modification of software-enabled devices. As noted, the current regulations include two repair-related exemptions, covering (1) computer programs that are contained in and control the functioning of a lawfully acquired motorized land vehicle, when circumvention is a

[181] ACB, AFB, NFB, LCA, AALL, Benetech/Bookshare & HathiTrust Class 8 Pet. at 4.

[182] *Id.*

[183] Campos Class 9 Pet. at 2 (citing 37 CFR 201.40(b)(4)).

[184] *Id.* at 2.

[185] *Id.*

[186] *Id.*

[187] *Id.*

[188] 2018 Recommendation at 229.

[189] *Id.* at 225.

[190] 37 CFR 201.40(b)(5).

[191] ISRI Class 10 Pet. #1 at 2.

[192] ISRI Class 10 Pet. #2 at 2.

[193] 2018 Recommendation at 162.

[194] 37 CFR 201.40(b)(6)–(8).

[195] SFC Class 11 Pet. at 2.

[196] EFF Class 11 Pet. at 2.

[197] *Id.*

necessary step to allow the diagnosis, repair, or lawful modification of a vehicle function; and (2) computer programs that are contained in and control the functioning of a lawfully acquired smartphone or home appliance or home system, when circumvention is a necessary step to allow the diagnosis, maintenance, or repair of such a device or system.[198]

Three petitions seek to expand the current exemptions to include additional types of devices. Summit Imaging, Inc. and Transtate Equipment Co., Inc. separately petition for an exemption allowing circumvention of TPMs for purposes of diagnosis, modification, and repair of medical devices.[199] iFixit and Public Knowledge jointly petition for an exemption permitting circumvention ''to repair video game consoles and replace damaged hardware.'' [200] With respect to the latter petition, the Office notes that in prior rulemakings it has declined to recommend exemptions for jailbreaking and repair of video game consoles in light of evidence that circumvention of TPMs in such devices may adversely affect the value of the affected software, as well as a lack of evidence of adverse effects on noninfringing uses.[201] The Office invites comment on whether, in the past three years, there has been any change in the legal or factual circumstances bearing upon these issues.

Two additional petitions request removal of the limitation to specific categories of devices, along with further changes to the current regulatory text.[202] EFF seeks to expand the exemption to permit circumvention for purposes of *modification* of a device, in addition to repair-related activities. iFixit and the Repair Association propose to remove the current requirement that circumvention of TPMs protecting software in motor vehicles not constitute a violation of applicable law.[203] The Office notes that it considered similar requests regarding these issues in the 2018 rulemaking.[204] Therefore, as with the above petitions, comments addressing these proposals should include discussion of any relevant changed circumstances.

Finally, the Office notes that all of the petitions in this class appear to request that the users eligible to exercise these exemptions include third-party service providers.[205] As above, the Office invites comment on the extent to which its prior analysis of that issue may be applicable here.[206]

Proposed Class 13: Computer Programs—Security Research

Two petitions seek to expand the current exemption permitting circumvention for purposes of good-faith security research. Professor J. Alex Halderman, CDT, and ACM propose removal of several limitations in the current regulation: (1) The requirement that circumvention be undertaken on a ''lawfully acquired device or machine on which the computer program operates'' and ''not violate any applicable law''; (2) both instances of the term ''solely'' (*i.e.,* ''solely for the purpose of good-faith security research'' and ''solely for purposes of good-faith testing, investigation, and/or correction of a security flaw or vulnerability''); and (3) the requirement that the information derived from the activity be used ''primarily to promote the security or safety of the class of devices or machines on which the computer program operates, or those who use such devices or machines, and is not used or maintained in a manner that facilitates copyright infringement.'' [207] As petitioners note, the Office considered these proposed changes in the 2018 rulemaking and provided interpretive guidance as to the regulatory language's intended scope.[208] Petitioners state, however, that they ''intend to further develop the record in favor of these changes in the current rulemaking period.'' [209]

SFC petitions for an expansion to ''clarify that the definition of 'good faith security research' . . . includes good-faith testing, investigation, and/or correction of privacy issues (including flaws or functionality that may expose personal information) and permits the owner of the device to remove software or disable functionality that may expose personal information.'' [210] Eligible users under this proposal would include ''privacy and security researchers who investigate and publish information about privacy flaws in computing devices; and individual consumers and hobbyists who wish to prevent their private data from being disclosed by the devices they own.'' [211]

The Office seeks comment on whether these proposed changes should be adopted. With respect to SFC's petition, comments should include discussion of the extent to which the proposed activities may or may not be addressed by permanent statutory exemptions or current regulatory exemptions.

Proposed Classes 14(a): Computer Programs and 14(b): Video Games—Preservation

SPN and LCA filed two petitions to expand the current exemptions for preservation of software and video games by eligible libraries, archives, and museums.[212] Both of these exemptions currently require that the covered works not be ''distributed or made available outside of the physical premises of the eligible library, archives, or museum.'' [213] The proposed exemptions would remove those requirements.[214] The Office welcomes further elaboration on how proponents of the exemptions would envision these works to be distributed or made available in a manner likely to be noninfringing, respectively. For example, the current exemptions are focused on circumvention to enable preservation uses, in contrast to enabling provision of lending copies for users, a preliminary distinction that the Office has found critical in the past when analyzing potential legislative reforms to the section 108 exception for libraries and archives.[215] Would the proposed modification maintain this distinction, and if so, how? Would there be conditions on access restrictions to registered users of an eligible library, archives, or museum or would material be made available more generally to members of the public? The Office notes that in the 2018 rulemaking, it declined to recommend a proposal to expand the video game preservation exemption to allow circumvention by affiliate archivists outside the premises of a covered institution, concluding that the

[198] 37 CFR 201.40(b)(9)–(10).

[199] Summit Imaging, Inc. Class 12 Pet. at 2; Transtate Equip. Co. Class 12 Pet. at 2.

[200] iFixit & Public Knowledge Class 12 Pet. at 2.

[201] *See* 2018 Recommendation at 206, 219–20; 2015 Recommendation at 199–201; 2012 Recommendation at 44, 47.

[202] EFF Class 12 Pet. at 2–3; iFixit & Repair Ass'n Class 12 Pet. at 2–3.

[203] iFixit & Repair.org Class 12 Pet. at 3.

[204] *See* 2018 Recommendation at 189–94, 206–09, 310–11.

[205] Summit Imaging, Inc. Class 12 Pet. at 3; Transtate Equip. Co. Class 12 Pet. at 2; iFixit & Public Knowledge Class 12 Pet. at 2; EFF Class 12 Pet. at 2–3; iFixit & Repair Ass'n Class 12 Pet. at 2.

[206] *See* 2018 Recommendation at 225.

[207] Halderman, CDT & ACM Class 13 Pet. at 3.

[208] *See* 2018 Recommendation at 283–314.

[209] Halderman, CDT & ACM Class 13 Pet. at 3.

[210] SFC Class 13 Pet. at 2.

[211] *Id.*

[212] 37 CFR 201.40(b)(12), (13).

[213] *Id.* at § 201.40(b)(12)(ii), (b)(13)(i).

[214] SPN & LCA Class 14(a) Pet. at 2; SPN & LCA Class 14(b) Pet. at 2.

[215] U.S. Copyright Office, Revising Section 108: Copyright Exceptions for Libraries and Archives at 24–34 (addressing preservation uses), 35–41 (addressing user copies) (2017), *https://www.copyright.gov/policy/section108/discussion-document.pdf.*

proponents had failed to establish that such activity was likely noninfringing.[216] Commenters responding to these petitions should address the extent to which the legal and factual issues relevant to this class may differ from those considered previously.

Although these proposed classes both involve computer programs (which constitute literary works under the Copyright Act), the petition regarding video games involves an additional category of works insofar as video games also constitute audiovisual works.[217] Therefore, the Office is following the same procedure discussed above in relation to the proposed TDM exemption: the Office has grouped these petitions into a single category encompassing two proposed classes. Commenters addressing these proposals may submit a single comment addressing both computer programs and video games, but the supporting evidence must be sufficient to establish an adverse effect on noninfringing uses with respect to each category of works. In particular, the Office is interested in the extent to which licensing markets for video games may be similar or different from those for software more generally, and whether any such differences may be relevant under the fair use analysis or the expected effect of circumvention of technological measures on the market for or value of copyrighted works.[218] The Office seeks comment on these and other relevant issues, including any proposed regulatory language.

Proposed Class 15: Computer Programs—3D Printing

Michael Weinberg petitions to amend the current exemption permitting circumvention to enable the use of alternative feedstock in 3D printers. The current exemption allows access to ''[c]omputer programs that operate 3D printers that employ microchip-reliant technological measures to limit the use of feedstock, when circumvention is accomplished solely for the purpose of using alternative feedstock and not for the purpose of accessing design software, design files, or proprietary data.'' [219] Mr. Weinberg seeks two changes to this language. First, he proposes to ''replace the term 'feedstock' . . . with the term 'material,' '' stating that the latter ''is more commonly used to describe the substances used by 3D printers within the 3D printing community and industry.'' [220] Second, he proposes to remove the term ''microchip-reliant.'' In his view, there is no ''justification to narrow the scope of the exemption to a specific subset of technological measures tied to microchip-based verifications,'' and ''the inclusion of the limiting language creates unnecessary ambiguity.'' [221] As noted, to recommend an exemption, the Office requires a showing that the statutory prohibition on circumventing access controls is yielding adverse effects on non-infringing uses. The current reference to ''microchip-reliant'' was based on the record of relevant TPMs submitted in connection with the exemption request.[222] In particular, the Office now solicits descriptions and examples of the prevalence of TPMs that are not microchip-based verifications, and descriptions of adverse effects stemming from such TPMs.[223]

In general, the Office seeks comment on whether these proposed changes should be adopted.

Proposed Class 16: Computer Programs—Copyright License Investigation

SFC petitions for a new exemption to permit circumvention of TPMs protecting computer programs for purposes of ''(a) investigating potential copyright infringement of the computer programs; and (b) making lawful use of computer programs (*e.g.,* copying, modifying, redistributing, and updating free and open source software (FOSS)).'' [224] The proposed exemption does not appear to be limited to particular users or types of devices. SFC states that the users seeking access include:

> software authors and publishers, including the authors of FOSS computer programs (which are frequently incorporated in embedded computing devices in an infringing manner); and individual consumers who are lawful owners of embedded computing devices and licensees of the computer programs embedded therein, and who wish to make lawful use of computer programs protected by technological protection measures (*e.g.* the right granted by certain FOSS licenses to install modified versions of the FOSS computer programs).[225]

It is somewhat unclear whether the requested exemption for ''lawful use of computer programs'' would apply to *any* lawful use or seeks merely to allow licensed uses of FOSS software. To the extent the former is intended, the proposed exemption appears beyond the Librarian's authority to grant. As the Office has consistently noted, the rulemaking requires a showing of ''distinct, verifiable and measurable'' adverse impacts on noninfringing uses.[226] Such evidence ''cannot be hypothetical, theoretical, or speculative, but must be real, tangible, and concrete.'' [227] In light of that requirement, ''the Register has previously rejected broad proposed categories such as 'fair use works' or 'educational fair use works' as inappropriate.'' [228] SFC and any other proponents of this request therefore must narrow or clarify the specific uses of computer programs that the proposed exemption seeks to permit, so that participants and the Office may fairly assess whether they are likely to be noninfringing and adversely affected by the prohibition on circumvention. The Office also welcomes additional detail regarding the first subpart of SFC's intended uses ''investigating potential copyright infringement of the computer programs, including the statement ''FOSS computer programs ([ ] are frequently incorporated in embedded computing devices in an infringing manner).''

Proposed Class 17: All Works—Accessibility Uses

Multiple organizations representing persons with disabilities (''Accessibility Petitioners'') jointly filed a petition proposing ''a more comprehensive exemption to resolve the shortcomings of the current, piecemeal approach to Section 1201 exemptions for accessibility.'' [229] The proposed exemption would permit circumvention to access ''all cognizable classes of works under Section 102 (a) of the Copyright Act'' to facilitate accessibility for persons with disabilities. Accessibility Petitioners state that this

[216] 2018 Recommendation at 271–75.

[217] U.S. Copyright Office, Compendium of U.S. Copyright Office Practices sec. 807.7(A)(1) (3d ed. 2017) (''Generally, a videogame contains two major components: the audiovisual material and the computer program that runs the game.'').

[218] *See* 17 U.S.C. 107; 1201(a)(1)(C)(iv).

[219] 37 CFR 201.40(b)(14).

[220] Weinberg Class 15 Pet. at 2.

[221] *Id.*

[222] 2015 Recommendation at 376.

[223] *See Lexmark Int'l Inc.* v. *Static Control Components, Inc.,* 387 F.3d 522, 547 (6th Cir. 2004) (''Because the statute refers to 'control[ling] access to a work protected under this title,' it does not naturally apply when the 'work protected under this title' is otherwise accessible.'').

[224] SFC Class 16 Pet. at 2.

[225] *Id.*

[226] Commerce Committee Report at 37; *see also* Section 1201 Study at 119–21.

[227] Section 1201 Study at 120.

[228] 2015 Recommendation at 100 (citing 2006 Recommendation at 17–19).

[229] ACB, AFB, Ass'n of Late-Deafened Adults, ATSP, AHEAD, Benetech/Bookshare, Gallaudet U., HathiTrust, Hearing Loss Ass'n of Am., LCA, Nat'l Ass'n of the Deaf, Nat'l Fed'n of the Blind, Telecomm. for the Deaf and Hard of Hearing, Inc. (collectively ''Accessibility Petitioners'') Class 17 Pet. at 4.

exemption would allow such users, as well as ''advocates[ ] and organizations that produce accessible versions of copyrighted works protected by technological protection measures[,] to press ahead on accessibility without the burden of engaging in a complex, situation-specific analysis.'' [230] They state that the relevant barriers to access include ''(1) the access controls that inhibit accessibility and (2) failures of producers, publishers, and other rightsholders to authorize access for accessibility purposes or to produce accessible versions of their works.'' [231]

As presently suggested, this proposed exemption is beyond the Librarian's authority to adopt because it does not meet the statutory requirement to describe ''a *particular class* of copyrighted works.'' [232] As discussed above, the legislative history confirms that this language is intended to refer to ''a *narrow and focused subset* of the broad categories of works . . . identified in section 102 of the Copyright Act.'' [233] Therefore, the Office uses the section 102 categories as a starting point and refines the proposed classes by other criteria, such as the types of TPMs used or the types of uses.[234] For example, while the category of ''literary works'' under section 102(a)(1) ''embraces both prose creations such as journals, periodicals or books, and computer programs of all kinds,'' Congress explained that ''[i]t is exceedingly unlikely that the impact of the prohibition on circumvention of access control technologies will be the same for scientific journals as it is for computer operating systems.'' [235] Thus, ''these two categories of works, while both 'literary works,' do not constitute a single 'particular class' for purposes of'' section 1201(a)(1).[236]

Further, petitioners are required to establish ''distinct, verifiable and measurable impacts'' on noninfringing uses,[237] and those impacts must be caused by the statutory prohibition on circumvention.[238] While TPMs undoubtedly have such impacts with respect to many accessibility uses (as reflected by the exemptions adopted for such uses in prior rulemakings), it is not clear to what extent various TPMs are effectively applied to every category of work in section 102, some of which may not readily lend themselves to such measures (*e.g.,* sculptural works). In addition, the availability of accessible-format versions of works in the marketplace is a relevant consideration in determining adverse effects,[239] and it is not clear that that factor applies equally to all categories of works.

The Office notes its continuing discretion to decline to put forward proposals for public comment that are unlikely to yield consideration of exemptions consistent with the standards of section 1201(a)(1).[240] In light of the important public policy considerations raised by this request and past exemptions adopted with respect to facilitating accessibility uses, however, the Office is noticing this category for public comment while flagging the need to further develop and refine petitioners' request into separate proposed classes. Accordingly, Accessibility Petitioners and any other proponents in this category must provide evidence and legal analysis sufficient to enable the Office to make a particularized assessment as to each class of works for which an exemption is sought. Based on prior exemptions adopted, the Office anticipates Accessibility Petitioners to be seeking exemptions related to TPMs protecting literary works as well as motion pictures distributed electronically, and proponents should provide evidence and proposed regulatory language with respect to these and any other relevant classes, and clearly identify and propose contours for each such class. For example, the Office is not inclined to recommend an exemption for printed copies of literary works, for which no TPMs are employed. Nor is the Office empowered to recommend regulatory language that extends to sound recordings, musical works, architectural works, etc. without development of an adequate administrative record demonstrating that an exemption is appropriate for each of these classes.[241]

Accessibility Petitioners should also include, with respect to each class, evidence of an actual or likely adverse effect on accessibility uses resulting from TPMs applied to that type of work. While the Office recognizes the vital importance of ensuring accessibility for persons with disabilities, and indeed has recommended legislation to make permanent the current exemption regarding assistive technologies for electronically-distributed literary works,[242] its authority in this proceeding is bound by the provisions of the statute. Subject to these requirements, the Office invites comment on this proposed class(es).

IV. Future Phases of the Eighth Triennial Rulemaking

As in prior rulemakings, after receipt of written comments, the Office will continue to solicit public engagement to create a comprehensive record. Described below are the future phases of the administrative process that will be employed for this rulemaking, so that parties may use this information in their planning.

A. Public Hearings

The Copyright Office intends to hold public hearings in spring 2021 following the last round of written comments. The hearings will allow for participation by videoconference and will be streamed online. In addition, the Office will determine at a later date, based on applicable public health guidelines, whether in-person participation will be possible. A separate notice providing details about the hearings and how to participate will be published in the **Federal Register** at a later date. The Office will identify specific items of inquiry to be addressed during the hearings.

B. Post-Hearing Questions

As with previous rulemakings, following the hearings, the Copyright Office may request additional information with respect to particular classes from rulemaking participants. The Office may rely on this process in cases where it would be useful for participants to supply missing information for the record or otherwise resolve issues that the Office believes are material to particular exemptions. Such requests for information will take the form of a letter from the Copyright Office and will be addressed to individual parties involved in the proposal as to which more information is sought. While responding to such a request will be voluntary, any response

[230] *Id.* at 5.

[231] *Id.*

[232] 17 U.S.C. 1201(a)(1)(C) (emphasis added).

[233] Commerce Committee Report at 38 (emphasis added).

[234] *See supra* Section I.

[235] House Manager's Report at 7.

[236] *Id.* As noted, the Office has repeatedly declined to recommend proposed exemptions that have failed to define the class of works to be covered with sufficient particularity. *See, e.g.,* 2018 Recommendation at 131–32; 79 FR at 73859; 2006 Recommendation at 17–19.

[237] Commerce Committee Report at 37.

[238] 17 U.S.C. 1201(a)(1)(C); *see also* Section 1201 Study at 115, 117.

[239] *See, e.g.,* 2018 Recommendation at 110 (including market check requirement in exemption for accessibility uses of audiovisual works ''to prevent copies being made of works already available in accessible formats, while supporting the motion picture industry's effort to further expand the availability of accessible versions in the marketplace'').

[240] 79 FR at 73859 (declining to notice three proposals for public comment).

[241] *See supra* Section I (outlining four elements to the evidentiary standard applied by the Office in evaluating requests).

[242] *See* Section 1201 Study at 84–88.

will need to be supplied by a specified deadline. After the receipt of all responses, the Office will post the questions and responses on the Office's website as part of the public record.

C. Ex Parte Communication

In the seventh triennial rulemaking, in response to stakeholder requests, the Office issued written guidelines under which interested non-governmental participants could request informal communications with the Office during the post-hearing phase of the proceeding. The Office expects to follow substantially the same process in this proceeding. To ensure transparency, participating parties will be required to submit a list of attendees and a written summary of any oral communications, which will be posted on the Office's website. Specific guidelines for this proceeding will be made available following the public hearings. No *ex parte* communications with the Office regarding this proceeding will be permitted prior to the post-hearing phase.

Dated: October 9, 2020.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2020–22893 Filed 10–14–20; 8:45 am]

BILLING CODE 1410–30–P

POSTAL SERVICE

39 CFR Part 20

International Mailing Services: Proposed Product and Price Changes—CPI

AGENCY: Postal Service™.

ACTION: Proposed rule; request for comments.

SUMMARY: The Postal Service proposes to revise *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), to reflect changes coincident with the recently announced mailing services price adjustments.

DATES: We must receive your comments on or before November 16, 2020.

ADDRESSES: Mail or deliver comments to the manager, Product Classification, U.S. Postal Service®, 475 L'Enfant Plaza SW, RM 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington DC by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday by calling 1–202–268–2906 in advance. Email comments, containing the name and address of the commenter, to: *PCFederalRegister@usps.gov,* with a subject line of ''January 2021 International Mailing Services Price Change—CPI.'' Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Kathy Frigo at 202–268–4178.

SUPPLEMENTARY INFORMATION:

International Price and Service Adjustments

On October 9, 2020, the Postal Service filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective on January 24, 2021. The Postal Service proposes to revise Notice 123, *Price List,* available on Postal Explorer® at *https://pe.usps.com,* to reflect these new price changes. The new prices are or will be available under Docket Number R2021–1 on the Postal Regulatory Commission's website at *www.prc.gov.*

This proposed rule describes the price changes for the following market dominant international services:

- International extra services and fees.

International Extra Services and Fees

The Postal Service plans to increase prices for certain market dominant international extra services including:

- Certificate of Mailing
- Registered Mail™
- Return Receipt
- Customs Clearance and Delivery Fee
- International Business Reply™ Mail Service

CERTIFICATE OF MAILING

	Fee
Individual pieces	
Individual article (PS Form 3817)	$1.55
Duplicate copy of PS Form 3817 or PS Form 3665 (per page)	1.55
Firm mailing sheet (PS Form 3665), per piece (minimum 3), First-Class Mail International only	0.44
Bulk quantities	
For first 1,000 pieces (or fraction thereof)	$8.80
Each additional 1,000 pieces (or fraction thereof)	1.10
Duplicate copy of PS Form 3606	1.55

Registered Mail

Fee: $16.30.

Return Receipt

Fee: $4.25.

Customs Clearance and Delivery

Fee: per piece $6.65.

International Business Reply Service

Fee: Cards $1.55; Envelopes up to 2 ounces $2.05

Following the completion of Docket No. R2021–1, the Postal Service will adjust the prices for products and services covered by the International Mail Manual. These prices will be on Postal Explorer at *pe.usps.com.*

Accordingly, although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed changes to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), which is incorporated by reference in the *Code of Federal Regulations* in accordance with 39 CFR 20.1, and to associated changes to Notice 123, *Price List.*

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, 39 CFR part 20 is proposed to be amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101,

401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), as follows: New prices will be listed in the updated Notice 123, *Price List.*

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020–22886 Filed 10–13–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

New Mailing Standards for Domestic Mailing Services Products

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: On October 9, 2020, the Postal Service (USPS®) filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective January 24, 2021. This proposed rule contains the revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) that we would adopt to implement the changes coincident with the price adjustments.

DATES: Submit comments on or before November 16, 2020.

ADDRESSES: Mail or deliver written comments to the Manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *PCFederalRegister@usps.gov,* with a subject line of ''January 2021 Domestic Mailing Services Proposal.'' Faxed comments are not accepted.

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Jacqueline Erwin at (202) 268–2158, or Dale Kennedy at (202) 268–6592.

SUPPLEMENTARY INFORMATION: Proposed prices will be available under Docket No. R2021–1 on the Postal Regulatory Commission's website at *www.prc.gov.*

The Postal Service's proposed rule includes: Changes to prices, mail classification updates, and product simplification efforts.

Seamless Acceptance Incentive

Currently, mailers who present qualifying full-service mailings receive an incentive discount of $.003 per piece for USPS Marketing Mail and First-Class Mail and $0.001 for Bound Printed Matter flats and Periodicals.

The Postal Service is proposing an incentive discount for mailers who mail through the Seamless Acceptance program, in addition to the full-service incentive discount.

Beginning on the day of their first mailing, following onboarding to the program the mailer or mail service provider, as applicable, will receive an incentive discount in addition to the full-service incentive discount. The mailer would be allowed to combine the Seamless and full-service incentive discounts. The Seamless incentive discount would be based on a mailer's customer registration ID (CRID). A Seamless mailer is defined by their status in *PostalOne!.* Moving to Seamless is defined as the status changing from ''None'' or ''Seamless Parallel'' to ''Seamless Acceptance''.

The proposal would leave the full-service discount exactly as it is now and provide a $.001 per piece incentive discount for Seamless. The maximum incentive discount per piece is $0.004 for USPS Marketing Mail and First-Class Mail and $0.002 for Bound Printed Matter flats and Periodicals.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

Notice 123 (Price List)

[Revise prices as applicable.]

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020–22887 Filed 10–13–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 110

[Docket No. 2020–0003]

RIN 0906–AB22

Countermeasures Injury Compensation Program: Smallpox Countermeasures Injury Table

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS) proposes adding a Smallpox Countermeasures Injury Table (Table) for designated covered smallpox countermeasures identified in a declaration. The proposed Smallpox Countermeasures Injury Table includes a list of smallpox countermeasures, proposed time intervals for the first symptom or manifestation of onset of injury, and Qualifications and Aids to Interpretation, which set forth the definitions and requirements necessary to establish the Table injuries.

DATES: Written comments and related material to this proposed rule must be received to the online docket via *www.regulations.gov,* or to the mail address listed in the **ADDRESSES** section below, on or before December 14, 2020.

ADDRESSES: You may submit comments on this proposed rule identified by HHS Docket No. HRSA–2020–0003, by any one of the following methods:

1. *Federal eRulemaking Portal (preferred): www.regulations.gov.*

Follow the website instructions for submitting comments.

2. *Mail:* You may mail written comments to the following address only: Health Resources and Services Administration, Department of Health and Human Services, Attention: HRSA Regulations Officer, 5600 Fishers Lane, Room 13N82, Rockville, MD 20857. Mail must be postmarked by the comment submission deadline.

Because of staffing and resource limitations, and to ensure that no comments are misplaced, the Program cannot accept comments by facsimile (FAX) transmission. When commenting by any of the above methods, please refer to file code: #0906–AB22.

FOR FURTHER INFORMATION CONTACT: Please visit the Countermeasures Injury Compensation Program's website, *http://www.hrsa.gov/cicp/,* or contact Tamara Overby, Acting Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, HRSA, 5600 Fishers Lane, Room 08N146B, Rockville, MD 20857. Phone calls can be directed to (855) 266–2427. This is a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Public Participation

HHS urges all interested parties to examine this regulatory proposal carefully and share your views, including data, to support your positions. We must consider all written comments received during the comment period before issuing a final rule. Subject to consideration of the comments received, the Secretary of Health and Human Services (the Secretary) intends to publish a final regulation.

If you are a person with a disability and/or a user of assistive technology who has difficulty accessing this document, please see the website: *https://www.hrsa.gov/about/508-resources.html* to obtain this information in an accessible format. Please visit *http://www.HHS.gov/regulations* for more information on HHS rulemaking and opportunities to comment on proposed and existing rules.

II. Background and Purpose

The Public Readiness and Emergency Preparedness Act (PREP Act) of 2005, enacted as Division C of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Public Law 109–148), directs the Secretary to establish, through regulation, a Covered Countermeasures Injury Table (Table) identifying serious physical injuries presumed to be directly caused by the administration or use of covered countermeasures identified in PREP Act declarations issued by the Secretary. The Secretary may only add injuries to a Table if it is determined based on ''compelling, reliable, valid, medical and scientific evidence'' that the administration or use of the covered countermeasure directly causes such covered injuries.[1] Such a Table informs the public about serious physical injuries supported by medical and scientific evidence known to be directly caused by covered countermeasures.

The purpose of a PREP Act declaration is to identify a disease, health condition, or threat to health that is currently, or may in the future constitute, a public health emergency. In addition, the Secretary, through a declaration, may recommend and encourage the development, manufacturing, distribution, dispensing, administration, or use of one or more covered countermeasures to treat, prevent, or diagnose the disease, condition, or threat specified in the declaration.[2]

This notice of proposed rulemaking (NPRM) concerns only the compensation program authorized by the PREP Act, not the liability protections set forth therein. Specifically, the PREP Act authorizes the Secretary to establish and administer the Countermeasures Injury Compensation Program (CICP or the Program) to provide timely, uniform, and adequate compensation to certain individuals who develop serious physical injuries or to certain survivors of individuals who die as a direct result of the use or administration of a covered countermeasure identified in a declaration.[3] The Secretary delegated responsibility for establishing and administering the Program to HRSA.

The PREP Act authorizes the Secretary to publish regulations to establish and administratively implement the Program. Specifically, the PREP Act authorizes the Secretary to determine Program eligibility, the process to apply for benefits, the methods of payments and amounts of compensation, and the process for further review of ''Requests for Benefits'' submitted by, or on behalf of, requesters. To be considered for compensation for any serious physical injury or death, an individual must submit a timely Request for Benefits with the required information.

The Secretary published the interim final rule implementing the Program on October 15, 2010.[4] The final rule, published on October 7, 2011, explains the Program's policies, procedures, and requirements. Title 42 of the Code of Federal Regulations (CFR) § 110.20(a) states that individuals must establish that a covered injury occurred to be eligible for benefits under the Program. A covered injury is a death or a serious injury determined to have occurred as a direct result of the administration or use of a covered countermeasure. The Secretary has determined that the list includes: (1) An injury meeting the requirements of covered countermeasures placed on an injury table, unless the Secretary determines there is another more likely cause; or (2) an injury (or health complications) that is the direct result of the administration or use of a covered countermeasure. This includes serious aggravation of a pre-existing condition caused by a covered countermeasure.[5]

Serious injury means serious physical injury. Serious injuries may, in certain circumstances, be considered physical or biochemical alterations leading to physical changes and serious functional abnormalities at the cellular or tissue level in any bodily function. As a general matter, only injuries that warranted hospitalization (whether or not the person was actually hospitalized) or injuries that led to a significant loss of function or disability (whether or not hospitalization was warranted) will be considered serious injuries.[6]

The Secretary proposes adding a Smallpox Countermeasures Injury Table to subpart K of 42 CFR part 110 for designated covered smallpox countermeasures identified in declarations. The proposed Smallpox Countermeasures Injury Table includes a list of smallpox countermeasures, proposed time intervals for the first symptom or manifestation of onset of injury, and Qualifications and Aids to Interpretation, which set forth the definitions and requirements necessary to establish the Table injuries.

The Table proposed in this NPRM is limited to covered smallpox countermeasures. To date, the CICP published a Pandemic Influenza Countermeasures Injury Table.[7] Since the PREP Act mandates the

[1] Section 319F–4(b)(5)(A) of the Public Health Service Act, as amended (42 U.S.C. 247d–6e(b)(5)(A)).

[2] Section 319F–3(b) of the PHS Act (42 U.S.C 247d–6d(b)).

[3] Section 319F–4(a) of the PHS Act (42 U.S.C. 247d–6e(a)).

[4] 75 FR 63656–63688; 42 CFR part 110.

[5] 42 CFR 110.3(g).

[6] 42 CFR 110.3(z).

[7] 80 FR 47411, August 7, 2015.

establishment of a Table identifying covered injuries that may be presumed to be directly caused by the administration or use of a covered countermeasure, the CICP may establish future Tables for other countermeasures relating to threats to health that pose or constitute potential public health emergencies. The PREP Act authorized the Secretary to create Tables for each covered countermeasure identified in a declaration if there is compelling, reliable, valid, medical and scientific evidence that the countermeasure directly causes a covered injury. Declarations have been issued with respect to countermeasures against pandemic influenza A viruses, anthrax, botulism, smallpox, acute radiation syndrome, Ebola, Zika, COVID–19, and nerve agents and certain insecticides (organophosphorus and/or carbamate). In the future, the Secretary may publish tables in the **Federal Register** through separate amendments to 42 CFR part 110 addressing additional covered countermeasures.

The CICP's Smallpox Countermeasures Injury Table is distinct from the Smallpox Vaccine Injury Table authorized under the Smallpox Emergency Personnel Protection Act of 2003 (SEPPA) (42 U.S.C. 239 *et seq.*). The SEPPA, enacted on April 30, 2003, authorized the Secretary to establish the Smallpox Vaccine Injury Compensation Program (SVICP). The SVICP provided benefits to certain persons who sustained a covered injury as the direct result of the administration of the smallpox vaccine or other covered countermeasure, and to certain individuals who sustained a covered injury as the direct result of accidental *vaccinia* inoculation (and/or death benefits to certain survivors of these individuals). The SVICP's implementing regulation was codified at 42 CFR part 102, and included a Smallpox Vaccine Injury Table. The SEPPA's Declaration Regarding Administration of Smallpox Countermeasures, expired on January 23, 2008, and was not renewed. Vaccine recipients and accidental *vaccinia* contacts had 1 and 2 years, respectively, to file a request for program benefits. The SVICP ended on January 23, 2010, and its outmoded regulations were rescinded on November 14, 2016. *See* 81 FR 62817–62818.

Relying instead on later-enacted legislation, based on a credible risk that the threat of exposure to variola virus, the causative agent of smallpox, constitutes a public health emergency, the Secretary issued a Declaration (73 FR 61869–61871) covering smallpox countermeasures under the Public Readiness and Emergency Preparedness Act of 2005 (PREP Act), with an effective date of January 24, 2008. The PREP Act authorizes the establishment and administration of the CICP. The CICP's implementing regulation, at 42 CFR part 110, is based on the SVICP's regulation and provides similar benefits. On December 9, 2015, the PREP Act Declaration for smallpox countermeasures was amended and republished (80 FR 76546–76553), extending the effective time period to December 31, 2022, and deleting obsolete language referring to SEPPA.

Definition of Covered Countermeasure

A ''covered countermeasure'' is defined in the PREP Act and includes three categories.[8] The first category, consisting of ''qualified pandemic or epidemic product[s],'' is defined in section 319F–3(i)(7) of the PHS Act.[9] A qualified pandemic or epidemic product means a drug or device, as defined in the Federal Food, Drug, and Cosmetic Act (FD&C Act), or a biological product, as defined in the PHS Act [10] that is: (i) Manufactured, used, designed, developed, modified, licensed, or procured to diagnose, mitigate, prevent, treat, or cure a pandemic or epidemic or to limit the harm such pandemic or epidemic might otherwise cause; (ii) manufactured, used, designed, developed, modified, licensed, or procured to diagnose, mitigate, prevent, treat, or cure a serious or life-threatening disease or condition caused by such a drug, biological product, or device; (iii) or a product or technology intended to enhance the use or effect of such a drug, biological product, or device.[11] To qualify as a pandemic or epidemic product, a drug, biologic, or device must be: (1) Approved or cleared under the Federal Food, Drug, and Cosmetic Act (FD&C Act) or licensed under the PHS Act; (2) the subject of research for possible use and subject to an exemption under sections 505(i) or 520(g) of the FD&C Act; or (3) authorized for emergency use in accordance with section 564, 564A, or 564B of the FD&C Act.

The second category includes ''security countermeasures.'' A security countermeasure, as defined in section 319F–2(c)(1)(B) of the PHS Act, is a drug or device [12], as defined in the FD&C Act, or a biologic product, as defined in the PHS Act,[13] that the Secretary determines is: (1) A priority to diagnose, mitigate, prevent harm or treat any biological, chemical, radiological, or nuclear agent identified as a material threat by the Secretary of Homeland Security, or to diagnose, mitigate, prevent harm or treat a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device against such an agent; (2) is a necessary countermeasure to protect public health as determined by the Secretary of Health and Human Services; [14] and (3) is approved or cleared under the FD&C Act [15] or will likely be approved, cleared, or licensed within 10 years after the Department's determination that procurement of the countermeasure is appropriate or is authorized for emergency use under sections 564 of the FD&C Act.[16]

The final category consists of drugs,[17] biologics,[18] or devices [19] authorized for emergency use in accordance with section 564, 564A, or 564B of the FD&C Act.

To be eligible for the liability protections of the PREP Act or to receive benefits under the compensation provisions of the PREP Act, a covered countermeasure must meet one of these three categories and must be described in a declaration.

Covered Smallpox Countermeasures

The Secretary issued two PREP Act declarations concerning smallpox countermeasures, pursuant to section 319F–3(b) of the PHS Act.[20] On December 9, 2015, the Secretary amended the smallpox countermeasures declaration issued on October 10, 2008 [21], pursuant to section 319F–3 of the PHS Act [22] to: (1) Include countermeasures authorized for use under section 564A and/or prepositioned under section 564B of the FD&C Act; [23] (2) clarify the description of covered countermeasures; (3) extend the effective time period of the declaration; (4) reformat the declaration;

[8] Section 319F–3(i)(1) of the PHS Act (42 U.S.C. 247d–6d(i)(1)).

[9] 42 U.S.C. 247d–6d(i)(7).

[10] 21 U.S.C. 321(g)(1), (h); 42 U.S.C. 262(i).

[11] Section 319F–3(i)(7)(A)(ii) of the PHS Act (42 U.S.C. 247d–6d(i)(7)(A)(ii)).

[12] 21 U.S.C. 321(g)(1), (h);42 U.S.C. 262(i).

[13] 21 U.S.C. 321(g)(1), (h);42 U.S.C. 262(i).

[14] 42 U.S.C. 247d–6d(i)(1)(B),(c)(1)(B).

[15] 21 U.S.C. 301 *et seq.*

[16] 21 U.S.C. 360bbb–3, 360bbb–3a, 360bbb–3b.

[17] As defined in section 201(g)(1) of the FD&C Act (21 U.S.C. 321(g)(1)).

[18] As defined in section 351(i) of the PHS Act (42 U.S.C. 262(i)).

[19] As defined in section 201(h) of the FD&C Act (21 U.S.C. 321(h)).

[20] *See* 73 FR 61869, October 10, 2008, as amended by 80 FR 76546, December 9, 2015.; 42 U.S.C. 247d–6d(b).

[21] 73 FR 61869 (October 10, 2008); *https://www.gpo.gov/fdsys/pkg/FR-2008-10-17/pdf/E8-24737.pdf.*

[22] 42 U.S.C. 247d–6d.

[23] 21 U.S.C. 360bbb–3a and 360bbb–3b.

(5) modify or clarify terms of the declaration; and, (6) republish the declaration in its entirety, as amended.[24]

Covered countermeasures under the declaration are ''any vaccine, including all components and constituent materials used in the administration of these vaccines, and all devices and their constituent components used in the administration of these vaccines; any antiviral; any other drug; any biologic; or any diagnostic or other device to identify, prevent or treat smallpox or orthopoxvirus or adverse events from such countermeasures.'' [25] Moreover, these covered countermeasures ''must be 'qualified pandemic or epidemic products,' or 'security countermeasures,' or drugs, biological products, or devices authorized for investigational or emergency use as those terms are defined in the PREP Act, the FD&C Act, and the PHS Act.'' [26] The covered countermeasures subject to this declaration that will be included on the proposed Table include smallpox vaccines, *vaccinia* immunoglobulin, cidofovir, tecovirimat, brincidofovir, and smallpox infection diagnostic testing.

General Information

The Secretary proposes a Table for injuries directly resulting from the use or administration of covered smallpox countermeasures identified in the above-referenced declaration. The proposed Table lists serious physical injuries demonstrated by compelling, reliable, valid, medical and scientific evidence to be directly caused by the administration or use of the covered countermeasures (hereafter referred to as ''evidence standard'').[27] Only injuries supported by this evidence standard are proposed for inclusion on the Table.

For each covered countermeasure, the proposed Table will include the covered injuries and/or conditions directly caused by such countermeasure and the applicable time intervals for the first symptom or manifestation of onset of injuries. The Program's statute directs that covered injuries presumed to be caused by the administration or use of a covered countermeasure must be included on a Table.[28] The Secretary also proposes to indicate on the Table if no injuries or conditions qualify for a Table presumption for a particular countermeasure at this time. This is to reflect that consideration was given regarding the possibility of Table injuries for these covered countermeasures. Claims related to any injuries alleged to be caused by these countermeasures will be considered on a case-by-case basis.

III. Discussion of Proposed Rule

This NPRM proposes to amend the Program's implementing regulation [29] and, if adopted, would establish a table of injuries resulting from the administration or use of smallpox covered countermeasures. Certain conditions that are currently not being proposed for inclusion on the Table also are discussed in this NPRM.

General Requirement of Serious Physical Injuries or Deaths

By statute, only serious physical injuries or deaths directly resulting from the use or administration of a covered countermeasure may be compensable under the Program regardless of whether the injury is a Table injury or a non-Table injury. Because the requirement of a serious physical injury applies to all Requests for Benefits filed with the Program, the Secretary considered this requirement while drafting the proposed Table included in this NPRM.

In general, only injuries or serious aggravation of injuries that warranted hospitalization (whether or not the person was actually hospitalized) or that led to a significant loss of function or disability will be considered serious physical injuries.[30] It is recognized that the term ''disability'' can be defined in many ways, and there are several definitions used by the federal government specific to various programs and services. To provide further clarity as to the type of disability that would qualify as a serious injury for the Program, under this NPRM, the term ''disability'' is defined as ''a physical or mental impairment that substantially limits one or more major life activities of an individual.'' This definition corresponds with the first listed definition of disability in the Americans with Disabilities Act, 42 U.S.C. 12102(1)(A). This definition was chosen because it is consistent with the Program's existing authorities and adds further guidance by using a widely accepted definition familiar to the general public.

In addition, pursuant to 42 CFR 110.3(z), ''physical biochemical alterations leading to physical changes and serious functional abnormalities at the cellular or tissue level in any bodily function may, in certain circumstances, be considered serious physical injuries.'' According to the preamble to the CICP Administrative Implementation interim final rule, 42 CFR part 110, serious physical injuries also include ''instances in which there may be no measurable anatomic or structural change in the affected tissue or organ, but there is an abnormal functional change. For example, many psychiatric conditions are caused by abnormal neurotransmitter levels in key portions of the central nervous system. It is possible that certain serious psychiatric conditions will qualify as serious physical injuries if the psychiatric conditions are a manifestation of a physical biochemical abnormality in neurotransmitter level or type caused by a covered countermeasure. One way of determining that an abnormal physical change in neurotransmitter level is causing the injury would be a clinical challenge that demonstrates a positive clinical response to a medication that is designed to restore the balance of appropriate neurotransmitters necessary for normal function in an injured countermeasure recipient.'' [31]

Minor injuries do not meet the definition of a serious physical injury. For example, covered injuries do not include common and expected skin reactions (such as localized swelling or warmth that is not of sufficient severity to warrant hospitalization and does not lead to significant loss of function or disability). Expected minor reactions, such as headaches and body aches that commonly occur with other types of vaccinations, are not considered serious. However, if a minor injury leads to a serious physical injury, and the minor injury was directly caused by a covered countermeasure, the Program may compensate the individual for the serious physical injury. The injury's causal link to the countermeasure must be based on compelling, reliable, valid, medical and scientific evidence. Therefore, the Program will consider such claims on a case-by-case basis.

Serious Aggravation of Pre-Existing Conditions

Injuries covered under the Program may include serious aggravations of pre-existing conditions if such aggravations were caused by a covered countermeasure (*e.g.,* any disorder that is proven to the satisfaction of the Secretary to have been made significantly more severe as the direct

[24] 80 FR 76546 (December 9, 2015); *https://www.gpo.gov/fdsys/pkg/FR-2015-12-09/pdf/2015-31092.pdf.*

[25] 80 FR 76546, 76552 (December 9, 2015).

[26] 80 FR 76546, 76552 (December 9, 2015).

[27] Section 319F–4(b)(5)(A) of the PHS Act (42 U.S.C. 247d–6e(b)(5)(A)).

[28] Section 319F–4(b)(5)(A) of the PHS Act (42 U.S.C. 247d–6e(b)(5)(A)).

[29] 42 CFR part 110.

[30] 42 CFR 110.3(z).

[31] 75 FR 63656, 63661.

result of the administration or use of the covered countermeasure). The serious aggravation of the pre-existing condition must be supported by compelling, reliable, valid, medical and scientific evidence and show a direct causal link between the aggravation or worsening of the pre-existing condition and the countermeasure. The Program will consider claims involving serious aggravations of pre-existing conditions on a case-by-case basis.

Table Time Intervals

For each covered injury, the proposed Table describes the time interval between the administration or use of the covered countermeasure and the first symptom or manifestation of onset of injury after the administration or use of the countermeasure. In addition to meeting the requirements of the Table injury, the symptom or manifestation of onset of injury must have occurred within the Table time interval. The time intervals are based on compelling, reliable, valid medical and scientific evidence in which nearly all of the cases of injury are known to be actually caused by the covered countermeasure. As is the case for non-Table injuries, Table injuries not meeting the Table time intervals may be compensated, on a case-by-case basis, based on adequate demonstration of compelling, reliable, valid, medical and scientific evidence supporting that the countermeasure had a causal role.

Table Definitions and Requirements

The proposed Table also includes Qualifications and Aids to Interpretation, which set forth the definitions and requirements necessary to establish the Table injuries. For this reason, the Table definitions and requirements are part of the Table. To receive compensation for a Table injury, the individual must meet the time interval, Table definition, and any other Table requirements, in addition to the other Program requirements.

Presumption Created for Table Injuries

For purposes of this Program, a rebuttable presumption exists that a Table injury was directly caused by the administration or use of a covered countermeasure if the first symptom or manifestation of onset of an injury listed on the Table occurred within the timeframe indicated, and the Table's definitions and requirements are satisfied. By statute, this presumption only applies to Table injuries.[32] An individual may obtain this presumption of causation by submitting medical documentation demonstrating the covered injury occurred, that it began within the time interval specified on the Table after administration or use of a covered countermeasure and all other applicable Table requirements and definitions are met. Nevertheless, it may be rebutted if, based on review of the relevant medical and scientific evidence, the Secretary determines the Table injury was more likely caused by other factors and not directly caused by the countermeasure.

Non-Table Injuries

Compensation may be available for individuals who: (1) Develop an injury not included on the Table, (2) develop an injury that is included on the Table but the injury began outside the allotted time interval provided by the Table, or (3) develop an injury that does not satisfy the definition or requirements included in the Qualifications and Aids to Interpretation that accompanies the Table with respect to such injury. In these cases, the injured countermeasure recipient does not receive the presumption of causation for a Table injury and must demonstrate that the use or administration of the covered countermeasure directly caused the injury. The regulation administratively implementing the Program includes more information about the requirements for such an injury.[33] For example, a temporal association between the administration or use of a covered countermeasure and onset of the injury (*e.g.,* the injury occurs a certain time after the administration or use of the countermeasure) alone is not sufficient to show that an injury is the direct result of a covered countermeasure.[34] Proof of a causal association for the non-Table injury must be based on compelling, reliable, valid, medical and scientific evidence.

Sequelae (Health Complications) of Table and Non-Table Injuries

A requester may be entitled to benefits if the Program determines that the *sequelae* (health complications), including death, resulted from a Table injury. This is also applicable to a requester who develops *sequelae* from a non-Table injury, but only if the non-Table injury is shown to be directly caused by a covered countermeasure based on compelling, reliable, valid, medical and scientific evidence. The Program will consider compensation for *sequelae* that develop from Table and non-Table injuries on a case-by-case basis.

Injuries Sustained as a Result of the Smallpox Virus

An individual will not have suffered a covered injury if a covered countermeasure is ineffective in diagnosing, preventing, or treating the underlying condition or disease for which the countermeasure was administered or used, and the individual sustains an injury caused by the condition or disease and not by the covered countermeasure. An injury sustained as the direct result of a disease, health condition or threat to health, for which the Secretary recommended the administration or use of a covered countermeasure in a declaration, is not a covered injury. The injury is not covered because it resulted from the disease itself and not from the administration or use of a covered countermeasure. For more information, see 42 CFR 110.20(d).

Amendments to the Proposed Table of Injuries

The Secretary has the discretion to amend or modify the Table at any time while the Program remains operational. For example, the Secretary may amend the Table by adding or removing injuries, modifying the governing time intervals, and/or revising the Table definitions and requirements. New studies and evolving medical and scientific evidence will be reviewed by the Secretary to determine causal relationships between covered countermeasures and injuries or deaths. Changes to the Table will be implemented as amendments to 42 CFR part 110 and will be published in the **Federal Register**.

The Table in Effect at the Time a Claim is Filed

The Table in effect when the Request for Benefits form is filed should be used, unless another Table is published after the claim is filed that provides greater benefit to the requester. If a new Table or an amendment to an existing Table would benefit a requester, as described in the following section, the requester may have an additional opportunity to file a Request for Benefits.

Filing Deadlines and Table Additions or Amendments

In accordance with 42 CFR 110.42(f), in the event that the Secretary issues a new Covered Countermeasures Injury Table or amends a previously published Table, requesters may have an extended filing deadline based on the effective date of the Table amendment. An

[32] Section 319F–4(b)(5)(A) of the PHS Act (42 U.S.C. 247d–6e(b)(5)(A)).

[33] 42 CFR 110.20(c).

[34] 42 CFR 110.20(c).

extended filing deadline will apply only if the Table amendment enables requesters to establish an injury when they could not establish one previously. If the Table proposed in this NPRM is adopted, any person who meets the Table requirements for a newly listed injury after receiving the smallpox vaccine would have 1 year from the effective date of the Table's adoption to file a Request for Benefits. This filing deadline applies regardless of whether the requester previously filed a Request for Benefits with the Program.

Individuals may seek compensation for one or more injuries stemming from a single administration of a covered countermeasure. However, if individuals previously received compensation for an injury through the Program, they may not re-file a claim for compensation if the same injury is later added to a Table. Not being able to re-file such claims avoids giving individuals the opportunity to receive additional compensation for the same serious physical injury. However, this does not preclude filing a Request for Benefits for an injury or aggravation of an injury, resulting from the subsequent administration or use of the same type of covered countermeasure. It also does not preclude subsequent Requests for Benefits for an injury, or an aggravation of a pre-existing condition, resulting from the administration or use of a different covered countermeasure or a different injury from the same countermeasure.

Eligible requesters have one year from the date of administration or use of a covered countermeasure to file a Request for Benefits. Also, if an injury is added to a countermeasure injury table, then a requester has 1 year from the effective date of publication of the table revision to file a Request for Benefits for that injury.

It is important to note that the additional filing deadline described in 42 CFR 110.42(f) is only available to persons whose Request for Benefits relates to a new or amended Table injury and otherwise meets the requirements of: (1) The new Table or the amendment(s) to a Table, (2) the Table time interval(s), (3) Table definitions, and (4) any other Table requirements. In this case, such persons may be eligible for the presumption of causation. Persons who sustained injuries not included on the new or amended Table, or those who do not meet all of the requirements for such a Table injury but may prove causation of the injury through other means, will not be afforded an additional 1-year filing deadline based on the Table amendment. Because the Table amendment would not enable such individuals to establish a Table injury, they would be subject to the standard filing deadline described in 42 CFR 110.42(a) (*e.g.,* 1 year from the date of administration or use of the covered countermeasure).

Eligible requesters have 1 year from the date of administration or use of a covered countermeasure to file a Request for Benefits. Also, if an injury is added to a countermeasure injury table, then the requester has 1 year from the effective date of publication of the table revision to file a Request for Benefits for that injury.

It is important to note that the additional filing deadline described in 42 CFR 110.42(f) is only available to persons whose Request for Benefits meet the requirements of: (1) A new Table or an amendment(s) to a Table; (2) the Table time interval(s); (3) Table definitions; and (4) any other Table requirements. In this case, such persons may be eligible for the presumption of causation. Persons who sustained injuries not included on the Table, or those who do not meet all of the requirements for such a Table injury but may prove causation of the injury through other means, will not be afforded an additional 1-year filing deadline based on the Table amendment. Because the Table amendment would not enable such individuals to establish a Table injury, they would be subject to the standard filing deadline described in 42 CFR 110.42(a) (*e.g.,* 1 year from the date of administration or use of the covered countermeasure).

Smallpox Countermeasures Injury Table

The proposed Table lists serious covered injuries directly caused by covered smallpox countermeasures. Although the occurrence of many of the injuries included on the Table is rare, the Secretary is including such injuries on the Table to ensure that people who are otherwise eligible for benefits and/or compensation under the Program will receive the Table's presumption of causation. The Table presumption can be rebutted if the Secretary determines, based on a review of the relevant evidence, that an injury meeting the Table requirements was more likely caused by other factors and not directly caused by the smallpox countermeasure. Claims involving injuries that do not meet the requirements of the Table may qualify as non-Table injuries and will be reviewed on a case-by-case basis by the Program.

Smallpox Background

Smallpox is a highly contagious disease that may cause fever, a severe rash, and a high death rate. The *variola* virus causes smallpox disease. *Variola* is a large orthopoxvirus within the *Poxviridae* family. Other poxviruses that infect humans include *molluscum contagiosum, vaccinia* (the virus used in smallpox vaccine), and monkeypox.[35]

The *variola* virus usually enters the body through the respiratory system. The virus can also enter through the skin and, rarely, through the eyes, or crosses the placenta.[36] It then rapidly enters the regional lymph nodes. On the third or fourth day after infection, the virus is circulating in the blood even though the infected person may not show symptoms. The virus then spreads further into the spleen, bone marrow, and other lymph nodes. Increased virus levels within lymph tissue leads to secondary viremia (elevated virus levels in the bloodstream), which causes fever and the characteristic smallpox rash. During the 8th to 12th day after infection, secondary viremia occurs leading to severe illness.[37]

During the first week after the rash starts, patients are most infectious when sores in the mouth open and release large amounts of virus into the saliva. The ability to pass the infection to others has been estimated as being highest from 3 to 6 days after the onset of fever.[38] The period of infectiousness lasts until all the lesions have scabbed over and the scabs have fallen off. Although, viral particles can be detected in scabs, scabs are considered relatively non-infectious, since the viral particles are bound in the scab.[39] Once the smallpox infection resolves, the person cannot infect others.

Naturally occurring smallpox virus has been eliminated. The absence of endemic smallpox led to the halt of routine vaccination in the United States in 1972.[40] In 1980, the World Health Organization declared that the smallpox

[35] Zack S. Moore, Jane F. Seward and J. Michael Lane, ''Smallpox.'' *Lancet* 367; 9508: (2006): 425.

[36] Frank Fenner et al. ''Smallpox and its eradication.'' *World Health Organization,* Geneva: (1988): 182.

[37] Fenner et al. ''Smallpox and its eradication.'' 188.

[38] Hiroshi Nishiura and Martin Eichner, ''Infectiousness of smallpox relative to disease age: Estimates based on transmission network and incubation period.'' *Epidemiology and Infection* 135, no. 7 (2007): 1147.

[39] Fenner et al. ''Smallpox and its eradication.'' 188.

[40] Richard B. Kennedy, Inna Ovsyannikova and Gregory A. Poland, ''Smallpox vaccines for biodefense.'' *Vaccine* 5; 27 Supplement 4 (November 2009): D73.

vaccine was essential for the successful global eradication of smallpox virus.

Even though smallpox no longer occurs in nature because of the administration of the smallpox vaccine, concern exists that the smallpox virus could be used as a biological weapon. All of the known samples of *variola* virus in the world are kept in two designated laboratories. However, it is unknown if other samples of the virus exist outside those in these two laboratories. This creates the potential of an accidental or intentional release of the virus back into the environment and the need for the ability to provide mass vaccination against smallpox. The use of smallpox as a biological weapon is a concern for several reasons. First, much of the population is susceptible to infection because smallpox vaccination programs have stopped, and thus, the general population is not routinely given the smallpox vaccine. In addition, the virus is infectious via the respiratory system, requires only a small amount of the virus to cause infection, and is transmissible from person to person. Furthermore, the disease has a long asymptomatic incubation period and a high rate of morbidity and mortality. Also, very few treatments exist, and experience has shown that the presence of smallpox virus creates havoc and panic.[41] The ability of individuals to travel rapidly over great distances by air increases the risk of rapid dissemination of the disease. Additionally, the impact of smallpox on the general population would be greater today because the prevalence of immunosuppressed individuals is higher. This includes people living with Human Immunodeficiency Virus (HIV) and individuals taking certain medications that suppress their immune systems to ameliorate specific medical conditions.[42]

Smallpox Vaccines

After confirmation of one or more human smallpox cases, the primary strategy for controlling the spread of disease involves the use of the smallpox vaccine in combination with other surveillance and containment activities. As demonstrated during the eradication campaign, the immune response generated by smallpox vaccination is one of the most effective tools for halting the transmission of smallpox.

Smallpox vaccines are either replication-competent or replication-deficient. The replication-competent vaccines are administered via the intradermal scarification method and the virus in the vaccine reproduces within the vaccine recipient. This method uses a bifurcated needle that punctures the skin multiple times while placing a drop of live-attenuated *vaccinia* virus vaccine in the wound created by the needle. This method creates a vaccination site. There is a risk of transferring the *vaccinia* virus from the vaccination site to other parts of the individual's body or to others. This type of vaccine also has an increased risk of adverse side effects in individuals with immunodeficiencies or skin disorders.

A second type of vaccine involves the use of replication-deficient *vaccinia* virus. This vaccine contains a live-attenuated virus; and is administered subcutaneously; however, the viral agent does not reproduce in human cells. This reduces the risk of transferring the vaccine to other parts of the body or to others. Individuals with certain skin disorders or who are HIV-infected were included in clinical studies, the frequencies of solicited local and systemic adverse reactions among these adults were generally similar to those observed in healthy adults.

The current Food and Drug Administration (FDA) approved smallpox vaccines contain live *vaccinia* viruses that protect against smallpox disease. They do not contain *variola* virus, the causative agent of smallpox. The U.S. Government has three different smallpox vaccines available in the U.S. Strategic National Stockpile (SNS): Smallpox (*Vaccinia*) Vaccine Live (replication-competent), Smallpox and Monkeypox Vaccine, Live, Non-replicating (replication-deficient), and APSV (Aventis Pasteur Smallpox Vaccine) (replication-competent). Smallpox (*Vaccinia*) Vaccine Live and Smallpox and Monkeypox Vaccine, Live, Non-replicating are licensed by the FDA, whereas APSV, which is an investigational vaccine and is not licensed by the FDA, would be made available under an Investigational New Drug (IND) or under Emergency Use Authorization (EUA). Although an EUA cannot be issued until an emergency determination and declarations are in place, a product sponsor can submit and the FDA can review product data as pre-EUA submissions before a formal EUA request.''[43] Such a pre-EUA submission does not imply that any specific set of qualifications has been met, but instead represents the initiation of a series of preliminary interactions between the FDA and a product sponsor to discuss potential suitability for EUA consideration.[44]

Dryvax, a type of smallpox vaccine, is no longer manufactured or used. It has been replaced by Smallpox (*Vaccinia*) Vaccine Live, which was derived from Dryvax. Smallpox (*Vaccinia*) Vaccine Live may cause myocarditis and pericarditis, conditions involving inflammation and swelling of the heart and surrounding tissues. Most of these cases are mild, resolve on their own, and do not have symptoms, but some can be very serious. Based on clinical studies, myocarditis and/or pericarditis occur in 1 in 175 adults who get this vaccine for the first time.[45]

In the Smallpox (*Vaccinia*) Vaccine Live clinical trial, 7 of the 2,983 first-time vaccine recipients were suspected of having myocarditis and/or pericarditis. Three of the 868 first-time recipients used the smallpox vaccine (Dryvax). No cases of myocarditis and/or pericarditis were reported among participants who had been previously vaccinated with a smallpox vaccine. In Smallpox (*Vaccinia*) Vaccine Live (replication-competent) clinical trials, among vaccinees naïve to *vaccinia,* 8 cases of suspected myocarditis and pericarditis were identified across both treatment groups, for a total incidence rate of 6.9 per 1,000 vaccinees (8 of 1,162). The rate for the Smallpox (*Vaccinia*) Vaccine Live (replication-competent) treatment group were similar: 5.7 (95 percent CI: 1.9–13.3) per 1,000 vaccinees (5 of 873 vaccinees) and for the Dryvax® group 10.4 (95 percent CI: 2.1–30.0) per 1,000 vaccinees (3 of 289 vaccinees). No cases of myocarditis and/or pericarditis were identified in 1,819 previously vaccinated subjects.[46] Commonly observed side effects included itching, sore arm, fever, headache, body ache, mild rash, and fatigue.[47]

[41] Tara O' Toole, Michael Mair and Thomas V. Inglesby, ''Shining light on dark winter.'' *Clinical Infectious Disease* 34(7) (April 1, 2002): 972.

[42] Louisa E. Chapman, Gina T. Mootrey and Linda J. Neff, ''Vaccination against smallpox in the post eradication era.'' *Clinical Infectious Disease* 15;46 Supplement 3: (March 2008): S155.

[43] Brett W. Petersen et al. ''Clinical guidelines for smallpox vaccine use in a post-event vaccination program.'' *Morbidity and Mortality Weekly Report: Recommendations and Reports* 64(2): (Feb 20, 2015): 11.

[44] U.S. Department of Health and Human Services, Food and Drug Administration, ''Emergency Use Authorization of Medical Products and Related Authorities, Guidance for Industry and Other Stakeholders,'' January 2017; *https://www.fda.gov/media/97321/download.*

[45] ''ACAM2000 (smallpox vaccine): Questions and answers.'' *United States Food and Drug Administration,* (March 23, 2018): 2.

[46] ACAM2000, Smallpox (*vaccinia*) vaccine, live. Package Insert, Emergent Product Development. Revised 03/2018, *https://www.fda.gov/media/75792/download.*

[47] Petersen et al. ''Clinical guidelines for smallpox.'' 7.

Another smallpox vaccine available for use is Smallpox and Monkeypox Vaccine, Live, Non-replicating. This vaccine uses a modified *Vaccinia* Ankara virus in its composition. Smallpox and Monkeypox Vaccine, Live, Non-replicating is administered via subcutaneous injection. The vaccine virus is replication-deficient; therefore, Smallpox and Monkeypox Vaccine, Live, Non-replicating does not present a risk of secondary transmission. This vaccine requires two doses, 28 days apart. Clinical trials evaluating the safety of Smallpox and Monkeypox Vaccine, Live, Non-replicating found that among the smallpox vaccine-naïve subjects, serious adverse events (SAEs) were reported for 1.5 percent of Smallpox and Monkeypox Vaccine, Live, Non-replicating (replication-deficient) recipients and 1.1 percent of placebo recipients. Among the smallpox vaccine-experienced subjects enrolled in studies without a placebo comparator, SAEs were reported for 2.3 percent of Smallpox and Monkeypox Vaccine, Live, Non-replicating (replication-deficient) recipients. Across all studies, a causal relationship to Smallpox and Monkeypox Vaccine, Live, Non-replicating (replication-deficient) could not be excluded for four SAEs, all non-fatal, which included Crohn's disease, sarcoidosis, extraocular muscle paresis and throat tightness.[48]

APSV, sometimes called ''WetVax'' was manufactured from 1956 to 1957. It is a replication-competent vaccine. It has been maintained in cold storage since it was produced. It was manufactured from the same *vaccinia* virus strain as Dryvax. It contains live *vaccinia* virus without preservatives or antibiotics. Testing of samples indicate that it is safe to use from a bioburden (presence of bacteria within the sample) perspective. The vaccine is administered in a single dose with a bifurcated needle and the appropriate number of punctures at the vaccination site. The preferred site of vaccination is on the upper arm over the deltoid muscle. Once appropriately diluted, each vial contains approximately 500 doses of vaccine. It has a similar side effect profile as Dryvax and a safety profile similar to Dryvax and Smallpox (*Vaccinia*) Vaccine Live. It is thought to be 95 percent effective when used as pre-exposure prophylaxis. The most frequently encountered serious complications of APSV include: encephalitis, progressive *vaccinia* (PV), and eczema vaccinatum.[49] APSV would be used if there is a shortage of Smallpox (*Vaccinia*) Vaccine, Live and of Smallpox and Monkeypox Vaccine, Live, Non-replicating.

Smallpox vaccination for pre-exposure prophylaxis using replication-competent vaccine is contraindicated in people with severe immunodeficiency (such as individuals undergoing bone marrow transplantation or those with primary or acquired immunodeficiency requiring isolation). A vaccine containing replication competent virus should be used with caution in the following groups: (1) Anyone who is allergic to the vaccine or any of its components; (2) anyone younger than 12 months of age; (3) people who have, or have had, certain skin conditions (especially eczema or atopic dermatitis); (4) people who have been diagnosed as having a heart condition, or having three or more known major cardiac risk factors; (5) women who are pregnant or planning to become pregnant within 4 weeks after vaccination; (6) persons with congenital or acquired immune deficiency disorders (*e.g.,* HIV/AIDS, leukemia, lymphoma); and (7) persons using corticosteroid eye drops. Within these identified groups, the risk of vaccination must be weighed against the risk of potential smallpox virus exposure.[50]

Smallpox vaccination using replication-deficient vaccine has no absolute contraindication for administration, it should be noted, however, that this vaccine has not been studied in individuals less than 18 years old.[51] Warning and precautions for this product include: Severe allergic reactions; altered immunocompetence (''Immunocompromised persons, including those receiving immunosuppressive therapy, may have a diminished immune response.'') and limitations of vaccine effectiveness.[52]

In a smallpox bioterrorism emergency, pregnant women at high risk of exposure may be advised to be vaccinated, since the risk of death and serious illness from smallpox in that situation would likely outweigh risks to the fetus from fetal *vaccinia* caused by replication-competent vaccines. A study of 376 women enrolled in the National Smallpox Vaccine in Pregnancy Registry showed that women vaccinated during pregnancy with replication-competent vaccine did not have higher-than-expected rates of pregnancy loss, preterm birth, or birth defects compared with pregnant women not receiving the smallpox vaccine. Most of the women in the registry (77 percent) were vaccinated near the time of conception, before results of a standard pregnancy test would have been positive. No cases of fetal *vaccinia* were identified. A retrospective cohort study employing information from Department of Defense databases examined outcomes among 31,420 infants born to active-duty military women during 2003–2004. There were 7,735 infants born to women who had previously been vaccinated against smallpox. An additional 672 infants were delivered by women who had been vaccinated for smallpox in the first trimester of pregnancy. Analysis revealed that maternal smallpox vaccination during pregnancy was not associated with preterm or extreme preterm delivery.[53] Maternal smallpox vaccination during the first trimester was not significantly associated with overall birth defects.[54] Live born infants who experience a covered injury as the direct result of a covered countermeasure administered to or used by a pregnant woman, such as a smallpox vaccine, are eligible for compensation from the CICP.[55]

Serious adverse reactions to smallpox vaccination can occur.[56] It has been estimated that during mass vaccinations campaigns with replication-competent vaccines, 1 to 2 deaths and hundreds of complications severe enough to require hospitalization occurred for every 1 million people vaccinated. Estimates from the medical and scientific literature indicate that if the current population of the United States was vaccinated with the replication-competent smallpox vaccine, hundreds of deaths and thousands of hospitalizations could occur.[57] Statistics from the 1960s and 1970s documented the rate of serious complications after receipt of the smallpox vaccine. These rates may be higher today as more

[48] JYNNEOS (Smallpox and Monkeypox Vaccine, Live, Non-replicating. Package Insert, Bavarian Nordic A/S. Aug 2019. *https://www.fda.gov/media/131078/download.*

[49] Petersen et al. ''Clinical guidelines for smallpox.'' 10.

[50] ACAM2000, Smallpox (vaccinia) vaccine, live. Package Insert, Emergent Product Development.

[51] JYNNEOS (Smallpox and Monkeypox Vaccine, Live, Non-replicating. Package Insert, Bavarian Nordic A/S. Aug 2019. *https://www.fda.gov/media/131078/download.*

[52] JYNNEOS (Smallpox and Monkeypox Vaccine, Live, Non-replicating. Package Insert, Bavarian Nordic A/S. Aug 2019. *https://www.fda.gov/media/131078/download.*

[53] Margaret Ryan and Jane F. Seward, Pregnancy, birth, and infant health outcomes from the national smallpox vaccine in pregnancy registry, 2003–2006. *Clinical Infectious Disease* 2008:46 (Suppl 30): S222.

[54] Margaret Ryan, et al. Evaluation of preterm births and birth defects in liveborn infants of US military women who received smallpox vaccine. *Birth Defect Research (Part A): Clinical and Molecular Teratology* 82:2008, 533–539.

[55] 42 CFR 110.3(n)(3).

[56] Petersen et al. ''Clinical guidelines for smallpox.''

[57] Kennedy et al. ''Smallpox Vaccines,'' D75.

individuals are immunocompromised, immunosuppressed or immunodeficient. However, the licensure of a vaccine with an improved safety profile is expected to decrease serious complications resulting from smallpox vaccination. Earlier studies primarily sought information only regarding what was already known to occur because of the administration of the smallpox vaccine. It is possible that previously unrecognized adverse reactions will become more evident with improved surveillance.

Minor adverse events following smallpox vaccination occur.[58] These include tenderness and erythema (redness) at the injection site and other localized reactions. With replication-competent vaccines, minor reactions also include allergic reactions to tape adhesives and ''robust takes.'' ''Robust takes'' are local reactions that are larger than expected and generally greater than 7.5 centimeters (cm), and are accompanied by some or all of the following signs and symptoms: Erythema, induration (firmness of the skin extending beyond the vaccination site), tenderness and warmth in the absence of secondary cellulitis (a bacterial infection of the skin). Robust takes are not generally considered a Table injury. In addition to localized reactions, systemic reactions such as fever of at least 100 °F, body aches, muscle pain, and local enlargement of the lymph nodes can occur and have been associated with replication-competent vaccines.

The *vaccinia* virus in the replication-competent smallpox vaccines is live and can be transmitted to other parts of the body of the vaccine recipient. For purposes of this NPRM, the term ''vaccination'' refers to the administration and receipt of the *vaccinia* virus through the smallpox vaccine and not through contact, whereas, the term ''inoculation'' refers to transmission of, and subsequent infection with, the *vaccinia* virus through a means other than smallpox vaccination. Autoinoculation occurs when vaccine recipients touch their vaccination site before it has healed and then touch another part of their body. Accidental or inadvertent, person-to-person inoculation occurs when a person or the vaccine recipient touches a vaccination site before it has healed and then touches another person.

The proposed Table lists the following injuries for the smallpox vaccines.

Injuries Associated With Both Replication-Competent and Replication-Deficient Smallpox Vaccines

A. Anaphylaxis

Anaphylaxis is a single discrete event that presents as a severe and potentially life threatening multi-organ reaction, particularly affecting the skin, respiratory tract, cardiovascular system, and the gastrointestinal tract. In an anaphylactic reaction, an immediate reaction generally occurs within minutes after exposure, and in most cases, the individual develops signs and symptoms within 4 hours after exposure to the antigen (substance causing the reaction). The immediate reaction leads to a combination of skin rash, mucus membrane swelling, leakage of fluid from the blood into surrounding tissues, restriction of the air passages in the lungs with tissue swelling, and gastrointestinal symptoms that can lead to shock, organ damage, and death if not promptly treated. Death, if it occurs, usually results from airway obstruction caused by laryngeal edema (throat swelling) or bronchospasm and may be associated with cardiovascular collapse.[59]

Anaphylaxis may occur following exposure to allergens from a variety of sources including food, aeroallergens, insect venom, drugs, and immunizations. Most treated cases resolve without additional complications. Anaphylaxis can be due to an exaggerated acute systemic hypersensitivity reaction. It is not an initial episode of a chronic condition, such as chronic hives.

Anaphylaxis following immunization is a rare occurrence with estimates in the range of 1–10 per 1 million doses distributed, depending on the vaccine studied.[60] In 2003, the Institute of Medicine (IOM) reported that evidence favors acceptance of a causal relationship between certain vaccines and anaphylaxis based on case reports and case series. The IOM reported that causality could be inferred with reasonable certainty based on one or more case reports because of the unique nature and timing of anaphylaxis following vaccine administration and provided there is an absence of alternative causes.[61]

Smallpox vaccines are currently prepared using various techniques that result in the final products containing a limited quantity of foreign protein that can induce immediate hypersensitivity reactions in some persons with severe protein mediated allergies. It is established that smallpox vaccines can cause anaphylaxis similar to that seen in other vaccines.[62] [63]

A 1994 IOM Report supports the causal association between vaccines and a biologic gradient of host responses, ranging from true anaphylaxis to milder forms of hypersensitivity reactions. Biological gradient refers to the observation of a spectrum of responses from mild to severe. In the case of hypersensitivity reactions, the reported spectrum after the vaccine runs from mild skin manifestations to chest and throat tightness and cardiovascular events to full blown anaphylaxis. The IOM also stated that the onset of anaphylaxis generally occurs within a few hours of exposure.[64] Consistent with the time interval for the first manifestation of anaphylaxis after vaccines covered by the National Vaccine Injury Compensation Program and the CICP's Pandemic Influenza Countermeasure Injury Table, the Secretary proposes an onset interval for the first symptom or manifestation of 0–4 hours for anaphylaxis to be covered under the proposed Table.

Based on the nature and timing of anaphylaxis, and the medical and scientific literature, the Program's evidence standard has been met, and anaphylaxis is proposed for inclusion on the Table because it is a serious physical injury that may be directly caused by the administration or use of either the replication-competent or replication-deficient smallpox vaccine.

In rare cases of acute anaphylaxis, initial symptoms of the immediate reaction may present up to 12 hours after exposure. A slow evolving late phase hypersensitivity reaction is possible, with an onset that usually begins 4–8 hours after the immediate reaction ends. The medical literature contains reports of late phase onset up

[58] ACAM2000, Smallpox (*vaccinia*) vaccine, live. Package Insert, Emergent Product Development.

[59] The Brighton Collaboration Anaphylaxis Working Group, ''Anaphylaxis: Case Definition and Guidelines for Data Collection, Analysis, and Presentation of Immunization Safety Data,'' Vaccine, Aug. 2007; 5676.

[60] Jens U. Ruggeberg et al. ''Anaphylaxis: case definition and guidelines for data collection, analysis, and presentation of immunization safety data.'' *Vaccine.* (August 2007): 5676.

[61] Institute of Medicine, ''Immunization safety review vaccination and sudden unexpected death in infancy.'' *The National Academies Press,* (2003): 31.

[62] Joanne Cono, Christine G. Casey and David M. Bell, ''Smallpox vaccination and adverse reactions. Guidance for clinicians.'' *Morbidity and Mortality Weekly Report,* 52(RR04) (February 21, 2003): 2.

[63] Werner J. Pichler et al. ''Drug hypersensitivity reactions: pathomechanism and clinical symptoms.'' *Medical Clinics of North America* 94, (July 2010): 646.

[64] Institute of Medicine, ''Adverse events associated with childhood vaccines evidence bearing on causality.'' *The National Academies Press,* (1994): 22.

to 72 hours later.[65] The late phase reaction results from a different immunologic mechanism of action. The late phase reaction is part of a biphasic reaction. It is possible for the first immediate hypersensitivity reaction to be relatively mild, unrecognized, or not observed. There may be unusual cases in which the immediate reaction is delayed and/or cases that the immediate reaction is not recognized, with the first apparent manifestation occurring in the late phase. These unusual cases do not meet the requirements to be considered table injuries, and will be evaluated on a case-by-case basis based on the Program's evidence standard.

B. Vasovagal Syncope

Vasovagal syncope is a temporary loss of consciousness (fainting) and postural tone, which includes a reflex drop in blood pressure and may be triggered by an event associated with pain or anxiety. This reaction is known to occur when a vaccine is administered with a needle which pierces the skin. Some people may experience jerking movements after losing consciousness, which generally are not seizures.

In its 2012 report, *Adverse Effects of Vaccines,* the IOM concluded, based on mechanistic evidence (mechanism of action), that the evidence convincingly supports a causal relationship between the injection of a vaccine and vasovagal syncope. Vasovagal syncope after vaccination is usually not associated with serious injuries; however, some cases of vasovagal syncope will result in serious injury related to physical trauma from an associated fall or other related accidents.

Based on a review of the medical and scientific literature, the Program's evidence standard has been met, and vasovagal syncope may be a serious physical injury that may be directly caused by the administration or use of any injected smallpox vaccine.[66] Since most cases of vasovagal syncope occur within 1 hour of vaccination, syncope is proposed to be added to the Table with an onset interval for the first symptom or manifestation of 0–1 hour after vaccination with the injected smallpox vaccine.

Injuries Associated With Only Replication-Competent Smallpox Vaccines

A. Skin Reactions

Certain skin reactions are associated with the administration of replication-competent smallpox vaccines. These include: (1) Significant local skin reaction, (2) Stevens-Johnson syndrome/toxic epidermal necrolysis (SJS/TEN), (3) inadvertent autoinoculation, (4) eczema *vaccinatum,* (5) generalized *vaccinia,* and (6) progressive *vaccinia,* previously termed ''*vaccinia necrosum.*'' [67] Widespread skin reactions are larger than a simple skin reaction and include two groups. The first group includes significant skin reactions (such as SJS/TENS) and other nonspecific post-vaccination rashes with lesions that are thought to be free of the *vaccinia* virus. The second group includes adverse reactions thought to be caused by replicating *vaccinia* virus recovered from skin lesions, which can be associated with risk for autoinoculation or contact transmission.[68 69 70 71 72 73]

1. Significant Local Skin Reaction

A significant local skin reaction is, for purposes of the Table, an unexpected and extreme response to the inoculation of the vaccinated person. The expected onset of this injury is the initial skin lesion at the smallpox vaccination or inoculation site. The replication-competent smallpox vaccine is administered through a multiple puncture technique known as scarification. The dose of vaccine is placed on a needle, which is then penetrated multiple times into the skin, commonly, in the upper arm.[74] Other sites for vaccine administration may be selected utilizing this same technique. The *vaccinia* virus in the vaccine replicates and causes damage in the cells resulting in a localized lesion.[75] This can result in a typical local skin reaction in a naïve (first-time) vaccine recipient composed of a papule, which develops 3 to 4 days post-vaccination. The papule then goes on to mature into a vesicle and a pustule over the next 4 to 5 days. The vaccine lesion is generally at its maximum size by day 8 post-vaccination. The primary lesion is surrounded by erythema and inflammation, and regional lymphadenopathy is generally present. The scab formed by the healing pustule separates by day 21 post-vaccination. The cutaneous reaction in individuals being revaccinated may be reduced in severity or entirely absent. In previously immunized individuals who fail to develop a skin response with the second immunization, no additional smallpox immunizations are required.[76]

Cono et al. found that approximately 10 percent of first time vaccinees will go on to develop a large vaccination reaction, defined as a reaction greater than 10 cm in diameter at the site of the inoculation. This is a normal variant within the population.[77]

In an examination of the data generated in the most recent mass smallpox vaccination program completed in the U.S. with HHS and the U.S. Department of Defense (DoD) in 2003 and 2004, using replication-competent vaccine, significant local skin reactions leading to hospitalization were not identified.[78] Of the nearly 770,000 individuals (both first time and revaccinated) vaccinated during this program, there were no reported cases of local skin reaction requiring hospitalization. The improved pre-screening of smallpox vaccine recipients is thought to have reduced the incidence of significant local skin reactions.[79]

In the 2003 Grabenstein and Winkenwerder study, the data indicates that 16 of 450,000 military patients vaccinated were hospitalized due to the uncertainty of the communicability of their skin conditions after receiving the replication-competent smallpox

[65] Ruggeberg et al. ''Anaphylaxis: case definition and guidelines.'' 5677.

[66] Institute of Medicine, *Adverse effects of vaccines: Evidence and causality.* (Washington, DC The National Academies Press, 2012): 18.

[67] Aysegul Nalca and Elizabeth E. Zumbrun, ''ACAM2000: The new smallpox vaccine for United States strategic national stockpile,'' *Drug Design, Development and Therapy* 4. (2010): 76.

[68] Cono et al. ''Smallpox vaccination and adverse reaction.'' 2.

[69] Cono et al. ''Smallpox vaccination and adverse reactions.'' 3.

[70] Lane and Goldstein, ''Adverse Events.'' 191–192.

[71] Kent A. Sepkowitz, ''How contagious is *vaccinia*?'' *New England Journal of Medicine* 348(5) (January 30, 2003): 443–445.

[72] Vincent A. Fulginiti et al. ''Smallpox vaccination: a review, part II. Adverse events.'' *Clinical Infectious Disease 37* (July 15, 2003): 252.

[73] Ellen R. Wertheimer et al. ''Contract transmission of *vaccinia* virus from smallpox vaccinees in the United States, 2003–2011.'' *Vaccine* 30. (2012): 986.

[74] Richard B. Kennedy et al. *Vaccines.* (Philadelphia: Elsevier-Saunders, 2013): 730.

[75] Xiaolin Tan et al. ''Failure of the smallpox vaccine to develop a skin lesion in *vaccinia* virus-naïve individuals is related to differences in antibody profiles before vaccination, not after.'' *Clinical and Vaccine Immunology* 19(3) (March 2012): 418.

[76] ACAM2000, Smallpox (*vaccinia*) vaccine, live. Package Insert, Emergent Product Development.

[77] Cono et al. ''Smallpox vaccination and adverse reaction.'' 5.

[78] Gregory A. Poland, John D. Grabenstein and John M. Neff, ''The US smallpox vaccination program: a review of a large modern era smallpox vaccination implementation program.'' *Vaccine* 23 (February 4, 2005): 2079.

[79] Poland et al. ''The US smallpox vaccination program.'' 2081.

vaccine. After additional evaluation, each patient was returned to duty. The authors also describe 36 cases of suspected mild generalized *vaccinia;* each of these patients were treated and released. Of these 36 patients, nine were hospitalized. These hospitalizations were attributed to providers who were seeing smallpox vaccinated patients for the first time being overly cautious. Each of these patients were treated and returned to duty. A single service member developed erythema multiforme major after receiving multiple vaccines. This was seen as a possible reaction to the replication-competent smallpox vaccine.[80]

A revaccination program that occurred in Israel in 2002 and 2003 provided replication-competent smallpox vaccinations to 21,000 first responders and utilized a different vaccine strain than the one used in the U.S. Many of the vaccine recipients experienced local swelling and pain. However, only one individual was hospitalized with a diagnosis of cellulitis at the injection site.[81]

The severity of adverse reactions following vaccination can vary based upon factors such as the immune status of the individual and a positive or negative history of past exposure to the smallpox vaccine. Typically, those with a potentially higher level of immunity, because of previous exposure to the vaccine, may develop a reduced response to revaccination. Vaccination site lesions generally resolve with the separation of the overlaying scab within 21 days post-vaccination.[82] This 21-day period is the expected timeframe of a normal immune response and the time in which reactions associated with the vaccine should have occurred and been resolved.[83]

Skin reactions that occur because of receiving the replication-competent smallpox vaccine are generally self-limiting and resolve without intervention. Minor scarring or minor local reactions do not constitute a Table injury. A robust take does not constitute a Table injury.

Based on a review of the medical and scientific literature, the Program's evidence standard has been met, and significant local skin reactions are serious physical injuries that may be directly caused by the use of the replication-competent smallpox vaccine. As explained above, the expected time interval between exposure and onset of injury for the first symptom or manifestation is 1–21 days.[84]

A Table injury in a recipient requires sufficient evidence in the medical records of the occurrence of a significant local skin reaction at the vaccination or inoculation site. The presence of a scar resulting from the significant local skin reaction would not be considered a Table injury unless the scar is of sufficient severity to warrant hospitalization or lead to a significant loss of function or disability.

2. SJS/TEN

SJS and TEN, are acute hypersensitivity reactions that affect skin, mucus membranes, and sometimes internal organs (systemic toxicity). As mentioned in the previous section, the terms Erythema Multiforme (EM) and SJS have been historically linked to TEN and are often confused by clinicians even today. It is now recognized that EM is a different disease from SJS and TEN.[102] Although SJS and TEN were once thought to be separate conditions, they are now considered part of a continuum. SJS is on the less severe end of the spectrum and TEN represents the more severe end.[85] SJS/TEN is the most commonly used term to refer to the spectrum of conditions that include SJS, SJS/TEN overlap, and TEN. The difference between SJS, SJS/TEN overlap, and TEN is defined by the degree of skin detachment. SJS is defined as skin involvement of less than 10 percent. TEN is defined as skin involvement of greater than 30 percent. SJS/TEN is defined as overlap of 10–30 percent skin involvement.[86] For the purposes of the Table, the term SJS/TEN will be used to refer to the SJS and TEN disease spectrum, consistent with its use in recent scientific articles.[87 88 89] SJS/TEN is a rare condition that affects 1–2 people per million, per year. SJS/TEN is most commonly triggered by medication, but it is also seen in individuals experiencing infections with *Mycoplasma pneumoniae* and cytomegalovirus. In many cases, no cause of SJS/TEN is ever identified.[90] Although rare, generalized hypersensitivity reactions have been documented with the use of live attenuated vaccines, such as the replication-competent smallpox vaccine, as the body reacts to the presence of an identified foreign protein.[91 92 93]

SJS/TEN frequently begins with flu-like symptoms. Shortly thereafter, the skin begins to blister and peel creating painful open areas on the skin, mouth, airways, and potentially the urinary tract and genitals. In SJS/TEN, mucosal involvement generally predominates. Mucosal lesions generally occur at more than one location and manifest as painful lesions in sites, such as the mouth or eyes. Skin rash or lesions in SJS/TEN usually consist of red raised areas, blisters, and ulcerations. Open areas created by SJS/TEN can lead to fluid loss and make the person susceptible to infection. Because of the damage that occurs to the skin and mucus membranes, SJS/TEN is considered a life threatening condition. Serious complications of SJS/TEN include pneumonia, sepsis, shock, multiple organ failure, and death. Approximately 10 percent of individuals with SJS/TEN will die from the condition.[94] For those who survive SJS/TEN, the potential long-term complications include skin color changes, skin and mucosal dryness, excessive sweating, hair loss, impaired taste, difficulty urinating, and genital abnormalities. Some individuals develop chronic dry eye leading to photophobia (light sensitivity) and vision impairment.[95]

A 1968 survey identified 48 cases of EM among 572 patients identified with

[80] John D. Grabenstein and William Winkenwerder, ''US Military smallpox vaccination program experience.'' *Journal of the American Medical Association* 289(24) (June 25, 2003): 3280.

[81] Emilia Anis et al. ''Smallpox revaccination of 21,000 first responders in Israel: lessons learned.'' *International Journal of Infectious Disease* 13 (August 6, 2009): 406.

[82] Lane et al. ''Adverse Events.'' 190.

[83] Kennedy et al. ''Smallpox and *vaccinia.*'' 730.

[84] Kennedy et al. ''Smallpox and *vaccinia.*'' 730.

[85] National Institutes of Health, U.S. National Library of Medicine, ''Steven-Johnsons syndrome/toxic epidermal necrolysis.'' (September 10, 2019): 1–2.

[86] Marianne Lerch et al. ''Current Perspectives on Stevens-Johnson syndrome and Toxic Epidermal Necrolysis.'' *Clinical Reviews in Allergy & Immunology.* Feb 2018;54(1):147–176.

[87] Roni P. Dodiuk-Gad et al. ''Stevens-Johnson syndrome and Toxic Epidermal Necrolysis: An Update.'' *American Journal of Clinical Dermatology.* Dec 2015:16(6):475–493.

[88] National Institutes of Health, U.S. National Library of Medicine, ''Stevens-Johnson syndrome.'' 1.

[89] Lerch et al. ''Current Perspectives on Stevens-Johnson syndrome and Toxic Epidermal Necrolysis.'' 147–176.

[90] National Institutes of Health, U.S. National Library of Medicine, ''Stevens-Johnson syndrome.''1.

[91] Adena E. Rosenblatt and Sarah L. Stein, ''Cutaneous reactions to vaccines.'' *Clinics in Dermatology* 33(3). (2015): 327.

[92] J. Michael Lane et al. ''Deaths attributed to smallpox vaccinations, 1959 to 1966, and 1968.'' *Journal of the American Medical Association* 212(3) (April 20, 1970): 441.

[93] Ashish Chopra et al. ''Stevens-Johnson syndrome after immunization with smallpox, anthrax and tetanus vaccines.'' *Mayo Clinic Proceedings* 79(9) (September 2004): 1193.

[94] National Institutes of Health, U.S. National Library of Medicine, ''Stevens-Johnson syndrome.'' 1.

[95] National Institutes of Health, U.S. National Library of Medicine, ''Stevens-Johnson syndrome.'' 1.

adverse reactions to the replication-competent smallpox vaccine; however, it was noted that this may actually be an under representation of the actual total number of SJS cases.[96] At the time of the study, EM and SJS were considered synonyms for the same condition or conditions on the same spectrum of disease. The United States Armed Forces vaccinated 450,293 of its members from December 2002, to May 2003, and reported one case of severe EM, defined as SJS, during this period.[97]

Based on a review of the medical and scientific literature, the Program's evidence standard has been met, and SJS/TEN is a serious physical injury that may be directly caused by the use of the replication-competent smallpox vaccine.[98] For SJS/TEN to be a Table injury, both skin and mucus membrane rash or lesions must be present. Two or more mucosal sites must be involved and the distribution of the rash must be widespread.[99] [100] The proposed onset interval for the first symptom or manifestation is 4–28 days after vaccination. The earliest time of onset, 4 days post-vaccination, is consistent with other conditions that cause SJS/TEN.[101] [102] The 28-day mark represents the point at which any immune response in the form of SJS/TEN would have occurred.[103] [104] [105]

3. Inadvertent Autoinoculation (IA) (Self-Inoculation)

Unintentional transfer of replication-competent *vaccinia* virus, which includes transfer from the vaccination site to elsewhere on the vaccine recipient's body, is called inadvertent autoinoculation (IA) or self-inoculation. IA is the most common adverse event associated with the smallpox vaccine.[106]

Smallpox vaccine recipients or contacts can transfer replication-competent *vaccinia* virus to their hands or fomites (inanimate objects that carry infection), which become a source for infection elsewhere on the body. The Program does not cover injuries caused by the transfer of the *vaccinia* virus to individuals who are not primary vaccine recipients. Other than ocular (eyes), the most common sites are the face, nose, mouth, lips, genitalia, and anus.[107] Lesions at IA sites progress through the same stages (*e.g.,* papular, vesicular, pustular, crusting, and scab) as the vaccination site. When IA occurs greater than 5 days post-vaccination, the developing immune response might reduce the lesions and their progression. Persons at highest risk for IA are children ages 1–4 years and those with disruption of the epidermis, such as abrasions and burns.[108]

Ocular *vaccinia* infections result from the transfer of *vaccinia* from the vaccine site or other lesion containing *vaccinia* to or near the eye. Infections can be clinically mild to severe and can lead to vision loss. [109] [110]

IA was a frequently reported complication of early smallpox vaccination programs. Proper adherence to aseptic technique with dressing changes, hand washing, and the use of hand sanitizers with greater than 60 percent alcohol content help to reduce the frequency of IA, but it still remains a complication of replication-competent smallpox vaccines. Treatment is based on the number of transfer sites or the size of the resulting lesions.[111]

During the 2002–2004 HHS and DoD smallpox vaccination program, 101 of the 770,000 individuals vaccinated reported cases of IA. This number represents both ocular and non-ocular forms of IA. The study did not provide information regarding the rate of hospitalization.[112]

In the 2002–2003 Israeli replication-competent smallpox immunization effort to revaccinate 21,000 first responders, there were 221 identified cases of IA. This represents a 1 percent incident rate within this group of vaccine recipients. The study did not provide details regarding the extent of the IA, and although some individuals were hospitalized as a result of receiving vaccines, the article does not make clear if these hospitalizations were the result of IA or other causes.[113]

Based on a review of the medical and scientific literature, the Program's evidence standard has been met, and IA is a serious physical injury that may be directly caused by the use of the replication-competent smallpox vaccine. Therefore, IA is proposed to be added to the Table with an onset interval for the first symptom or manifestation of onset of 1–21 days for the first symptom or manifestation to occur after vaccination since the live *vaccinia* virus can be transferred from the vaccination site to another location on the vaccine recipient's body at any time during this period. By day 21 post-vaccination, the vaccination site should be healed, and the scab should have become dislodged and fallen off.[114] [115] [116] [117] For the purpose of this regulation, the inadvertent or intentional inoculation of other persons by the vaccine recipient is not considered a covered injury. Only individuals who were administered the smallpox vaccine will be eligible for benefits.[118]

4. Generalized *Vaccinia*

Generalized *vaccinia* (GV) is caused by the systemic spread of replication-competent *vaccinia* from the site of vaccination with the smallpox vaccine.[119] It presents as a disseminated vesicular or pustular rash and is usually benign and self-limited among immunocompetent hosts. GV may be accompanied by fever and can produce skin lesions anywhere on the body. GV can also appear as a regional form characterized by extensive vesiculation

[96] J Michael Lane et al. ''Complications of smallpox vaccination, 1968* National Surveillance in the United States.'' *The New England Journal of Medicine* 281 (22) (November 27, 1969): 1205.

[97] Chopra et al. ''Stevens-Johnson syndrome.'' 1196.

[98] Rosenblatt et al. ''Cutaneous Reactions to Vaccinations,'' 327.

[99] Chopra et al. ''Stevens-Johnson Syndrome after Immunization with Smallpox, Anthrax, and Tetanus Vaccines.'' 1195.

[100] Heng et al. ''Epidermal necrolysis: 60 years of errors and advances.'' 1252.

[101] Dodiuk-Gad et al. ''Stevens-Johnson syndrome and Toxic Epidermal Necrolysis: An Update.'' 475, 477.

[102] Maja Mockenhaupt, Cecile Viboud, Ariane Dunant, Luigi Naldi, Sima Halevy, Jan Nico Bouwes Bavinck, Alexis Sidoroff, Jurgen Schneck, Jean-Claude Roujeau and Antoine Flahault. Stevens-Johnson syndrome and Toxic Epidermal Necrolysis: Assessment of Medication Risks with Emphasis on Recently Marketed Drugs. The Euro SCAR Study. *Journal of Investigative Dermatology.* January 2008; 128(1):35–44.

[103] Dodiuk-Gad et al. ''Stevens-Johnson syndrome and Toxic Epidermal Necrolysis: An Update.''477.

[104] B. Sassolas, C. Haddad, M. Mockenhaupt, A. Dunant, Y. Liss, K. Bork, UF Haustein, D. Vieluf, JC Roujeau and H. Le Louet. ''ALDEN, an Algorithm for Assessment of Drug Causality in Stevens-Johnson syndrome and Toxic Epidermal Necrolysis: Comparison with Case-Control Analysis'' *Nature.* July 2010;88(1): 60–68.

[105] Cono et al. ''Smallpox Vaccination and Adverse Reactions.'' 3.

[106] Kennedy et al. ''Smallpox and *vaccinia.*'' 738.

[107] Lane et al. ''Adverse Events.'' 191.

[108] Kennedy et al. ''Smallpox and *vaccinia.*'' 741.

[109] Frederick Ruben and J. Michael Lane, ''Ocular *vaccinia:* an epidemiologic analysis of 348 cases.'' *Archives of Ophthalmology* 84 (July 1970): 47.

[110] Danielle M. Tack et al. ''Unintentional transfer of *vaccinia* virus associated with smallpox vaccines.'' *Human Vaccines & Immunotherapeutics* 9:7 (July 2013): 1491.

[111] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 256.

[112] Poland et al. ''The US smallpox vaccination program: a review.'' 2079.

[113] Anis et al. ''Smallpox revaccination of 21,000.'' 406.

[114] Cono et al. ''Smallpox Vaccination and Adverse Reactions.'' 3.

[115] Lane et al. ''Adverse Events.'' 191.

[116] Kennedy et al. ''Smallpox and *vaccinia.*'' 738.

[117] Wertheimer et al. ''Contract transmission of *vaccinia* virus.'' 985.

[118] See sections 319F–4(b)(4), (e)(2), and (e)(5) of the PHS Act (42 U.S.C. 247d–6e(b)(4), (e)(2), and (e)(5)).

[119] Kennedy et al. ''Smallpox and *vaccinia.*'' 738.

around the vaccination site or as an eruption localized to a single body region (*e.g.,* arm or leg). The skin lesions of GV are thought to contain virus spread through the blood stream. First-time vaccinees are at higher risk for GV than re-vaccinees. GV is often more severe among persons with underlying immunodeficiency who might have been inadvertently vaccinated; these patients might benefit from early intervention with *vaccinia* immunoglobulin (VIG). GV should not be confused with multiple inadvertent inoculations that might occur in the presence of acute or chronic exfoliative, erosive, or blistering skin disease. GV is different from eczema *vaccinatum* (EV), which typically occurs in persons with a history of atopic dermatitis and is often associated with systemic illness.[120]

In GV, the initial lesions usually appear approximately a week after immunization on unimmunized skin. These new lesions have a similar appearance to the initial immunization but are generally smaller and heal quickly to a scar (within 5–6 days). In extremely rare cases, lesions have been seen to reoccur at 4 to 6 week intervals for up to 1 year unless treatment with VIG stops the recurrence.[121]

In the U.S., from January 24 through August 8, 2003, 38,257 civilian health care workers received the smallpox vaccination using replication-competent smallpox vaccine. During this period, HHS reported there were two suspected cases and one confirmed case of GV within the group of vaccine recipients.[122]

In the DoD smallpox vaccination program (770,000 vaccinated), as of January 4, 2005, there were 35 suspected cases of GV. All of these cases were described in the literature as mild, and all individuals made a full recovery.[123]

GV is a known, but rare, complication of receiving the replication-competent smallpox vaccine, and its level of severity varies from person to person. The literature indicates the risk of developing GV is significantly reduced with obtaining a complete history and excluding individuals at risk for developing the condition. It is presently not possible to predict completely who may develop GV, but Smallpox (*Vaccinia*) Vaccine Live is contraindicated for use in individuals with severe immunodeficiency.[124] The treatment of GV may require hospitalization and the use of *vaccinia* immunoglobulin intravenous (VIGIV).

Based on a review of the medical and scientific literature, the Program's evidence standard has been met, and GV is a serious physical injury that may be directly caused by the administration or use of the replication-competent smallpox vaccine.[125] [126] [127] [128] [129] Therefore, GV is proposed to be added to the Table with an onset interval of 6–9 days for the first symptom or manifestation to occur after vaccination as supported by the compelling, reliable and valid medical and scientific literature.[130] The literature supports this timeframe as the first symptoms of GV generally occur approximately one week after immunization. Because GV entails the systemic spread of *vaccinia* virus throughout the body causing an immune response and then the subsequent development of satellite lesions on unvaccinated skin, the onset of symptoms typically does not occur prior to 6 days post vaccination. Cases of GV with an onset occurring outside this timeframe will be considered as non-Table injuries and evaluated on a case-by-case basis based on the Program's evidence standard.

5. Eczema *Vaccinatum* (EV)

Eczema v*accinatum* (EV) is the acute onset of widespread painful vesicles and pustules that occur in individuals who receive the smallpox vaccine and who have a history of atopic dermatitis. Persons with a history of atopic dermatitis are at highest risk for eczema *vaccinatum.* However, not all individuals who have a history of atopic dermatitis and are vaccinated against smallpox with a replication-competent vaccine will go on to develop EV. This phenomenon is well documented in the medical literature, but is not completely understood.[131]

EV may occur as the result of implantation of the *vaccinia* virus into broken or diseased skin. After implantation, the virus spreads from cell to cell creating extensive lesions. The amount of spread is dependent on the amount of abnormal skin and the individual's immune system.[132] Once viremia is established, lesions can develop in unbroken skin.[133] Positive viral cultures of the lesions are diagnostic of EV.[134] Cases of EV have also been reported in individuals with a history of atopic dermatitis but whose condition appeared to resolve over time and who had intact skin at the time of vaccination.[135] [136]

Onset of the characteristic lesions can occur concurrently or shortly after the occurrence of the reaction at the vaccination site. There is generally no visible reaction at the vaccination site before day 3 or 4 post vaccination. On approximately day 3 to 4, a papule forms, which progresses to a vesicle by day 5 to 6, which forms a pustule by day 7 to 9.[137] In EV, these lesions occur in areas away from the primary vaccination site, often initially on non-intact skin, and they may progress to areas of intact skin. EV lesions follow the same Jennerian progression (progression of dermatological lesions through the various stages of development and resolution) as the vaccination site in a vaccine recipient. Confluent (flowing together) or erosive (wearing away) lesions can occur. The rash is often accompanied by fever and lymphadenopathy and affected persons are frequently systemically ill. EV tends to be most severe among first-time replication-competent vaccine recipients, unvaccinated close contacts of vaccine recipients, and young children.[138]

Early diagnosis of EV and the administration of VIGIV, within 1 or 2 days of diagnosis, is helpful in reducing the associated morbidity and

[120] Cono et al. ''Smallpox Vaccination and Adverse Reactions.'' 2.

[121] Fulginiti et al. ''Smallpox vaccination: a review, Part II. 261.

[122] Centers for Disease Control and Prevention. ''Update: Adverse events following civilian smallpox vaccination, United States, 2003.'' *Morbidity and Mortality Weekly Report* 52(34) (August 29, 2003): 819.

[123] Poland et al. ''The US smallpox vaccination program.'' 2079–2080.

[124] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 261.

[125] Cono et al. ''Smallpox Vaccination and Adverse Reactions.'' 12–13.

[126] Rosenblatt et al. ''Cutaneous Reactions to Vaccinations.'' 328.

[127] Kennedy et al. ''Smallpox and *vaccinia.*'' 738.

[128] Poland et al. ''The US smallpox vaccination program.'' 2079.

[129] Claudia Vellozzi et al. ''Generalized *vaccinia* progressive *vaccinia,* and eczema *vaccinatum* are rare following smallpox (*vaccinia*) vaccination: United States surveillance, 2003.'' *Clinical Infectious Disease* 41(5) (September 1, 2005): 689.

[130] Cono et al. ''Smallpox Vaccination and Adverse Reactions.'' 12.

[131] Jennifer L. Reed, Dorothy E. Scott, and Mike Bray. ''Eczema *vaccinatum.*'' *Clinical Infectious Disease* 54(6) (March 15, 2012): 834.

[132] Fulginiti et al. ''Smallpox vaccination: a review, Part II. 256–258.

[133] Fulginiti et al. ''Smallpox vaccination: a review, Part II. 256–258.

[134] Rosenblatt et al. ''Cutaneous Reactions to Vaccinations.'' 328.

[135] Reed et al. ''Eczema *vaccinatum.*'' 835.

[136] Vincent Fulginiti et al. ''Smallpox vaccination: a review, Part I. Background, vaccination technique, normal vaccination and revaccination, and expected normal reactions.'' *Clinical Infectious Disease* 37. (July 15, 2003): 244.

[137] Fulginiti et al. ''Smallpox vaccination: a review Part I.'' 248.

[138] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 258.

mortality.[139] [140] The fatality rate for those experiencing EV ranges from 5 to 40 percent both with and without treatment, respectively.[141] [142] Complications of EV include secondary infections caused by fungus and bacteria, septic shock, and fluid and electrolyte imbalances.[143] Historical reports from the era of universal vaccination for smallpox showed greater rates for developing EV with varying severity.[144] In the most recent DoD and HHS smallpox vaccination programs, there were no documented cases of EV in primary vaccine recipients.[145] This is attributed to improved pre-screening of potential smallpox vaccine recipients and excluding those thought to be at risk of developing EV. Attenuated smallpox vaccine may reduce the risk of developing EV in those individuals with a history of atopic dermatitis. However, the potential of developing EV from receiving the smallpox vaccine must be weighed against the potential of being exposed to the smallpox virus and then developing smallpox infection.[146]

Based on a review of the medical and scientific literature, the Program's evidence standard has been met, and EV is a serious physical injury that may be directly caused by the administration or use of the replication-competent smallpox vaccine.[147] [148] [149] EV is proposed to be added to the Table with an onset interval for the first symptom or manifestation of onset of 3–21 days after vaccination. Three days would be the minimum time to mount an immune response and develop symptoms. With treatment, using VIGIV, no additional lesions should occur after 21 days.

Although EV can occur as the result of inadvertent transfer of the *vaccinia* virus to non-*vaccinia* vaccine recipients,[150] for the purpose of this regulation, the inadvertent or intentional inoculation of other persons by the vaccine recipient and the subsequent development of EV is not considered a covered injury. Only those individuals who actually were administered the smallpox vaccine will be eligible for benefits.[151]

6. Progressive *Vaccinia*

Progressive *vaccinia* (PV) also known as *vaccinia necrosum, vaccinia gangrenosa* or disseminated *vaccinia,* is a rare, severe, and potentially fatal complication of receiving replication-competent smallpox vaccine. Its frequency of occurrence is estimated to be 3 to 5 cases per million vaccinated.[152] PV results when a vaccination site fails to heal after 14 to 21 days in the presence of a minimal inflammatory response and when *vaccinia* virus replication persists.[153] Of all of the adverse skin conditions associated with smallpox vaccine, PV is the most severe and life threatening.[154] PV occurs as the result of a T-cell deficiency within the immune system of the vaccine recipient while the ''B'' cell function remains intact. As a result, the progression and manifestation of this condition are limited to the skin without viremic spread.[155] The skin surrounding the vaccination site becomes *vaccinia* infected due to cell-to-cell spread, the primary lesion (vaccination site) becomes larger in diameter, and secondary metastatic *vaccinia* lesions can occur in areas away from the primary immunization site. As the lesions increase in size, they leave dead skin behind the leading edge of the expanding lesion.

The onset of symptoms and rate of progress are based on the individual level of T-cell deficiency, but with an expected onset of 3 to 21 days after vaccination.[156] Primary lesions that fail to heal by day 21 post-vaccination should be suspicious for PV.[157]

Lesions can appear necrotic (dead), fungated (ulcerated), piled-up, or well demarcated (clear margins). Concomitant bacterial superinfection can also occur. Fungal and parasitic infections have also been documented in patients diagnosed with PV. Progression of PV can lead to toxic or septic shock and disseminated intravascular coagulation (DIC), a blood clotting disorder, generally ending with death.[158] A diagnosis of PV is made by the appearance and progression of the lesions at the primary vaccination site and other subsequent satellite lesions.[159] Management of PV should include aggressive therapy with VIGIV. Cidofovir has been included in some recommendations as a potential second-line agent that might be used under an investigational protocol if the patient does not respond to VIGIV or if supplies of VIGIV are exhausted. In addition, case management should include intensive monitoring, and tertiary-level supportive care.[160] More recently, recommendations [161] have been posted suggesting tecovirimat (recently approved as a smallpox treatment) brincidofovir, and cidofovir as antivirals that might be used under certain circumstances to treat certain vaccine complications if treatment with VIGIV alone is inadequate or if VIGIV is not readily available. Tecovirimat and brincidofovir were used as part of multifactorial interventions in a case of PV though the contribution of any one intervention to the patient's outcome could not be assessed.[162]

During the most recent DoD and HHS smallpox vaccination program where approximately 770,000 individuals were vaccinated, using replication-competent vaccines, there were no documented cases of PV. The study results indicate improved screening techniques prior to delivering the vaccine and withholding vaccinations from those at greatest risk of developing an adverse event contributed to this result.[163]

Based on a review of the medical and scientific literature, the Program's evidence standard has been met, and PV is a serious physical injury that may be directly caused by the administration or use of the replication-competent smallpox vaccine.[164] [165] [166] [167] PV is proposed to be added to the Table with an onset interval for the first symptom

[139] Cono et al. ''Smallpox vaccination and adverse reactions.'' 13.

[140] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 256–258.

[141] Rosenblatt et al. ''Cutaneous reactions to vaccinations.'' 328.

[142] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 256.

[143] Rosenblatt et al. ''Cutaneous reactions to vaccinations.'' 328.

[144] Reed et al. ''Eczema *vaccinatum.*'' 832.

[145] Poland et al. ''The US smallpox vaccination program.'' 2079.

[146] Reed et al. ''Eczema *vaccinatum.*'' 838.

[147] Cono et al. ''Smallpox vaccination and adverse reactions.'' 13.

[148] Rosenblatt et al. ''Cutaneous reactions to vaccinations.'' 328.

[149] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 256–258.

[150] Lane et al. ''Adverse events.'' 191.

[151] 42 CFR part 110.

[152] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 253.

[153] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 263.

[154] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 263.

[155] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 263.

[156] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 263.

[157] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 263.

[158] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 263.

[159] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 265.

[160] Cono et al. ''Smallpox vaccination and adverse reactions.'' 14.

[161] *https://www.cdc.gov/smallpox/clinicians/vaccine-medical-management6.html.*

[162] E. Lederman et al. ''Progressive *vaccinia:* Case description and laboratory-guided therapy with *vaccinia* immune globulin, ST–246, and CMX001.'' *Journal of Infectious Disease,* 206 (November 1, 2012) 1372–1385.

[163] Poland et al. ''The US smallpox vaccination program.'' 2079.

[164] Cono et al. ''Smallpox vaccination and adverse reactions.'' 13.

[165] Lane et al. ''Adverse Events.'' 191.

[166] Rosenblatt et al. ''Cutaneous reactions to vaccinations.'' 328.

[167] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 263.

or manifestation of onset of 3–21 days after vaccination.

B. The Post-Vaccinial Encephalopathy (PVE), Encephalitis, and Encephalomyelitis Spectrum (PVEM)

PVEM is a spectrum of overlapping conditions that includes post-*vaccinial* encephalopathy, encephalitis, and encephalomyelitis, and, for the purposes of this NPRM, is treated as one injury. Encephalopathy, encephalitis, and encephalomyelitis are inflammations of the parenchyma (the functional tissue of an organ) of the central nervous system, the brain and spinal cord generally due to an infectious or post-infectious etiology. These conditions have been reported after receiving the replication-competent smallpox vaccine and have been causally associated with the replication-competent smallpox vaccine.[168] In addition to the replication-competent smallpox vaccine, more than one hundred viruses have been identified as causing encephalitis, and there are no known predictors for those individuals who will go on to develop encephalitis.[169] Of the conditions on the PVEM spectrum, the literature discusses PVE in depth.

In early vaccination campaigns in Great Britain, Europe, and the United States, cases of PVE were reported after receipt of the smallpox vaccine with varying rates of occurrence based on the type of vaccine used by each country.[170] [171] The Great Britain incidence of PVE decreased when they changed the type of replication-competent smallpox vaccine they were using to the Lister strain.[172] [173] Rates for PVE in Dutch military recruits were as high as 1 in 4,000 vaccinated, whereas in U.S. military recruits, the rate was estimated to be 1 in 100,000 vaccinated.[174] Statistics from the 1960s in the U.S. suggest the rates of PVE could range from 9 to 59 in 1 million vaccinated.[175] Among the more than 700,000 DoD vaccine recipients, three cases of PVE occurred.[176] Complications from vaccination were much less frequent in previously vaccinated individuals than those who were *vaccinia*-naïve.

Literature indicates there are two subtypes of PVE associated with the smallpox vaccine. First, microglial encephalitis results in the demyelination of the subcortical white matter and clinically resembles acute disseminated encephalomyelitis (ADEM). Second, the cytotoxic form presents with cerebral edema (swelling of the brain), infiltration of white blood cells into the meningeal tissues and hemorrhages around the small blood vessels of the brain.[177] [178]

A confirmed diagnosis of PVE requires demonstration of CNS inflammation by histopathology or neuroimaging. A suspected diagnosis is made by clinical features alone.[179] [180] The clinical symptoms of PVE generally begin 7 to 14 days post-vaccination. Clinically significant findings may be identified on magnetic resonance imaging (MRI) as early as day 5 post-vaccination with multifocal lesions noted throughout the white matter. Cerebral spinal fluid may be positive for *vaccinia* virus, but this does not universally occur. The initial symptoms of PVE may include headache, vomiting, drowsiness, and fever in mild cases. Severe cases may include these same symptoms, as well as paralysis, incontinence, urinary retention, coma, and seizures. There is no effective treatment for PVE, only supportive care. Approximately 25 percent of patients with PVE will die, and ⅓ of the survivors will experience a broad spectrum of residual neurological conditions that include mental impairment and paralysis.[181] [182]

The pathophysiology of CNS adverse reactions attributed to replication-competent smallpox vaccination is not completely understood, but it is thought to represent some type of autoimmune process involving the white matter of the CNS.[183] Direct infection of the CNS by *vaccinia* virus may result in acute cytotoxic neuronal damage and inflammation. However, laboratory evidence of virus replication is often lacking; inflammatory changes are attributed instead to immune response mechanisms.

Histopathological findings of PVE are often similar to those found with acute disseminated encephalomyelitis (or post-infectious encephalomyelitis). However, a diagnosis of acute disseminated encephalomyelitis is characterized by a longer interval of onset after immunization and by MRI findings suggesting acute demyelination.[184] Demyelination occurs as the result of an immune response in which the membrane that covers the nerves begins to breakdown. Demyelination interferes with nerve signal transmission.

PVE is diagnosed by excluding other causes of the symptoms prior to associating them with the vaccine.[185] Cerebral spinal fluid examination may show an increased number of white blood cells and increased protein, but this is not always the case.[186]

Based on a review of the medical and scientific literature, the Program's evidence standard has been met, and PVEM (including PVE, encephalitis, and encephalomyelitis) are serious physical injuries that may be directly caused by the administration or use of the replication-competent smallpox vaccine. The expected onset interval for the first symptom or manifestation is 5–14 days after vaccination.[187] [188]

C. Vaccinial Myocarditis, Pericarditis or Myopericarditis (MP)

For purposes of the NPRM, MP is *vaccinial* myocarditis, pericarditis, or myopericarditis. Myocarditis is an inflammation of the heart muscle without blockage of the coronary arteries, and pericarditis is an inflammation of the fibrous sack surrounding the heart muscle. Myopericarditis is the term used when the two conditions occur

[168] Cornelius Van Dam et al. ''Severe post *vaccinia* encephalitis with acute disseminated encephalomyelitis: recovery with early intravenous immunoglobulin, high-dose steroids, and *vaccinia* immunoglobulin.'' *Clinical Infectious Disease* 48(4) (February 15, 2009): e47.

[169] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 267.

[170] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 267.

[171] Kennedy et al. ''Smallpox and *vaccinia*.'' 738.

[172] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 267.

[173] Kennedy et al. ''Smallpox and *vaccinia*.'' 738.

[174] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 267.

[175] Van Dam et al. ''Severe post *vaccinia* encephalitis.'' e47.

[176] Van Dam et al. ''Severe post *vaccinia* encephalitis.'' e47.

[177] Van Dam et al. ''Severe post *vaccinia* encephalitis.'' e47.

[178] James J. Sejvar et al. ''Neurologic adverse events associated with smallpox vaccination in the United States, 2002–2004.'' *Journal of the American Medical Association* 294(21) (December 7, 2005): 2744.

[179] Cono et al. ''Smallpox vaccination and adverse reactions.'' 15.

[180] Stuart N. Isaacs and Harvey M. Friedman, ''*Vaccinia* virus as the smallpox vaccine.'' *UpToDate* (June 03, 2015): 5.

[181] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 267.

[182] Kennedy et al. ''Smallpox vaccines for biodefense.'' 738.

[183] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 268.

[184] John Neff et al. ''Monitoring the safety of a smallpox vaccination program in the United States: report of the joint smallpox vaccine safety working group of the advisory committee on immunization practices and the armed forces epidemiological board.'' *Clinical Infectious Disease* 46 (Supplement 3) (2008): S261.

[185] Cono et al. ''Smallpox vaccination and adverse reactions.'' 15.

[186] Cono et al. ''Smallpox vaccination and adverse reactions.'' 14.

[187] Cono et al. ''Smallpox vaccination and adverse reactions.'' 14.

[188] Fulginiti et al. ''Smallpox vaccination: a review, Part II.'' 267.

simultaneously. Severe cases of myopericarditis can result in dilated cardiomyopathy (DCM) characterized by an enlarged and weakened heart muscle. Myocarditis and pericarditis can cause palpitations, shortness of breath, fever, sweats, or chest pain and can be diagnosed by an abnormal electrocardiogram (ECG), imaging studies (echocardiogram), histopathology, or elevated cardiac enzymes. Myocardial dysfunction in cases of myopericarditis may result from direct viral injury or from a triggered immune response that targets the myocardium or pericardium. In mouse models of infectious myocarditis, the virus is only rarely isolated from the myocardium. The absence of direct infection of the myocardium suggests immune-mediated injury as the predominant pathogenic mechanism.

Inflammatory processes can be caused by a number of viral infections and autoimmune disorders and have *sequelae* ranging from self-limiting asymptomatic disease to DCM, resulting in fulminant (severe and sudden) congestive heart failure and possibly death. Myocarditis is blamed for causing up to 20 percent of all cases of sudden death among military recruits. Although cardiac events after the administration or use of replication-competent smallpox vaccine were reported in the literature before 2003, they were largely unrecognized during the worldwide eradication campaign and were thought to occur very rarely. Only six cases of cardiac complications after replication-competent smallpox vaccination with the New York City Board of Health (NYCBH) strain of *vaccinia* were reported in the United States before 2003.[189] In the past decade, cardiac complications following live *vaccinia* vaccination have been detected more often due to the availability of more sophisticated diagnostic techniques. Cardiac complications resulting from live *vaccinia* vaccination range in severity from mild to fatal and include myocarditis, pericarditis, arrhythmias, and DCM.[190]

Of 730,580 U.S. Armed Forces personnel vaccinated with the discontinued vaccine, Dryvax, 86 cases of myopericarditis with moderate or severe clinical presentation occurred in otherwise healthy vaccine recipients.[191] The single fatal case of myocarditis was in a female. The report calculated a rate of myopericarditis 7.5-fold higher than the expected background rate among 347,516 primary vaccine recipients with the expected rate being 2.16 per 100,000 vaccinated as opposed to the observed rate of 16.11 per 100,000 vaccinated.[192]

Of 37,901 HHS vaccine recipients, 21 civilians were diagnosed with mild cases of myopericarditis (at a rate of 554 per million), all of which resolved without further complication.[193] Additionally, four DoD and three HHS cases of DCM occurred among previously healthy subjects, with two requiring heart transplants.[194]

The occurrence of the vast majority of cardiac adverse events within 30 days of the smallpox vaccination, and clustering within 7–12 days post-vaccination, provides compelling, reliable, valid, medical and scientific evidence of a direct link between vaccination with live *vaccinia* virus and incidence of *vaccinia* associated cardiac complications consisting of *vaccinial* myocarditis, pericarditis and myopericarditis (MP). Based on a review of the medical and scientific literature, the Program's evidence standard has been met, and MP is a serious physical injury that may be directly caused by the administration or use of the replication-competent smallpox vaccine. Therefore, MP is proposed to be added to the Table with an onset interval for the first symptom or manifestation of 0–21 days after vaccination.[195] [196] Although clustering occurs 7–12 days post-vaccination, symptoms may begin within 24 hours of vaccination.[197] The literature does not indicate that cardiac manifestations have occurred beyond 21 days post-vaccination based on immune response.[198]

Anecdotal reports of ischemic heart disease, such as angina pectoris or myocardial infarction (heart attacks), occurring in a few individuals following receipt of the smallpox vaccine have been published in the literature.[199] However, these reports are not compelling, reliable, valid, medical and scientific evidence demonstrating that the replication-competent smallpox vaccine directly causes ischemic heart disease. Therefore, the Secretary does not propose to add ischemic heart disease to the Table, and claims for this injury will be considered non-Table injuries and evaluated on a case-by-case basis based on the Program's evidence standard.

Other Conditions of Special Interest to Smallpox Vaccination

Although the conditions listed below may be of special interest to the public and are being monitored by HHS, the Secretary does not propose including them on the Table at this time because compelling, reliable, valid, medical and scientific evidence of causation does not currently exist. The conditions include the following:

A. Secondary Infection

Secondary infections resulting from loss of skin integrity because of receiving a replication-competent vaccine are common. All instances of secondary infection will be considered non-Table injuries and evaluated on a case-by-case basis based on the Program's evidence standard.

B. Serum Sickness

Serum sickness is a systemic, immune complex–mediated hypersensitivity vasculitis classically attributed to the therapeutic administration of foreign serum proteins. It is a classic example of a type III hypersensitivity reaction caused by antigen-antibody complexes. The symptoms of serum sickness generally begin 7–12 days after injection of the foreign material, but may appear as late as 3 weeks afterward. Immune complexes involving heterologous (animal) serum proteins and complement activation are important pathogenic mechanisms in serum sickness. Reactions originally described as serum sickness—like are now attributed to drug allergy, triggered in particular by antibiotics (*e.g.,* penicillin, cefaclor), and, rarely, to other agents, such as human immune globulin, humanized monoclonal antibodies, and insect venom. The Program is not aware of compelling, reliable, valid, medical and scientific evidence in literature demonstrating the smallpox vaccine directly causes serum sickness. Therefore, the Secretary does not propose to add serum sickness to the

[189] Juliette Morgan et al. ''Myocarditis, pericarditis, and dilated cardiomyopathy after smallpox vaccination among civilians in the United States, January–October 2003.'' *Clinical Infectious Disease* 46 Supplement 3 (2008): S242.

[190] Nalca et al. ''ACAM200™: The New Smallpox vaccine.'' 76.

[191] Poland et al. ''The US smallpox vaccination program.'' 2079.

[192] Poland et al. ''The US smallpox vaccination program.'' 2079.

[193] Morgan et al. ''Myocarditis, pericarditis, and dilated cardiomyopathy.'' S246.

[194] Neff et al. ''Monitoring the safety of a smallpox vaccination program.'' S262.

[195] Centers for Disease Control and Prevention, ''Cardiac adverse events following smallpox vaccination—United States, 2003.'' *Morbidity and Mortality Weekly Report* 52(12) (March 28, 2003): 250.

[196] Dimitri C. Cassimatis et al. ''Smallpox vaccination and myopericarditis: a clinical review.'' *Journal of the American College of Cardiology* 43(9) (May 5, 2004): 1505.

[197] Centers for Disease Control and Prevention, ''Cardiac adverse.'' 3.

[198] Lane et al. ''Adverse events.'' 190.

[199] Centers for Disease Control and Prevention, ''Cardiac adverse.'' 2.

Table, and claims for this injury will be considered non-Table injuries and evaluated on a case-by-case basis based on the Program's evidence standard.

C. Shoulder Injury Related to Vaccine Administration (SIRVA)

Shoulder Injury Related to Vaccine Administration (SIRVA) manifests as shoulder pain and limited range of motion occurring after the administration of a vaccine intended for intramuscular administration in the upper arm. The symptoms occur in the arm in which the vaccine was administered because of unintended injection of vaccine antigen or trauma from the needle into and around the underlying bursa of the shoulder resulting in an inflammatory reaction. SIRVA is not a neurological injury.

The smallpox vaccine is administered via a bifurcated (two-pronged) needle into the deep epidermis when administering Smallpox (*Vaccinia*) Vaccine Live, replication-competent or, in the case of Smallpox and Monkeypox Vaccine, Live, Non-replicating replication-deficient, via a subcutaneous (under the skin) injection. Both injections generally take place over the deltoid or triceps muscles. As the smallpox vaccine is administered in a manner other than an intramuscular injection and neither the vaccine nor the needle reaches the internal structures of the shoulder, there is no compelling, reliable, valid, medical and scientific evidence of a direct causal association between the smallpox vaccination and SIRVA. Therefore, the Secretary does not propose to add SIRVA to the Table at this time, and claims for this injury will be considered non-Table injuries and evaluated on a case-by-case basis based on the Program's evidence standard.

D. Subdeltoid Bursitis

Subdeltoid bursitis (*e.g.,* deltoid bursitis, subacromial bursitis) is an inflammation of the bursa located between the deltoid muscle and the capsule of the shoulder joint. A bursa is a closed fluid-containing sac that reduces friction between bones and tendons, or bones and skin. The bursa extends below the deltoid muscle, and it is possible for a deep injection given high in the shoulder to enter the bursa inadvertently causing an inflammatory bursitis. Subdeltoid bursitis can result in debilitating pain or immobility.

As stated above, the smallpox vaccine is administered via a bifurcated (two-pronged) needle into the deep epidermis or via a subcutaneous (under the skin) injection. Both injections generally take place over the deltoid or triceps muscles. Since the smallpox vaccine is administered in a manner other than an intramuscular injection and neither the vaccine nor the needle reaches the subdeltoid space, there is no compelling, reliable, valid, medical and scientific evidence of a direct causal association between the smallpox vaccination and subdeltoid bursitis. Therefore, the Secretary does not propose to add subdeltoid bursitis to the Table at this time. However, claims for this injury will be considered non-Table injuries and evaluated on a case-by-case basis based on the Program's evidence standard.

E. EM

EM is a typically mild and self-limiting mucocutaneous reaction characterized by target lesions on the skin and mucous membranes.[200] Historically, EM comprised a disease spectrum that was classified by increasing degrees of severity. The spectrum included a minor form (EM minor) and a more severe or major form (EM major), SJS. TEN completed the spectrum as the most severe form of the disease. The unifying clinical features of these diseases that placed them under the EM spectrum were target lesions, similar mucosal features and epidermal necrosis. However, current evidence suggests that EM, SJS, and TEN are not in the same continuum. SJS and TEN are the same disease differing only in the area of involvement and severity of systemic findings. EM and SJS/TEN differ in their cause, clinical presentation, pathology and therapy.[201]

EM is almost always infectious in origin, with herpes simplex virus (HSV) as the infectious agent in 70–80 percent of cases.[202] Drugs have been estimated to induce EM in less than 10 percent of cases. The most common precipitators are non-steroidal anti-inflammatory drugs, sulfonamides, anti-epileptics and antibiotics.[203] The interpretation of the literature on drug-induced EM is complicated by previous classification of SJS/TEN as part of the EM spectrum. This is true for studies involving smallpox and EM. A 1968 study noted that EM accounted for 13 percent of all complications associated with the replication-competent smallpox vaccine or a rate of 165 cases of EM per 1 million persons vaccinated.[204] In 1977, an Australian study of 938 adverse events related to the replication-competent smallpox vaccine identified 87 cases of EM, which represented 9.3 percent of all of the reported complications.[205] Neither of these studies specified the severity of EM or mentioned SJS/TEN.

EM most often manifests as both skin and mucosal lesions, but may also exhibit skin lesions alone. Occasionally, EM presents only with mucous membrane involvement. Skin lesions most commonly appear in a symmetrical distribution on the extremities (acral distribution) and spread centripetally (toward the center). Skin lesions are usually asymptomatic though some patients experience itching and burning. Oral mucous lesions are common. Mucosal lesions can also be found in other sites (such as genital area and eyes) but are less common.[206] In most patients, EM is a transient condition that spontaneously resolves without long-term morbidity. EM lesions usually appear over the course of 3 to 5 days and resolve in approximately 2 weeks. Skin lesions do not scar, but post-inflammatory hyperpigmentation may remain months after resolution. Rarely, patients experience complications, such as fluid and electrolyte abnormalities, or those with eye involvement can have scarring and visual impairment.[207]

Based on a review of the medical and scientific literature, EM is a physical injury that may be directly caused by the use of the replication-competent smallpox vaccine. However, since EM is typically a mild and self-limiting condition, it is not considered a serious injury based on the Program's standards. Therefore, the Secretary does not propose to add EM to the Table and claims for this injury will be considered non-Table injuries and evaluated on a case-by-case basis, based on the Program's evidence standard.

Non-Vaccine Countermeasures

In addition to the smallpox vaccine, there are other potential countermeasures that might be used either for smallpox or to treat adverse

[200] P. Michele Williams and Robert J. Conklin. ''Erythema multiforme: A review and contract from Stevens-Johnson syndrome/toxic epidermal necrolysis.'' *Dental Clinics of North America* 2005; 49: 67–76.

[201] Williams et al. ''Erythema multiforme.'' 68.

[202] Williams et al. ''Erythema multiforme.'' 68.

[203] David Wetter. ''Erythema multiforme: Pathogenesis, clinical features and diagnosis.'' 2019 UpToDate.

[204] J. Michael Lane et al. ''Complications of smallpox vaccination, 1968: Results of ten statewide surveys.'' *Journal of Infectious Disease* 122(4) (October 1, 1970): 305.

[205] B.J. Feery, ''Adverse reactions after smallpox vaccinations.'' *Medical Journal of Australia* 2 (August 6, 1977): 181.

[206] J. Clark Huff, William Weston, and Marcia Tonnesen. ''Erythema multiforme: A critical review of characteristics, diagnostic criteria and causes.'' *Journal of the American Academy of Dermatology* 8(6) (June 1983): 763–775.

[207] Huff et al. Erythema multiforme, 767–768.

events following vaccination including *vaccinia* immunoglobulin intravenous (VIGIV), cidofovir, tecovirimat, and brincidofovir. The Secretary proposes to add VIGIV, cidofovir, tecovirimat and brincidofovir to the Table as covered countermeasures.

Vaccinia Immunoglobulin Intravenous (VIGIV)

Vaccinia immunoglobulin intravenous (VIGIV) is a medication that is used to treat some of the complications (adverse side effects) of receiving the smallpox vaccine. It is not indicated for treatment of smallpox infection. Immunoglobulins are a class of medication used to treat many autoimmune diseases and primary immune deficiency, infections, and complications from the smallpox vaccine. Although the clinical use of, and experience with, VIGIV is limited, this product is derived in the same way as other types of immunoglobulins and is thought to have the same side effects and potential complications. As a result, the possible adverse side effects are thought to be similar to other immunoglobulins (class effect).

VIGIV is harvested from the plasma of persons vaccinated with *vaccinia* virus and who have had a sufficient immune response to produce antibodies in an effort to prevent smallpox infection. Individuals who were vaccinated, as part of their immune response, develop antibodies after vaccination, and those antibodies are collected within donated plasma. The plasma is processed into VIGIV. VIGIV may help in ameliorating some complications of *vaccinia* immunization including eczema *vaccinatum,* progressive *vaccinia,* or severe generalized *vaccinia.* It may also be used to treat autoinoculation to the eye or eyelid. VIGIV is not thought to be effective in treating PVE. The current VIGIV product is administered intravenously.

The following injuries have been associated with the use of immunoglobulins: (a) anaphylaxis, (b) transfusion related acute lung injury, (c) acute renal failure, (d) drug-induced aseptic meningitis, (e) hemolysis, and (f) thrombosis.[208]

A. Anaphylaxis

A general discussion of anaphylaxis is in the Anaphylaxis section under the Smallpox Vaccine heading of this NPRM. *Vaccinia* immune globulin is a product derived from human plasma and as such, it contains human proteins and antibodies. According to the literature, the use of VIGIV poses a risk of anaphylaxis when used in individuals who have an immunoglobulin A (IgA) deficiency and who go on to form immunoglobulin E (IgE) antibodies against IgA or who have had a previous allergic reaction to human antibody/blood products.[209] [210] [211] The number of individuals with IgA deficiency varies based on geographic location. Estimates of IgA deficiency range from 1 in 400 to 1 in 3,000 within the U.S. Approximately 30–40 percent of this population also has anti-IgA antibodies. It is possible to reduce the amount of IgA in VIGIV. However, it is not possible to eliminate the antibody, and only very small amounts are necessary to cause anaphylaxis.[212]

Based on the unique nature of the presentation and timing of anaphylaxis, the consensus in the medical community regarding causation based on IgA antibody reactions, and the existing medical literature, anaphylaxis is proposed for inclusion on the Table because it is a serious physical injury that may be directly caused by the administration or use of VIGIV, as supported by the Program's evidence standard. Consistent with the time interval for the first manifestation of anaphylaxis after exposure to a foreign protein and as established in the 1994 IOM clinical case definition of anaphylaxis [213], the Secretary proposes including anaphylaxis as an injury on the Table with an onset interval of 0–4 hours for the first symptom or manifestation to occur after the administration or use of VIGIV.[214] This timeframe is consistent with other medications or blood derived products that may induce anaphylaxis.[215]

In rare cases of acute anaphylaxis, initial symptoms of the immediate reaction may present up to 12 hours after exposure. A slow evolving late phase hypersensitivity reaction is possible, with an onset that usually begins 4–8 hours after the immediate reaction ends. The medical literature contains reports of late phase onset up to 72 hours later.[216] The late phase reaction results from a different immunologic mechanism of action. The late phase reaction is part of a biphasic reaction. It is possible for the first immediate hypersensitivity reaction to be relatively mild, unrecognized, or not observed. There may be unusual cases in which the immediate reaction is delayed and/or cases that the immediate reaction is not recognized, with the first apparent manifestation occurring in the late phase. These unusual cases do not meet the requirements to be considered table injuries, and will be evaluated on a case-by-case basis based on the Program's evidence standard.

B. Transfusion-Related Acute Lung Injury (TRALI)

Transfusion-related acute lung injury (TRALI) is defined as the onset of respiratory distress within 6 hours after receipt of plasma containing blood products in non-critically ill patients. However, in critically ill patients, the literature states that it may take as long as 72 hours to develop TRALI post-transfusion.[217] As VIGIV is derived from human plasma, VIGIV may precipitate TRALI.

TRALI is a form of non-cardiac pulmonary edema identified by chest x-ray and characterized by severe respiratory distress, pulmonary edema, hypoxia (oxygen starvation), and fever in the presence of normal left ventricular function.[218] A patient experiencing TRALI may require mechanical ventilation to treat the respiratory distress, pulmonary edema, and hypoxia. The use of mechanical ventilation is associated with other injuries and complications, such as lung trauma and tracheal stenosis. TRALI has been identified as a major cause of mortality in those individuals receiving plasma-containing transfusions.[219]

Although not completely understood, it is believed that the basis of TRALI rests in a host antibody response to receiving blood products that contain plasma, via transfusion. The host receives a transfer of donor anti-leukocyte antibodies (antibodies that act against the patient's white blood cells) within the plasma and then develops a reaction causing the activation of the endothelial cells and pulmonary neutrophils leading to capillary leakage

[208] David J. Hamrock, ''Adverse events associated with intravenous immunoglobulin therapy.'' *International Immunopharmacol* 6 (2006): 535.

[209] Centers for Disease Control and Prevention (CDC). ''Smallpox supplemental fact sheet: Investigational *vaccinia* immune globulin (VIG) information.'' (March 10, 2009): 1.

[210] Hamrock, ''Adverse events associated.'' 535.

[211] Patrick Cherin et al. ''Management of adverse events in the treatment of patients with immunoglobulin therapy: a review of evidence.'' *Autoimmunity Reviews* 15 (September 16, 2015): 75.

[212] Hamrock, ''Adverse events associated.'' 539.

[213] Institute of Medicine, ''Immunization safety review vaccination.'' 5.

[214] Ruggeberg et al. ''Anaphylaxis.'' 5677–5678.

[215] Ruggeberg et al. ''Anaphylaxis.'' 5677–5678.

[216] Ruggeberg et al. ''Anaphylaxis: case definition and guidelines.'' 5677.

[217] Alexander P.J. Vlaar and Nicole P. Juffermans, ''Transfusion-related acute lung injury: a clinical review.'' *Lancet* 328 (May 1, 2013): 984.

[218] ''*Vaccinia* immune globulin intravenous (human)'' [package insert]. Cangene Corporation, Frederick, MD; (2010): 7.

[219] Vlaar et al. ''Transfusion-related acute.'' 984.

and pulmonary edema (fluid in the lungs).[220] The patient then goes on to develop the classic symptoms of TRALI.[221]

Based on the unique nature of the presentation and timing of TRALI together with consensus in the medical community regarding causation, and the existing scientific and medical literature, the Program's evidence standard has been met, and TRALI is as a serious physical injury proposed to be added to the Table. The Secretary proposes including TRALI as an injury on the Table with an onset interval of 0–72 hours for the first symptom or manifestation to occur after the administration or use of VIGIV.[222]

C. Acute Renal Failure

Acute renal failure (ARF) is the sudden inability of the kidneys to filter waste products from the blood stream. This leads to the build-up of waste products and fluid in the body and can lead to a metabolic derangement (chemical imbalance), fluid overload, and death, if not identified and treated early. Acute renal failure can occur over a matter of hours or days and can generally be treated and reversed if diagnosed early. The use of immunoglobulin has been identified as a factor leading to the development of ARF. Between 1985 and 1998, the FDA received 120 reports of patients developing ARF associated with the use of immunoglobulins.[223] The majority of cases of renal failure were associated with the use of immunoglobulins that contained sucrose as a stabilizing agent. The sucrose caused swelling within the kidney and the loss of renal function.[224] VIGIV does not contain sucrose, but rather maltose, which may decrease the incidents of ARF but not eliminate the risk of developing the condition completely.[225]

The factors that may contribute to or precipitate ARF when using VIGIV include: (1) Pre-existing renal insufficiency or use of VIGIV in patients at risk of developing renal insufficiency due to diabetes; (2) age older than 65 years; (3) volume depletion (dehydration); (4) paraproteinemia (high amount of paraprotein in the blood); (5) sepsis; (6) a faster rate of immunoglobulin infusion; and (7) the concomitant use of nephrotoxic (kidney toxic) drugs.[226] [227] [228]

Based on existing scientific and medical literature, the Program's evidence standard has been met, and ARF is as a serious physical injury proposed to be added to the Table. The onset of ARF with the use of VIGIV begins with the onset of renal insufficiency, progressing to renal failure, and occurs within 0–10 days after receiving VIGIV. Therefore, the Secretary proposes adding ARF to the Table as an injury associated with the use of VIGIV with a time of onset within 10 days for the first symptom or manifestation to occur after the administration or use of VIGIV.[229] [230] [231] [232] [233]

D. Drug-Induced Aseptic Meningitis

Drug-induced aseptic meningitis (DIAM) is an inflammation of the linings of the brain (meninges) that is not caused by a bacteria or virus, but by a drug or medication. The symptoms of meningitis include severe headache, nuchal (neck) rigidity, drowsiness, fever, photophobia (light sensitivity), painful eye movements, nausea, and vomiting. Discontinuation of the medication leads to a resolution of the symptoms. It is postulated that DIAM occurs because of an immunological hypersensitivity reaction to a specific medication.[234] In the case of immunoglobulins, DIAM may be precipitated by the immunologically active components within the plasma or because of the stabilizers used within the product.[235] The symptoms of DIAM may reoccur with another exposure to the offending agent. Drugs that can cause DIAM include immunoglobulins, non-steroidal anti-inflammatory drugs (NSAIDs), drugs delivered via the intrathecal route (into the spinal canal) and antibiotics.[236] [237]

The incidence of DIAM is estimated to occur in approximately 1 percent of patients receiving immunoglobulins. Most patients who experience immunoglobulin-associated DIAM recover completely within 5 days of stopping the medication and without *sequelae* or permanent injury.[238] It appears that individuals with a history of migraine headaches have an increased risk for developing immunoglobulin associated DIAM.[239] In addition, the dose delivered may contribute to the development of DIAM. Doses of immunoglobulin given at 2 g/kg/cycle appeared to precipitate aseptic meningitis when compared to smaller doses.[240]

Based on existing scientific and medical literature, the Program's evidence standard has been met, and DIAM is a serious physical injury proposed to be added to the Table. As noted by Jolles et al., the anticipated time of onset for the first symptom or manifestation to occur is within 48 hours after the administration or use of the first dose of VIGIV and no more than 48 hours after the administration or use of the last dose of VIGIV.[241] Therefore, the Secretary proposes adding DIAM within this time of onset interval as a Table injury.

E. Hemolysis

Hemolysis is the physical breakdown of red blood cells (RBCs) either through natural attrition or as caused by external factors. An RBC's natural life cycle ranges from 110 to 120 days. This cycle coincides with the production of RBCs within the bone marrow, which maintains homeostasis (steady state). The RBC's function is to transport oxygen throughout the body in the hemoglobin contained within the RBCs. Additionally, the RBCs contain the majority of the body's potassium stores. When RBCs break down faster than their natural life cycle, the bone marrow

[220] Vlaar et al. ''Transfusion-related acute.'' 985.

[221] Robert S. Makar, Amy Powers and Christopher Stowell, ''Reducing transfusion-related acute lung injury risk: evidence for and approaches to transfusion-related acute lung injury mitigation.'' *Transfusion Medicine Reviews* 26(4) (October 2012): 305.

[222] Vlaar et al. ''Transfusion-related acute.'' 984.

[223] M. Jennifer Cheng and Colleen Christmas, ''Special consideration with the use of intravenous immunoglobulin in older persons.'' *Drugs Aging* 28(9) (2011): 732.

[224] Hamrock, ''Adverse events associated.'' 538.

[225] Hamrock, ''Adverse events associated.'' 538.

[226] Cono et al. ''Smallpox vaccination and adverse reactions.'' 18.

[227] *Vaccinia* immune globulin intravenous package insert.

[228] Hamrock, ''Adverse events associated.'' 538.

[229] H.I.A. Sati, R. Ahya and H.G. Watson, ''Incidence and associations of acute renal failure complicating high-dose intravenous immunoglobulin therapy.'' *British Journal of Haematology* 113 (January 4, 2001): 557.

[230] Doreen Bianchi-Winward and Mary T. Brophy, ''Acute renal failure after administration of intravenous immunoglobulin: review of the literature and case report.'' *Pharmacotherapy* 15(6) (1995): 766.

[231] Yelena M. Itkin and Toby C. Trujillo, ''Intravenous immunoglobulin-associated acute renal failure: case series and literature review.'' *Pharmacotherapy* 25(6) (2005): 889.

[232] N. Gupta et al. ''Intravenous gammaglobulin-associated acute renal failure.'' *American Journal of Hematology* 66 (2001): 1552.

[233] Thomas G. Cantu et al. ''Acute renal failure associated with immunoglobulin therapy.'' *American Journal of Kidney Disease* 25(2) (February 1995): 228.

[234] Stephen Jolles, W.A. Carrock-Sewell and Carol Leighton, ''Drug-induced aseptic meningitis.'' *Drug Safety* 3 (March 2000): 216.

[235] Jolles et al. ''Drug-induced.'' 221.

[236] German Moris and Juan Carlos Garcia-Monoco, ''The challenge of drug-induced aseptic meningitis revisited.'' *Journal of the American Medical Association* 174(9) (September 2004): 1511.

[237] Jolles et al. ''Drug-induced.'' 217.

[238] Cherin et al. ''Management of adverse events.'' 75.

[239] Hamrock, ''Adverse events associated.'' 537.

[240] Hamrock, ''Adverse events associated.'' 537.

[241] Jolles et al. ''Drug-induced.'' 221.

cannot produce new cells fast enough to maintain RBC levels, resulting in anemia. The body is unable to transport oxygen effectively, and the person develops hypoxia (oxygen starvation). Additionally, the rapid breakdown of the cell releases large amounts of potassium into the blood stream, which can cause abnormal heart rhythms. Breakdown of RBCs also releases large amounts of hemoglobin which may result in renal damage. In severe cases of hemolysis, a blood transfusion may be required to correct the resulting anemia.[242]

Conditions that contribute to hemolysis include immune reactions, infections, toxins, poisons, hemodialysis, and medications. Immunoglobulins cause hemolysis in certain individuals due to blood group antibodies. These antibodies cause RBCs to be coated with immune globulin, which leads to an anti-globulin reaction and hemolysis.[243] Individuals with non-group O type blood may be more susceptible to hemolysis in conjunction with the use of immunoglobulin.[244] There may also be a relationship between hemolysis and the total accumulative amount of immunoglobulin received by an individual. Individuals who have received a larger accumulative dose of immunoglobulin had a greater likelihood of developing hemolysis.[245]

Based on existing scientific and medical literature, the Program's evidence standard has been met, and development of hemolysis after the use or administration of VIGIV is a serious physical injury proposed to be added to the Table. As noted by Berg, et al., the onset of hemolysis associated with the use of VIGIV is anticipated to develop between 12 hours and 14 days from the administration of VIGIV.[246] [247] Therefore, the Secretary proposes adding hemolysis as a Table injury with a time of onset from 12 hours to 14 days for the first symptom or manifestation to occur after the administration or use after of VIGIV.[248]

Other Conditions of Special Interest to VIGIV

A. Thrombotic Events

A thrombotic event involves the formation of a blood clot within a blood vessel. This clot restricts flow of blood back to the heart and lungs in the area distal to (behind) the clot. Once formed the clot poses a risk of dislodging, becoming an embolism, floating to a smaller blood vessel in the brain, lung, or heart and causing tissue death in one of these areas resulting in a stroke, pulmonary embolism, or heart attack, respectively. People with a history of atherosclerosis (blood vessel disease), multiple cardiovascular risk factors, advanced age, impaired cardiac output, hypercoagulable disorders (blood clotting disorders), prolonged periods of immobilization and known or suspected hyperviscosity (thickening of the blood) are at increased risk of thrombus formation.[249] [250] [251] [252] [253] Additional risk factors for forming a thrombus include smoking, obesity, pregnancy, and the use of oral contraceptives.[254]

Medical and scientific literature supports an association between the use of VIGIV and thrombotic events. There are a number of predisposing factors, which may increase an individual's risk of developing a thrombus in association with the use of immunoglobulins. Since multiple external factors play a role in the development of a thrombus, a timeframe for the onset of a thrombotic event after the use of VIGIV that meets the Program's evidence standard cannot be determined. Therefore, claims for thrombotic events associated with the use of VIGIV will be considered a non-table injury and evaluated on a case-by-case basis based on the Program's evidence standard.

B. Interference With Blood Glucose Testing

As noted above, VIGIV uses maltose, a disaccharide or sugar, in its composition. Some forms of blood glucose monitoring equipment may falsely identify the presence of maltose as an elevated blood glucose level. Treating this false reading by providing supplemental insulin could result in hypoglycemia (low blood sugar) in patients receiving VIGIV.[255]

There is compelling, reliable, valid, medical and scientific evidence that the use of VIGIV may lead to false measurements of elevated blood glucose levels if the appropriate testing methods are not used. However, these falsely elevated blood glucose levels in and of themselves are not harmful unless treated inappropriately. Since false test results alone do not meet the Program's definition of a serious injury, the Secretary does not propose adding interference with blood glucose testing as a Table injury with the use of VIGIV. However, claims of hypoglycemia resulting from the treatment of falsely elevated blood glucose levels will be considered a non-Table injury and will be evaluated on a case-by-case basis based on the Program's evidence standard.

C. Infectious Contamination

As immunoglobulins generally and VIGIV specifically are products derived from human blood plasma, there is a risk, however slight, of the product being contaminated with human viruses. Prior to donating plasma, all donors are tested for certain infectious diseases. Additionally, during the processing of plasma into VIGIV, it undergoes treatment to remove and or kill infectious organisms. It is possible, however, that an individual could potentially obtain a blood-borne infection from receiving VIGIV.[256]

The medical literature supports the theoretical possibility of infectious contamination of VIGIV; however, as there is no compelling, reliable, valid, medical or scientific evidence linking VIGIV to a specific infection meeting the Program's definition of a serious injury, each claim for unintended infections caused by the receipt of VIGIV will be considered on a case-by-case basis based on the Program's evidence standard.

Cidofovir

Cidofovir is a medication that is only approved to treat cytomegalovirus retinitis in HIV-infected persons. However, it has been included in some recommendations as a potential second-line agent that might be used under an

[242] Cherin et al. ''Management of adverse events.'' 78.

[243] *Vaccinia* immune globulin intravenous package insert.

[244] Cherin et al. ''Management of adverse events.'' 78.

[245] Cherin et al. ''Management of adverse events.'' 78.

[246] Zohra Daw et al. ''Hemolytic transfusion reactions after administration of intravenous immune (gamma) globulin: a case series analysis.'' *Transfusion* 48(8) (August 2008): 1598.

[247] Scott Winiecki et al. ''Complementary use of passive surveillance and mini-sentinel of better characterize hemolysis after immune globulin.'' *Transfusion* 55 (July 2015): s30.

[248] Roger Berg et al. ''Hemolytic events associated with intravenous immune globulin therapy: a qualitative analysis of 263 cases reported to four manufacturers between 2003 and 2012.'' *Transfusion* 55 (July 2015): S40.

[249] Cangene Corporation, ''*Vaccinia* immune globulin intravenous package insert.'' (2005): 6.

[250] Hamrock, ''Adverse events associated.'' 538–539.

[251] Cherin et al. ''Management of adverse events.'' 76–77.

[252] Gregory W. Daniel et al. ''Immune globulins and thrombotic adverse events as recorded in a large administrative database in 2008 through 2010.'' *Transfusion* 52 (October 2012): 2117.

[253] Cheng et al. ''Special considerations with the use.'' 733.

[254] Mayo Clinic, ''Diseases and conditions-Deep vein thrombosis (DVT). (August 10, 2018). Available from *https://www.mayoclinic.org/diseases-conditions/deep-vein-thrombosis/symptoms-causes/syc-20352557.*

[255] Cangene Corporation, ''*Vaccinia* immune globulin intravenous package insert.'' (2005): 6.

[256] Cangene Corporation, ''*Vaccinia* immune globulin.'' 7–8.

investigational protocol when treatment with VIGIV is not sufficient or not available to treat adverse events related to the smallpox vaccine, based on studies in animals.[257] It might sometimes be used (preferably under an IND protocol) for serious vaccine adverse events, such as eczema vaccinatum or progressive *vaccinia,* if other potential countermeasures are not available or not working. Reports indicate some activity in the laboratory against *vaccinia* and variola viruses, but there is currently no human data showing efficacy against any poxvirus infection. Cidofovir is injected through a needle into the vein. The co-administration of intravenous fluids (fluids given through the vein) and probenecid have been shown to decrease the renal side effects of cidofovir. Cidofovir is a pregnancy category ''C'' meaning that can cause severe birth defects in pregnant women. Cidofovir is excreted in breast milk, therefore, nursing mothers should not receive cidofovir or discontinue nursing.[258]

The major adverse events associated with the use of cidofovir are kidney injury that can lead to kidney failure and a decreased number of white blood cells, which may in turn lead to increased susceptibility to infections. Additionally, the following have been reported with the use of cidofovir: Decreased pressure in the eye, swelling and tenderness of the eye, and buildup of acid in the body that can result in liver abnormalities and inflammation of the pancreas that can result in death. Other symptoms include fever, infection, pneumonia, shortness of breath, and nausea with vomiting.

At this time, the Secretary is not proposing to add any injuries to the Table related to the use of cidofovir. Claims of injuries associated with the use of cidofovir will be considered as a non-Table injury and evaluated on a case-by-case basis based on the Program's evidence standard.

Conditions of Special Interest to Cidofovir

Acute Renal Failure

Acute renal failure (ARF), associated with the use of cidofovir, can occur after as few as one or two doses and in some cases has been reported as resulting in dialysis or contributing to death. It is believed that cidofovir is toxic to the epithelial cells of the kidney, and this combined with other factors can lead to the development of ARF.[259] The factors that may contribute to, or precipitate, ARF when using cidofovir include: (1) Pre-existing renal insufficiency or use of cidofovir in patients at risk of developing renal insufficiency; (2) increased baseline serum creatinine concentration greater than 1.5 mg/dL, baseline creatinine clearance less than 55mL/min; (3) baseline urine protein concentration greater than 100 mg/dL, 2+ proteinuria (protein in the urine); or (4) glycosuria (glucose or sugar in the urine) and concomitant use of nephrotoxic drugs.[260]

The compelling, reliable, valid, medical and scientific evidence, regarding the clinical use of this medication in treating the complications of smallpox vaccination, and other types of infections, indicates that there is an increased risk of developing ARF with the use of cidofovir. However, the literature does not establish an exact time of onset for the possible development of ARF after using cidofovir. The increased risk of developing ARF is individually based and may be influenced by the patient's age, fluid status, baseline renal function, and the level of infection at the time the medication is administered. Because an exact timeframe for the onset of ARF with the use of cidofovir cannot be established by compelling, reliable, and valid medical and scientific evidence, the Secretary does not propose including ARF after the use of cidofovir as a Table injury. Claims for ARF associated with the use of cidofovir will be considered a non-Table injury and evaluated on a case-by-case basis based on the Program's evidence standard.

Other Conditions

The following injuries have been associated with the use of cidofovir: neutropenia (abnormally low concentration of the white blood cells, neutrophils), decreased intraocular pressure and metabolic acidosis (an imbalance of the acid/base balance within the body).[261] Although documented in medical case studies, most of these data were collected from patients with significant co-morbidities, including organ transplants, and/or who were taking other medications, such as immunosuppressants. There is insufficient compelling, reliable, valid, medical and scientific evidence that these injuries are directly caused by cidofovir. Therefore, the Secretary does not propose to add these injuries to the Table at this time. Claims for these injuries associated with cidofovir will be considered on a case-by-case basis as non-Table injuries.

Tecovirimat

Tecovirimat is a small-molecule antiviral oral drug that has been approved for the treatment of smallpox under the Animal Rule[262] which in certain instances allows for approval based on adequate and well-controlled animal efficacy studies. An intravenous formulation is presently under development. Although extensively tested in animal models, the drug has had no efficacy testing in humans due to the eradication of naturally occurring smallpox, but an acceptable safety profile has been demonstrated in healthy human volunteers. It is also possible that it would be used as an investigational treatment for certain serious *vaccinia* vaccine adverse events. In a clinical trial with 359 participants receiving tecovirimat, 21 individuals reported minor adverse side effects.[263] Due to the limited information regarding possible adverse reactions associated with tecovirimat, there is presently no compelling, reliable, valid, medical and scientific evidence of any injury directly caused by tecovirimat. Therefore, the Secretary does not propose to add any injuries to the Table as associated with tecovirimat at this time, and claims for injuries associated with it will be considered a non-Table injury and evaluated on a case-by-case basis based on the Program's evidence standard.

Brincidofovir

Brincidofovir is a broad-spectrum antiviral agent, which has activity in the laboratory against a number of double stranded DNA (dsDNA) viruses and has been under investigation for its potential clinical utility. It might be used as an investigational treatment of some serious *vaccinia* vaccine complications and is under development for possible use against smallpox, but its role in treating any of these infections has not been established. Brincidofovir is a nucleotide analog of the drug, cidofovir; however, brincidofovir is likely to demonstrate a different spectrum of

[257] Cono et al. ''Smallpox vaccination and adverse reactions.'' 14.

[258] Mylan Institutional LLC. Cidofovir package insert. *https://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?setid=56541229-8c1a-4550-8951-2415ed08e7e9.*

[259] Hassane Izzedine, Vincent Launay-Vacher and Gilbert Deray, ''Antiviral drug-induced nephrotoxicity.'' *American Journal of Kidney Diseases* 45(5) (May 2005): 804.

[260] Mylan Institutional LLC. Cidofovir package insert.

[261] Cono et al. ''Smallpox vaccination and adverse reactions.'' 19–20.

[262] *See* 21 CFR part 314 Subpart I.

[263] U.S. Food and Drug Administration. ''Drug Trial Snapshot: TPOXX.'' (July 13, 2018): 1–2.

toxicity when compared to cidofovir.[264] Specifically, gastrointestinal toxicity (including severe diarrhea) and hepatotoxicity have been observed in clinical trials of brincidofovir; however, most of these data were collected from patients with significant co-morbidities, including patients' post-stem cell or solid organ transplantation who were taking other medications, such as immunosuppressants.[265]

Due to the challenges inherent in evaluating the available safety data regarding possible adverse reactions associated with brincidofovir, there is no compelling, reliable, valid, medical and scientific evidence of any injury directly caused by brincidofovir. Therefore, the Secretary does not propose to add any injuries to the Table as associated with brincidofovir at this time, and claims for injuries associated with it will be considered a non-Table injury and evaluated on a case-by-case basis based on the Program's evidence standard.

Smallpox Infection Diagnostic Testing Devices

Presently, there is no compelling, reliable, valid, medical and scientific evidence demonstrating a causal association between smallpox infection diagnostic testing devices and any serious injuries. Therefore, the Secretary does not propose to add any injuries to the Table as associated with diagnostic testing devices at this time. Any claims of injury from the use or administration of smallpox infection diagnostic testing devices will be considered as non-Table injuries and evaluated on a case-by-case basis based on the Program's evidence standard.

The Program will not compensate claims merely because a diagnostic test provides inaccurate results, such as failure to diagnose the presence of a smallpox infection or yielding a positive result of a smallpox infection that is not present. The Program also cannot compensate for injuries that are the direct result of the covered condition or disease for which the countermeasure was administered or used, and that are not the direct result of the administration or use of the covered countermeasure (for example, if the covered countermeasure is ineffective).[266]

Other Proposed Changes to Section 42 CFR 110.100

In light of the proposed additions related to the inclusion of the Smallpox Countermeasure Injury Table, this NPRM also proposes changes to section 110.100. First, revisions are proposed to the introductory text of paragraph (b). These revisions are intended to clarify that paragraph (b) relates to the Pandemic Influenza Countermeasure Injury Table in paragraph (a). The NPRM also proposes to revise paragraph (c) by deleting the current language and replacing it with the proposed Smallpox Countermeasures Injury Table. The language in current paragraph (c) indicates that the Secretary publishes information about certain covered countermeasures in the **Federal Register**. The Secretary proposes to delete the current language in paragraph (c) because it is unnecessary and for accuracy as, when declarations are updated, the language becomes out of date. Finally, the NPRM proposes to add paragraph (d) to include the Smallpox Countermeasures Injury Table's qualifications and aids to interpretation (table definitions and requirements).

Impact on Family Well-Being

This NPRM will not adversely affect the following elements of family well-being: family safety, family stability, marital commitment; parental rights in the education, nurture, and supervision of their children; family functioning, disposable income, or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999. In fact, this NPRM may have a positive impact on the disposable income and poverty elements of family well-being to the extent that injured persons or their families may receive medical, lost employment income, and/or death benefits paid under this part without imposing a corresponding burden on them.

IV. Statutory and Regulatory Requirements

A. Executive Orders 12866, 13563, and 13771: Regulatory Planning and Review

HHS 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 Congressional Review Act (5 U.S.C. 804(2)), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 202 of the Unfunded Mandates Reform Act of 1995 (March 2, 1995; Pub. L. 104–4), section 654(c) of the Treasury and General Government Appropriations Act of 1999, and Executive Order 13132 on Federalism (August 4, 1999).

Executive Order 12866 requires all regulations reflect consideration of alternatives, costs, benefits, incentives, equity, and available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations that are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis. In 2011, President Obama supplemented and reaffirmed Executive Order 12866.

Executive Order 13563 provides that, to the extent feasible and permitted by law, the public must be given a meaningful opportunity to comment on any proposed regulations, with at least a 60-day comment period. In addition, to the extent feasible and permitted by law, agencies must provide timely online access to both proposed and final rules of the rulemaking docket on *https://www.regulations.gov/,* including relevant scientific and technical findings, in an open format that can be searched and downloaded. Federal agencies must consider approaches to maintain the freedom of choice and flexibility, including disclosure of relevant information to the public. Objective scientific evidence guides regulations and should be easy to understand, consistent, and written in plain language. Furthermore, federal agencies must attempt to coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for the public.

Executive Order 13771 (January 30, 2017) requires that the costs associated with significant new regulations ''to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' The designation of this rule, if finalized, will be informed by public comments received; however, if finalized as proposed, this rule would be neither regulatory nor deregulatory for purposes of E.O. 13771. There are no additional costs; the proposed rule, if finalized, will only change how HRSA expends the appropriated funds.

Summary of Impacts

In this NPRM, the Secretary proposes a Table identifying serious physical

[264] Lawrence C. Trost et al. ''The efficacy and pharmacokinetics of brincidofovir for the treatment of lethal rabbitpox virus infection: A model of smallpox disease.'' *Antiviral Research* 117 (2015): 115.

[265] Francisco Marty et al. ''A randomized, double-blind, placebo-controlled phase 3 trial of oral brincidofovir for cytomegalovirus prophylaxis in allogeneic hematopoietic cell transplantation.'' *Biology of Blood and Marrow Transplant* 25(2019) 369–381.

[266] *See* 42 CFR 110.20(d).

injuries that shall be presumed to result from the administration or use of the covered countermeasures, and the time interval in which the onset of the first symptom or manifestation of each such serious physical injury must manifest in order for such presumption to apply. The Secretary is also proposing Table definitions and requirements. This proposed rule would have the effect of affording certain persons a presumption that particular serious physical injuries occurred as the result of the administration or use of covered countermeasures. The Table, if implemented, will establish a presumption of causation and relieve requesters of the burden of demonstrating causation for covered injuries listed on the Table. However, this presumption is rebuttable based on the Secretary's review of the evidence. This Table also may afford some requesters a new filing deadline.

Rather than showing that a serious physical injury or death directly resulted from an injury included on the Table, individuals may, in the alternative, receive compensation if they can show that a covered countermeasure caused an injury or death. This NPRM is based upon legal authority.

The Secretary has determined that minimal resources are required to implement the provisions included in this NPRM. Therefore, in accordance with the Regulatory Flexibility Act of 1980 (RFA) and the Small Business Regulatory Enforcement Fairness Act of 1996, which amended the RFA, the Secretary certifies that this NPRM will not have a significant impact on a substantial number of small entities.

The Secretary also determined that this NPRM does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or federal expenditures. The Secretary determined that this NPRM is not a ''major rule'' within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801.

This rule is not being treated as a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

B. Unfunded Mandates Reform Act of 1995

The Secretary determined that this NPRM will not have effects on state, local, or tribal governments or on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995. This NPRM comports with the 2011 supplemental requirements.

C. Executive Order 13132—Federalism

The Secretary also reviewed this NPRM in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' This NPRM, if implemented, would not ''have substantial direct effects on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

D. Collection of Information

This NPRM has no information collection requirements.

List of Subjects in 42 CFR Part 110

Biologics, Immunization.

Dated: August 24, 2020.

Thomas J. Engels,

Administrator, Health Resources and Services Administration.

Approved: September 14, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

Therefore, for the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 42 CFR part 110 as follows:

PART 110—COUNTERMEASURES INJURY COMPENSATION PROGRAM

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 42 U.S.C. 247d–6e.

■ 2. Amend § 110.100 by revising paragraph (b) introductory text and paragraph (c), and adding paragraph (d) to read as follows:

§ 110.100 Injury Tables.

* * * * *

(b) *Qualifications and aids to interpretation (table definitions and requirements).* The following definitions and requirements shall apply to the table set forth in paragraph (a) of this section and only apply for purposes of this subpart.

* * * * *

(c) *Smallpox countermeasures injury table.*

Table 1 to paragraph (c)

Covered countermeasures under declarations	Serious physical injury (illness, disability, injury, or condition) [1]	Time interval (for first symptom or manifestation of onset of injury after administration or use of covered countermeasure, unless otherwise specified)
I. Smallpox Vaccines Replication-Deficient.	A. Anaphylaxis	A. 0–4 hours.
	B. Vasovagal Syncope	B. 0–1 hour.
II. Smallpox Vaccines Replication-Competent.	A. Anaphylaxis	A. 0–4 hours.
	B. Vasovagal Syncope	B. 0–1 hour.
	C. Significant Local Skin Reaction	C. 1–21 days.
	D. Stevens-Johnson Syndrome/Toxic Epidermal Necrolysis.	D. 4–28 days.
	E. Inadvertent Autoinoculation	E. 1–21 days.
	F. Generalized *Vaccinia*	F. 6–9 days.
	G. Eczema *Vaccinatum*	G. 3–21 days.
	H. Progressive *Vaccinia*	H. 3–21 days.
	I. Post-*vaccinial* Encephalopathy, Encephalitis or Encephalomyelitis (PVEM).	I. 5–14 days.
	J. *Vaccinial* Myocarditis, Pericarditis, or Myopericarditis (MP).	J. 0–21 days.
III. *Vaccinia* Immunoglobulin Intravenous (VIGIV).	A. Anaphylaxis	A. 0–4 hours.
	B. Transfusion-Related Acute Lung Injury (TRALI)	B. 0–72 hours.
	C. Acute Renal Failure (ARF)	C. 0–10 days.
	D. Drug-Induced Aseptic Meningitis (DIAM)	D. Within 48 hours after the first dose and up to 48 hours after the last dose of VIGIV.

Covered countermeasures under declarations	Serious physical injury (illness, disability, injury, or condition) [1]	Time interval (for first symptom or manifestation of onset of injury after administration or use of covered countermeasure, unless otherwise specified)
	E. Hemolysis	E. 12 hours to 14 days.
IV. Cidofovir	A. No Condition Covered [2]	A. Not Applicable.
V. Tecovirimat	A. No Condition Covered [2]	A. Not Applicable.
VI. Brincidofovir	A. No Condition Covered [2]	A. Not Applicable.
VII. Smallpox Infection Diagnostic Testing Devices.	A. No Condition Covered [2]	A. Not Applicable.

[1] Serious physical injury as defined in 42 CFR 110.3(z). Only injuries that warranted hospitalization (whether or not the person was actually hospitalized) or injuries that led to a significant loss of function or disability will be considered serious physical injuries.

[2] The use of ''No condition covered'' in the Table reflects that the Secretary at this time does not find compelling, reliable, valid, medical, and scientific evidence to support that any serious injury is presumed to be caused by the associated covered countermeasure. For injuries alleged to be due to covered countermeasures for which there is no associated Table injury, requesters must demonstrate that the injury occurred as the direct result of the administration or use of the covered countermeasure. *See* 42 CFR 110.20(b), (c).

(d) *Qualifications and aids to interpretation (table definitions and requirements).* The following definitions and requirements shall apply to the Table set forth in paragraph (c) of this section and only apply for purposes of this subpart.

(1) *Anaphylaxis.* Anaphylaxis is an acute, severe, and potentially lethal systemic reaction that occurs as a single discrete event with simultaneous involvement of two or more organ systems. Most cases resolve without *sequelae.* Signs and symptoms begin within minutes to a few hours after exposure. Death, if it occurs, usually results from airway obstruction caused by laryngeal edema or bronchospasm and may be associated with cardiovascular collapse. Other significant clinical signs and symptoms may include the following: Cyanosis, hypotension, bradycardia, tachycardia, arrhythmia, edema of the pharynx and/or trachea and/or larynx with stridor and dyspnea. There are no specific pathological findings to confirm a diagnosis of anaphylaxis.

(2) *Vasovagal syncope.* Vasovagal syncope (also sometimes called neurocardiogenic syncope) means loss of consciousness (fainting) and loss of postural tone caused by a transient decrease in blood flow to the brain occurring after the administration of an injected countermeasure. Vasovagal syncope is usually a benign condition, but may result in falling and injury with significant *sequelae.* Vasovagal syncope may be preceded by symptoms, such as nausea, lightheadedness, diaphoresis (sweating), and/or pallor. Vasovagal syncope may be associated with transient seizure-like activity, but recovery of orientation and consciousness generally occurs simultaneously. Loss of consciousness resulting from the following conditions will not be considered vasovagal syncope: Organic heart disease, cardiac arrhythmias, transient ischemic attacks, hyperventilation, metabolic conditions, neurological conditions, psychiatric conditions, seizures, trauma, and situational as can occur with urination, defecation, or cough. This list is not complete as other conditions that are not associated with the vaccine also may cause loss of consciousness. Episodes of recurrent syncope occurring after the applicable timeframe are not considered to be *sequelae* of an episode of syncope meeting the Table requirements.

(3) *Significant local skin reaction.* Significant local skin reaction is an unexpected and extreme response at the vaccination or inoculation site that results in a significant scar that is serious enough to require surgical intervention. The onset of this injury is the initial skin lesion at the vaccination site that generally occurs with replication-competent smallpox vaccinations. Minor scarring or minor local reactions do not constitute a Table injury. A robust take, defined as an area of redness at the vaccination site that exceeds 7.5 cm in diameter with associated swelling, warmth and pain, is generally considered an expected response to the vaccination or inoculation. A robust take, in itself, does not constitute a Table injury, even when the redness and swelling involves the entire upper arm with associated enlargement and tenderness of the glands (lymph nodes) in the underarm (axilla).

(4) *Stevens-Johnson syndrome/Toxic Epidermal Necrolysis (SJS/TEN).* SJS/TEN is a spectrum of acute hypersensitivity reactions that affects skin, mucous membranes, and sometimes, internal organs (systemic toxicity) associated with the use or administration of replication-competent smallpox vaccines. For purposes of the Table, both skin and mucous membrane rash or lesions must be present. Rash or lesion distribution must be widespread. Rash must not have a symmetric acral distribution (affecting arms, hands, legs or feet). Two or more mucosal sites must be involved. Mucosal lesions generally manifest as painful lesions in sites, such as the mouth or eyes. Skin rash or lesions in SJS/TEN usually consist of red or purple raised areas (erythematous macules), blisters, and ulcerations.

(5) *Inadvertent Autoinoculation (IA).* IA is the spread of *vaccinia* virus from an existing vaccination site to a second location usually by scratching the vaccination site and subsequently spreading the virus, which produces a new *vaccinial* lesion on the same person who received the vaccination. IA is the most common adverse event associated with the replication-competent smallpox vaccine.

(6) *Generalized Vaccinia (GV).* GV is a *vaccinial* infection that occurs from the spread of *vaccinia* from an existing vaccination or inoculation site, with the use or administration of a replication-competent smallpox vaccine, to otherwise normal skin, resulting in multiple new areas of *vaccinial* rash or lesions. The *vaccinia* is believed to be spread through the blood. The rash or lesions, characterized by multiple blisters (vesicles or pustules) generally evolve in a similar sequence or manner as the original vaccination site.

(7) *Eczema Vaccinatum (EV).* EV is the transmission or the spread of *vaccinia* virus from a vaccination site, after the use or administration of a replication-competent smallpox vaccine, to skin that has been affected by, or is currently affected with, eczema or atopic dermatitis. EV is characterized by lesions that include multiple blisters (vesicles or pustules), which generally evolve in a similar sequence or manner as the original vaccination site. The lesions may come together to form larger lesions. Lesions may also spread to patches of skin that have never been involved with eczema or atopic dermatitis. The new lesions, if cultured, will be positive for *vaccinia* virus. A person with EV may become severely ill with signs and symptoms that involve the whole body (systemic illness), such

as fever, malaise, or enlarged glands (lymph nodes).

(8) *Progressive Vaccinia (PV).* PV is the failure to initiate the healing process in an initial vaccination or inoculation site, after the use or administration of a replication-competent smallpox vaccine, by 21 days after exposure to *vaccinia,* with progressive ulceration or necrosis at the vaccination site leading to a large destructive ulcer. PV is seen in people who are immunocompromised (have an impaired immune system) and is characterized by a complete or near complete lack of inflammation or absence of inflammatory cells in the dermis of the skin at the vaccination site. The diagnosis of PV may be made before 21 days after exposure, especially in a known immunocompromised individual who develops a lesion at the vaccination site. PV may spread through the blood to any location in the body. No one who experiences a significant healing process of the vaccination site within 21 days after receipt of the replication-competent smallpox vaccine or exposure to *vaccinia* has PV.

(9) *Post-vaccinial Encephalopathy, Encephalitis, and Encephalomyelitis (PVEM).* PVEM is a spectrum of overlapping conditions that includes post-*vaccinial* encephalopathy, encephalitis, and encephalomyelitis, and, for the purposes of this Table, is treated as one injury. For the purposes of the Table, PVEM is an autoimmune central nervous system injury that occurs after the use or administration of a replication-competent smallpox vaccine. In rare cases, the *vaccinia* virus is isolated from the central nervous system. Manifestations usually occur abruptly and may include fever, vomiting, loss of appetite (anorexia), headache, general malaise, impaired consciousness, confusion, disorientation, delirium, drowsiness, seizures, language difficulties (aphasia), coma, muscular incoordination (ataxia), urinary incontinence, urinary retention, and clinical signs consistent with inflammation of the spinal cord (myelitis), such as paralysis or meningismus (meningeal irritation). Long-term central nervous system impairments, such as paralysis, seizure disorders, or developmental delays are known to occur as *sequelae* of the acute PVEM. No clinical criteria, radiographic findings, or laboratory tests are specific for the diagnosis of PVEM. Symptoms that occur before 5 days or more than 14 days after receiving the smallpox vaccine should not be attributed it. In addition, encephalopathy caused by an infection, a toxin, a metabolic disturbance, a structural lesion, a genetic disorder, or trauma would not meet this Table definition.

(10) *Vaccinial Myocarditis, Pericarditis, or Myopericarditis (MP).* For purposes of the Table, MP is *vaccinial* myocarditis, pericarditis, or myopericarditis. *Vaccinial* myocarditis is defined as an inflammation of the heart muscle (myocardium) because of receiving the replication-competent smallpox vaccine. *Vaccinial* pericarditis is defined as an inflammation of the covering of the heart (pericardium) because of receiving the smallpox vaccine. *Vaccinial* myopericarditis is defined as an inflammation of both the heart muscle and its covering because of receiving the smallpox vaccine. The inflammation associated with MP may range in severity from very mild (subclinical) to life threatening. In many mild cases, myocarditis is diagnosed solely by; transient electrocardiographic (EKG) abnormalities (*e.g.,* ST segment and T wave changes), increased cardiac enzymes, or mild echocardiographic abnormalities. Arrhythmias, abnormal heart sounds, heart failure, and death may occur in more severe cases. Pericarditis generally manifests with chest pain, abnormal heart sounds (pericardial friction rub), EKG abnormalities (*e.g.,* ST segment and T wave changes), and/or increased fluid accumulation around the heart. A Table injury of MP requires sufficient evidence in the medical records of the occurrence of acute MP.

(11) *Transfusion-Related Acute Lung Injury (TRALI).* TRALI is defined as the onset of respiratory distress within 6 hours in non-critically ill patients, and 72 hours in critically ill patients, after receipt of blood products containing plasma, in this case, VIGIV. The relative level of illness will be determined on a case-by-case basis after reviewing the medical records and the medical history. The respiratory distress is the result of receiving a plasma containing transfusion (VIGIV) and subsequently developing pulmonary edema, respiratory distress, and hypoxia. TRALI occurs as the result of an antibody response in the host to the donor antibodies within the plasma product. Pulmonary edema is non-cardiac in nature and does not occur more than 72 hours after receiving VIGIV. Pulmonary edema occurring more than 72 hours after receiving a blood product containing plasma (VIGIV) or associated with cardiac dysfunction is not TRALI and is excluded as a countermeasure-related injury. TRALI has been identified as a major cause of mortality in those individual receiving plasma-containing transfusions. A Table injury for TRALI has occurred in a recipient if there is sufficient evidence in the medical record of an occurrence of TRALI and the pulmonary edema is not caused by cardiac dysfunction or other causes and occurs within 72 of receiving a blood product containing plasma, in this case VIGIV.

(12) *Acute Renal Failure (ARF).* ARF is the sudden loss of the kidneys' ability to perform their main function of eliminating excess fluids and electrolytes (salts), as well as waste material from the blood. ARF, which is also called acute kidney injury, develops rapidly over a few hours or a few days. ARF can be fatal and requires intensive treatment; however, ARF may be reversible. ARF may cause permanent loss of kidney function, or end-stage renal disease necessitating dialysis or transplant. A Table injury for ARF has occurred if there is sufficient evidence in the medical record of an occurrence of ARF within the identified timeframe and the individual received the associated countermeasure (VIGIV).

(13) *Drug-Induced Aseptic Meningitis (DIAM).* DIAM is an inflammation of the meninges (linings of the brain) that is not caused by a bacteria or virus, but is caused by a drug or medication. The symptoms of meningitis include severe headache, nuchal (neck) rigidity, drowsiness, fever, photophobia (light sensitivity), painful eye movements, nausea, and vomiting. Discontinuation of the medication leads to a resolution of the symptoms. DIAM is thought to occur because of an immunological hypersensitivity reaction to a specific medication. In the case of immunoglobulins, DIAM may be precipitated by the immunologically active components within the plasma or because of the stabilizers used within the product. The symptoms of DIAM may reoccur with another exposure to the offending agent. A Table injury for DIAM has occurred in a recipient if there is sufficient evidence in the medical record of an occurrence of DIAM within the identified timeframe and the individual received the associated countermeasure (VIGIV). DIAM occurring in the absence of the use of VIGIV, or DIAM occurring with the use of VIGIV outside the established timeframe of onset, which is any time after the first dose and up to 48 hours after the last dose of this medication, is not a Table injury.

(14) *Hemolysis.* Hemolysis is the physical breakdown of red blood cells (RBCs) either through natural attrition or as caused by external factors. The RBC's function is to transport oxygen throughout the body in the hemoglobin contained within the RBC. Additionally, the RBCs contain the majority of the

body's potassium stores. With hemolysis, the body is unable to transport oxygen effectively, and the person develops hypoxia. Additionally, the rapid breakdown of the cell releases large amounts of potassium into the blood stream, which can cause abnormal heart rhythms and cardiac arrest. In severe cases of hemolysis, a blood transfusion may be required to correct the resulting anemia. A Table injury for hemolysis has occurred if there is sufficient evidence in the medical record of an occurrence of hemolysis, and the patient received the associated countermeasure (VIGIV). Hemolysis occurring in the absence of the use of VIGIV and outside of the timeframe of 12 hours to 14 days after receiving VIGIV is not a Table injury. Hemolysis occurring from a more likely alternative diagnosis, such as infections, toxins, poisons, hemodialysis, or medications, is not a Table injury. This list of conditions that can cause hemolysis, not associated with VIGIV, is not exhaustive, and all additional diagnoses within the medical documentation will be evaluated.

[FR Doc. 2020–20806 Filed 10–14–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 201008–0267]

RIN 0648–BJ84

Pacific Island Fisheries; 2020–2023 Hawaii Kona Crab Annual Catch Limit and Accountability Measure

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish annual catch limits (ACLs) of 30,802 pound (lb) and annual catch targets (ACTs) of 25,491 lb of main Hawaiian Islands (MHI) Kona crab in 2020, 2021, 2022, and 2023. The proposed rule would also establish in-season and post-season accountability measures (AMs). The proposed action supports the long-term sustainability of the Hawaii Kona crab fishery.

DATES: NMFS must receive comments by November 5, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0091, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov/docket?D=NOAA-NMFS-2020-0091,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

NMFS prepared a draft environmental assessment (EA) that describes the potential impacts on the human environment that could result from the proposed ACL and AM. The draft EA and other supporting documents are available from *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kate Taylor, NMFS PIRO Sustainable Fisheries, 808–725–5182.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Kona crab fishery in the U.S. Exclusive Economic Zone (generally 3–200 nm from shore) around Hawaii through the Fishery Ecosystem Plan for the Hawaiian Archipelago (FEP) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The FEP contains a process for the Council and NMFS to specify ACLs, ACTs, and AMs; that process is codified at Title 50, Code of Federal Regulations, § 665.4 (50 CFR 665.4). The regulations require NMFS to specify an ACL and AM for each stock and stock complex of management unit species (MUS) in an FEP, as recommended by the Council, and considering the best available scientific, commercial, and other information about the fishery. If a fishery exceeds an ACL, the regulations require the Council to take action, which may include reducing the ACL for the subsequent fishing year by the amount of the overage, or other appropriate action. The specification of an ACT, which is set below the ACL, can help ensure that the catch does not exceed the ACL. When used, an ACT also serves as the basis for invoking accountability measures.

The Council recommended that NMFS specify ACLs of 30,802 lb and ACTs of 25,491 lb for MHI Kona crab for each of the 2020–2023 fishing years. The fishing year for Kona crab is the calendar year. The Council based its recommendation on a 2018 benchmark stock assessment of MHI Kona crab, published in 2019, and in consideration of the best available scientific, commercial, and other information about the fishery. The stock assessment estimated the overfishing limit for Kona crab to be 33,989 lb. The proposed ACLs and ACTs are associated with a 38 percent and 20 percent risk of overfishing, respectively. These levels are more conservative than the 50 percent risk threshold allowed under NMFS guidelines for National Standard 1 of the Magnuson Stevens Act. Catch from State and Federal waters will count toward catch limits. NMFS does not anticipate that the fishery would reach the proposed limit in any fishing year, or that fishing for Hawaii Kona crab would be constrained during the fishing year.

NMFS proposes to implement both in-season and post-season AMs. Under the in-season AM (which is new for this fishery), when NMFS projects that the catch of Kona crab will reach the ACT, we would close the commercial and non-commercial fisheries for Kona crab in Federal waters for the remainder of the year. For the post-season AM, if NMFS and the Council determine after the end of each fishing year that the catch exceeded the ACL, NMFS would reduce the ACL and ACT in the subsequent fishing year by the amount of the overage. In the event that the catch exceeds the ACT, but is below the ACL, a post-season correction would not be applied. NMFS will use the best scientific information available to monitor the ACT and ACL, such as the monthly catch reporting required by State of Hawaii Commercial Marine License (CML) holders. Since NMFS does not issue Federal fishing permits to fish for Kona crab and instead relies on the CML, we have no way to directly inform fishermen of an in-season closure or post-season adjustment. NMFS will provide advance notice to fishermen and the public through available print and online publications if we implement an in-season closure or a post-season correction. We will also request the State of Hawaii notify CML

holders of any changes in the fishery, including an in-season closure or a post-season correction.

The proposed rule would make a housekeeping change related to codification of the Hawaii deepwater shrimp ACL and AMs. Specifically, the proposed rule would separate the ACLs for Kona crab and deepwater shrimp in 50 CFR 665.253 by adding paragraphs for each stock.

NMFS will consider public comments on this proposed rule and will announce the final ACLs, ACTs, and AMs in the **Federal Register**. NMFS must receive any comments by the date provided in the **DATES** heading, not postmarked or otherwise transmitted by that date. Regardless of the final ACL, ACT, and AM, all other management measures will continue to apply in the fishery.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed action is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the proposed action, why it is being considered, and the legal basis for it are contained in the preamble to this proposed rule.

This rule would apply to participants in the commercial and non-commercial fisheries for MHI Kona crab. Kona crab catch averaged 3,316 lb from 2017–2019, with an estimated ex-vessel value of $24,605, if all catch were sold, based on the 2019 average price of $7.42 per lb; between 2017 and 2019, percent sold ranged from 43 to 57 percent. The amount of Kona crab caught each year has generally declined since 2011, when 51 fishermen reported landing 10,609 lb, although 2019 Kona crab catch was almost double 2018 catch. During the 2019 fishing year, 23 fishermen reported landing 5,698 lb. In 2018, 22 fishermen reported landing 2,561 lb.

NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $11 million for all of its affiliated operations worldwide. Based on available information, NMFS has determined that all vessels engaging in the commercial and non-commercial fisheries for Kona crab (NAICS Code: 11411) are small entities. That is, they are engaged in the business of fish harvesting, independently owned or operated, not dominant in their field of operation, and have annual gross receipts not in excess of $11 million. Therefore, there would be no disproportionate economic impacts between large and small entities. Furthermore, there are would be no disproportionate economic impacts among the universe of vessels based on gear, homeport, or vessel length.

Even though this proposed action would apply to a substantial, but unquantified, number of vessels, this action should not result in significant adverse economic impact to individual vessels. The proposed ACTs are much higher than the ACL implemented in 2017 and 2019 (3,500 lb). This increase is because the most recent stock assessment incorporated several changes that resulted in markedly different outputs compared to the previous assessment, upon which the previous ACLs were based. The proposed ACLs are not expected to result in an expansion of the fishery by new fishermen looking to take advantage of the higher quota compared to previous years. Given the offshore fishing grounds for Kona crab, it would take a significant financial investment to become active in the fishery if fisherman did not already own a vessel and the required specialized gear. The proposed action, if implemented, is not expected to constrain the fishery, given that the proposed ACLs and ACTs are both more than double the highest catch recorded over the past 10 years, which was 10,609 lb in 2011. Furthermore, the fishery would still be managed by State of Hawaii regulations (*e.g.,* discarding of female and undersized crabs) that limits interest and viability of the fishery.

While NMFS and the Council are considering, as AMs, both an in-season closure in the Kona crab fishery if catch is projected to reach the ACT and a post-season adjustment if the catch exceeds the ACL, the proposed ACT is several times higher than the reported catch in 2019, so either accountability measure is unlikely to be needed. The ACLs, ACTs, and AMs, as proposed, would not change the gear types, areas fished, effort, or participation of the fishery during each fishing year.

The proposed action does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small entities (as discussed above), organizations, or government jurisdictions. The proposed action also will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities.

For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

Executive Order 12866

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

Executive Order 13771

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

List of Subjects in 50 CFR Part 665

Annual catch limits, Accountability measures, Fisheries, Fishing, Hawaii, Kona crab, Pacific Islands.

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

Dated: October 8, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Serive.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 665 as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

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

■ 2. In § 665.243, add paragraph (d) to read as follows:

§ 665.243 Prohibitions.

* * * * *

(d) In Crustacean Permit Area 2, it is unlawful for any person to fish for, possess, sell, or offer for sale any Kona crab from a closed fishery in the Federal waters of the MHI in violation of § 665.253(b).

■ 3. Revise § 665.253 to read as follows:

§ 665.253 Annual Catch Limits (ACL) and Annual Catch Targets (ACT).

(a) *Deepwater shrimp.* (1) In accordance with § 665.4, the ACLs for each fishing year are as follows: Table 1 to paragraph (a)(1)

Fishing year	2020	2021
ACL (lb)	250,733	250,733

(2) If the average catch of the three most recent years of deepwater shrimp exceeds the specified ACL in a fishing year, the Regional Administrator will reduce the ACL for the subsequent year by the amount of the overage.

(b) *MHI Kona crab.* (1) In accordance with § 665.4, the ACLs and ACTs for each fishing year are as follows: Table 2 to paragraph (b)(1)

Fishing year	2020	2021	2022	2023
ACL (lb)	30,802	30,802	30,802	30,802
ACT (lb)	25,491	25,491	25,491	25,491

(2) When the ACT is projected to be reached based on analyses of available information, the Regional Administrator shall publish a document to that effect in the **Federal Register** and shall use other means to notify affected fishermen. The document will include an advisement that the fishery will be closed beginning on a specified date, which is not earlier than seven days after the date of filing the closure notification for public inspection at the Office of the **Federal Register**, until the end of the fishing year in which the ACL is reached.

(3) On and after the date specified in paragraph (b)(2) of this section, no person may fish for, possess, sell, or offer for sale any Kona crab from a closed fishery in the Federal waters of the MHI, except as otherwise allowed in this section.

(4) If landings exceed the specified ACL in a fishing year, the Regional Administrator will reduce the ACL and the ACT for the subsequent year by the amount of the overage.

[FR Doc. 2020–22742 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 85, No. 200

Thursday, October 15, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Service Handbook 2409.15, Chapters Zero, 10, 30, 50 and 70; Forest Service Handbook 2409.18a, Chapters Zero, 10, and 20; Forest Service Manual 2400, Chapters Zero, 30, 40, 50 and 60 Timber Management; Public Notice and Comment for Changes to Forest Service Directives

AGENCY: Forest Service, USDA.

ACTION: Notice of availability for public comment.

SUMMARY: The United States Department of Agriculture (USDA), United States Forest Service (Forest Service), is revising directives related to timber management, timber sale administration and timber sale debarment and suspension procedures.

DATES: Comments must be received in writing by November 16, 2020.

ADDRESSES: Comments may be submitted electronically to *https://cara.ecosystem-management.org/Public/CommentInput?project=ORMS-2688.* Written comments may be mailed to Dave Wilson, Acting Assistant Director, Forest Management, Range and Vegetation Ecology, 201 14th Street SW, Washington, DC 20024. All timely received comments, including names and addresses, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received at *https://cara.ecosystem-management.org/Public/ReadingRoom?project=ORMS-2688.*

FOR FURTHER INFORMATION CONTACT: Dave Wilson, Acting Assistant Director, Forest Management, Range and Vegetation Ecology, at 202–578–9916 or by electronic mail to *david.wilson@usda.gov.* Individuals using telecommunication devices for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The proposed directives reorganize and eliminate redundant policies and procedures, delete obsolete references and update agency policies and procedures to reflect new authorities and timber management practices that have been implemented since previous revisions to the directives were made available. An analysis of existing agency policy in Forest Service Handbooks and Manuals was conducted to identify revisions needed to support this initiative.

The proposed directives update Forest Service Handbook 2409.15, ''Timber Sale Administration,'' Chapters Zero, 10, 30, 50 and 70; Forest Service Handbook 2409.18a, ''Timber Sale Debarment and Suspension Procedures,'' Chapters Zero, 10, and 20; and Forest Service Manual 2400, ''Timber Management,'' Chapters Zero, 30, 40, 50 and 60. These directives set forth policy, responsibilities, and direction for several aspects of management and implement the agency's goal of providing more current direction. Forest Service National Environmental Policy Act (NEPA) procedures exclude from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions.'' 36 CFR 220.6(d)(2). The Agency's conclusion is that these final directives fall within this category of actions and that no extraordinary circumstances exist as currently defined that require preparation of an environmental assessment or an environmental impact statement.

The Forest Service has also determined that the changes to the manual and two handbooks formulate standards, criterion, or guidelines applicable to a Forest Service program and are therefore publishing the proposed manual for public comment in accordance with 36 CFR part 216. The Forest Service is seeking public comment on the proposed directives, including the sufficiency of the proposed directives in meeting its stated objectives, ways to enhance the utility and clarity of information within the direction, or ways to streamline processes outlined.

After the public comment period closes, the Forest Service will consider timely comments that are within the scope of the proposed directive in the development of the final directive. A notice of the final directive, including a response to timely comments, will be posted on the Forest Service's web page at *https://www.fs.fed.us/about-agency/regulations-policies/comment-on-directives.*

Jacqueline A. Emanuel,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2020–22859 Filed 10–14–20; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Maryland Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a briefing of the Maryland Advisory Committee to the Commission will convene by conference call at 12 p.m. (ET) on Tuesday, November 10, 2020. The purpose of the briefing is to hear from public officials and advocates about health care disparities during the COVID–19 pandemic.

DATES: Tuesday, November 10, 2020, at 12 p.m. (ET)

Public Call-In Information: 1–866–575–6539 and conference ID: 3918108.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez at *ero@usccr.gov* or by phone at 202–539–8246.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–866–575–6539 and conference ID: 3918108. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no

charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Federal Relay Service operator with the conference call-in numbers: 1–866–575–6539 and conference ID: 3918108.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be emailed to Barbara Delaviez at *ero@usccr.gov.* Persons who desire additional information may contact Barbara Delaviez at 202–539–8246.

Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number or email address.

Agenda

Tuesday, November 10, 2020; 12 p.m. (ET)

- Rollcall
- Briefing on Covid-19 Health Disparities
- Open Comment
- Next Steps and Other Business
- Adjournment

Dated: October 8, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–22745 Filed 10–14–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–814]

Common Alloy Aluminum Sheet From the Sultanate of Oman: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Determination of Critical Circumstances, and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from the Sultanate of Oman (Oman) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Chelsey Simonovich, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1979.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now October 6, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are aluminum sheet from Oman. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

The deadline to submit scope case briefs is established in the Preliminary Scope Decision Memorandum. There will be no further opportunity for comments on scope-related issues.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied on partial facts otherwise available, with adverse inferences, for the mandatory respondent Oman Aluminium Rolling

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[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Oman,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 6, 2020 (Preliminary Scope Decision Memorandum).

[7] Case briefs, other written comments, and rebuttal briefs submitted in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum; *see also* ''Public Comment'' section of this notice.

Company (OARC). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determines that critical circumstances do not exist with respect to imports of aluminum sheet from OARC or for all other exporters or producers not individually examined. For a full description of the methodology and results of Commerce's analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

In this investigation, the all-others rate is based on the dumping margin calculated for OARC, the only entity selected for individual examination and for which Commerce calculated a rate.[8]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Oman Aluminium Rolling Company (OARC)	[9] 3.53
All Others	3.53

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), where appropriate, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its preliminary determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments on non-scope issues will be notified to interested parties at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[10] Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional

[8] *See* section 735(c)(5)(A) of the Act.

[9] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Oman,'' dated concurrently with, and hereby adopted by, this notice.

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

measures from a four-month period to a period not more than six months in duration.

On September 18, 2020, pursuant to 19 CFR 351.210(e), OARC requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[12] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum sheet from Oman are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Affiliation
VII. Application of Facts Available and Use of Adverse Inference
VIII. Preliminary Negative Determination of Critical Circumstances
IX. Discussion of the Methodology
X. Currency Conversion
XI. Recommendation

[FR Doc. 2020–22805 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–DS–P

[12] *See* OARC's Letter, ''Common Alloy Aluminum Sheet from Oman: Request for Postponement of Final Determination and Provisional Measures Period,'' dated September 18, 2020.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–842]

Common Alloy Aluminum Sheet From Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Italy is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Jun Jack Zhao, 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) 482–0197 or (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination of this investigation, the revised deadline is now October 6, 2020.[2] For a complete description of the

[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman,*

events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are aluminum sheet from Italy. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice,* as well as additional language proposed by Commerce. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed herein, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

The scope case briefs were originally due on April 20, 2020, 20 calendar days after the signature date of the *Initiation Notice,* and scope rebuttal briefs were originally due ten days thereafter on April 30, 2020.[7] However, Commerce extended the deadline to submit scope case and rebuttal briefs to May 6, 2020, and May 18, 2020, respectively.[8] There will be no further opportunity for comments on scope-related issues.[9]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied on facts otherwise available, with adverse inferences, for Profilglass S.p.A. (Profilglass). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

Commerce has preliminarily determined that the estimated weighted-average dumping margin for Laminazione Sottile S.p.A. (Laminazione) is zero. Additionally, Commerce preliminarily assigned a rate based entirely on facts available, under section 776 of the Act, to Profilglass. Therefore, pursuant to section 735(c)(5)(B) of the Act, we determine that it is reasonable to calculate the all-others rate based on a simple average of Laminazione's zero percent margin and Profilglass' adverse facts available (AFA) margin.[10]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Laminazione Sottile S.p.A	0.00
Profilglass S.p.A	** 29.13
All Others	14.57

** Adverse Facts Available (AFA).

Consistent with section 733(b)(3) of the Act, Commerce disregards *de minimis* rates and preliminarily determines that these individually examined respondents with *de minimis* rates have not made sales of subject merchandise at LTFV.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, except for those entries of subject merchandise produced and exported by Laminazione. Because the estimated weighted-average dumping margin for Laminazione is zero, we are not directing CBP to suspend liquidation of entries of the subject merchandise it produced and exported.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), where appropriate, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows:

Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations, 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Italy,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Common Alloy Aluminum Sheet from the Federal Republic of South Africa, India, Italy, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 6, 2020 (Preliminary Scope Decision Memorandum).

[7] *See Initiation Notice.*

[8] *See* Memorandum ''Common Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Deadline for Scope Comments: Correction to Scope Comments Deadlines,'' dated May 1, 2020.

[9] Parties were already permitted the opportunity to file scope case and rebuttal briefs. Case briefs, other written comments, and rebuttal briefs submitted in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum; *see also* ''Public Comment'' section of this notice.

[10] *See, e.g., Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value,* 81 FR 47355 (July 21, 2016).

(1) The cash deposit rate for Profilglass will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Because the estimated weighted-average dumping margin for Laminazione is zero, entries of shipments of subject merchandise produced and exported by this company will not be subject to suspension of liquidation or cash deposit requirements. In such situations, Commerce applies the exclusion of the provisional measures to the producer/exporter combination that was examined in the investigation. Accordingly, Commerce is directing CBP not to suspend liquidation of entries of subject merchandise produced and exported by Laminazione. Entries of shipments of subject merchandise from this company in any other producer/exporter combination, or by third parties that sourced subject merchandise from the excluded producer/exporter combination, are subject to the provisional measures at the all-others rate.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for the producer/exporter combination identified above, entries of shipments of subject merchandise from this producer/exporter combination will be excluded from the potential antidumping duty order. Such exclusions are not applicable to merchandise exported to the United States by this respondent in any other producer/exporter combinations or by third parties that sourced subject merchandise from the excluded producer/exporter combination.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 17, 2020, pursuant to 19 CFR 351.210(e), Laminazione requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[12] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not

[11] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[12] *See* Laminazione Sottile S.p.A.'s Letter, ''Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Italy: Request to Extend Final Determination,'' dated September 17, 2020.

clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Application of Facts Available and Use of Adverse Inference
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2020–22820 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–941, C–570–942]

Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Continuation of Antidumping Duty Order and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on certain kitchen appliance shelving and racks from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD and CVD orders.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Rachel Greenberg, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0652.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 2009, Commerce published the AD and CVD orders on certain kitchen appliance shelving and racks from China.[1] On February 3, 2020, the ITC instituted,[2] and Commerce initiated,[3] the second sunset reviews of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to continuation or recurrence of dumping and countervailing subsidies and, therefore, notified the ITC of the magnitude of the margins and net countervailable subsidy rates likely to prevail should the *Orders* be revoked.[4]

On October 6, 2020, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

The product covered by the *Orders* consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens (''certain kitchen appliance shelving and racks'' or ''the merchandise under order''). Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

—Shelving and racks with dimensions: ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
—baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
—side racks from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches; or

[1] *See Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order,* 74 FR 46971 (September 14, 2009); and *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Countervailing Duty Order,* 74 FR 46973 (September 14, 2009) (collectively, *Orders*).

[2] *See Certain Kitchen Appliance Shelving and Racks from China; Institution of Five-Year Reviews,* 85 FR 5980 (February 3, 2020).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 5940 (February 3, 2020).

[4] *See Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order,* 85 FR 35063 (June 8, 2020); and *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order,* 85 FR 35061 (June 8, 2020).

[5] *See Kitchen Appliance Shelving and Racks from China,* 85 FR 63139 (October 6, 2020).

—subframes from 6 inches by 10 inches by 0.1 inch to 28 inches by 34 inches by 6 inches.

The merchandise under the *Orders* is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.2 inch. The merchandise under the *Orders* may by coated or uncoated and may by formed and/or welded. Excluded from the scope of the *Orders* is shelving in which the support surface is glass.

The merchandise subject to the *Orders* is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers 8418.99.8050, 8418.99.8060, 7321.90.5000, 7321.90.6090, and 8516.90.8000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

Continuation of the *Orders*

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or a recurrence of dumping and countervailable subsidies, as well as material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders.*

U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Notification to Interested Parties

These five-year sunset reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: October 8, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–22807 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–839]

Common Alloy Aluminum Sheet From Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Turkey is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Carey, 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) 482–3964.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now October 6, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are aluminum sheet from Turkey. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

The deadline to submit scope case briefs is established in the Preliminary Scope Decision Memorandum. There will be no further opportunity for comments on scope-related issues.[7]

[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-FairValue Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Turkey,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 6, 2020 (Preliminary Scope Decision Memorandum).

[7] Case briefs, other written comments, and rebuttal briefs submitted in response to this preliminary LTFV determination should not include scope-related issues. *See* ''Public Comment'' section of this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determines that critical circumstances do not exist with respect to imports of aluminum sheet by Assan or Teknik, and do not exist with respect to imports of aluminum sheet by all other exporters or producers not individually examined. For a full description of the methodology and results of Commerce's analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis,* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

Commerce calculated an individual estimated weighted-average dumping margin for Assan Aluminyum Sanayi ve Ticaret A.S. (Assan) of 12.65 percent and an individual estimated weighted-average dumping margin of 12.90 percent for Teknik Aluminyum Sanayi A.S. (Teknik), the only individually examined exporters/producers in this investigation. Commerce calculated the rate for the companies not selected for individual examination using a simple average of the estimated weighted-average dumping margins calculated for Assan and Teknik and each company's publicly-ranged values for the merchandise under consideration.[8] This margin was assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rates (adjusted for subsidy offset(s)) (percent)
Assan Aluminyum Sanayi ve Ticaret A.S. (Assan)	[9] 12.65	12.11
Teknik Aluminyum Sanayi A.S. (Teknik)	[10] 12.90	12.90
All Others	12.71	12.30

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), where appropriate, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Commerce preliminarily made an affirmative determination that Assan received countervailable export subsidies [11] and therefore, has offset the estimated weighted-average dumping margin by the appropriate CVD rate. Any such adjusted cash deposit rate may be found in the ''Preliminary Determination'' section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. These suspension of liquidation instructions will remain in effect until further notice.

While Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in

[8] With two respondents under examination, Commerce normally calculates: (A) A weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for producers and exporters not subject to individual examination. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). For a complete analysis of the data, *see* Memorandum ''Preliminary Determination Calculation for the 'All-Others' Rate,'' dated concurrently with, and hereby adopted by, this notice.

[9] *See* Memorandum, ''Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Turkey: Preliminary Determination Margin Calculation for Assan Aluminyum Sanayi ve Ticaret A.S.,'' dated concurrently with, and hereby adopted by, this notice.

[10] *See* Memorandum, ''Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Turkey: Preliminary Determination Margin Calculation for Teknik Aluminyum Sanayi A.S.,'' dated concurrently with, and hereby adopted by, this notice.

[11] *See Common Alloy Aluminum Sheet from The Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Determination of Critical Circumstances in Part, and Alignment*of Final Determination with Final Antidumping Duty Determination, 85 FR 49629 (August 14, 2020) (*CVD Aluminum Sheet Prelim*).

effect, we have preliminarily not adjusted the cash deposit rate listed above for Teknik because the preliminary CVD margin was *de minimis,*[12] and thus, no CVD cash deposits are currently being collected.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances do not exist for imports of subject merchandise. Therefore, the provisions under section 733(e)(2) of the Act do not apply.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments will be notified to interested parties at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[13] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[14] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 11 and 22, 2020, pursuant to 19 CFR 351.210(e), Assan and Teknik requested, respectively, that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[15]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum sheet from Turkey are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any

[12] *See CVD Aluminum Sheet Prelim.*

[13] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[14] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[15] *See* Assan's Letter, ''Request to Extend Final Determination and Provisional Measures,'' dated September 11, 2020; and Teknik's Letter, ''Request to Postpone Final Determination and to Extend Provisional Measures,'' dated September 22, 2020.

other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Discussion of the Methodology
VII. Preliminary Negative Determination of Critical Circumstances
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2020–22801 Filed 10–14–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–856–001]

Common Alloy Aluminum Sheet from Slovenia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Slovenia is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Faris Montgomery or Irene Gorelik, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1537 or (202) 482–6905, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination of this investigation and the revised deadline is now October 6, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is aluminum sheet from Slovenia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Memorandum.[6] As discussed in the Preliminary Scope Memorandum, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

The deadline to submit scope case briefs is established in the Preliminary Scope Memorandum. There will be no further opportunity for comments on scope-related issues.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has

[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Slovenia,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 85 FR at 19445.

[6] *See* Memorandum, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 6, 2020 (Preliminary Scope Memorandum).

calculated export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Commerce calculated an individual estimated weighted-average dumping margin for Impol d.o.o. and Impol FT, d.o.o. (collectively, Impol), the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Impol is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Impol d.o.o./Impol FT, d.o.o.[7]	4.80 percent
All Others	4.80 percent

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[8] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 9, 2020, pursuant to 19 CFR 351.210(e), Impol requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[10] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is

[7] Impol reported that Impol FT, d.o.o. is the producer and Impol d.o.o. is the exporter of subject merchandise and that they are affiliated by common control. *See* Impol's Letter, ''Section A Questionnaire Response,'' dated May 26, 2020, at A–4, Exhibit A–4, and Appendix I, containing the Impol Group 2019 Annual Report, at page 15. Accordingly, the preliminary rate calculated for Impol applies to subject merchandise produced by Impol FT, d.o.o. and exported by either Impol FT, d.o.o. or Impol d.o.o.

[8] *See* 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[10] *See* Impol's Letter, ''Request Postponement of Final Determination and Extension of Provisional Measures Period,'' dated September 9, 2020.

affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its affirmative preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Discussion of the Methodology
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2020–22800 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–825]

Common Alloy Aluminum Sheet From South Africa: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from South Africa is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Brendan Quinn, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–5848, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now October 6, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics

[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-FairValue Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the

Continued

included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at h*ttp://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet from South Africa. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed herein, Commerce is preliminarily modifying the scope language as it appeared in the Initiation Notice. *See* the revised scope in Appendix I to this notice. The Preliminary Scope Decision Memorandum establishes the deadline to submit scope case briefs. There will be no further opportunity for comments on scope-related issues.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for Hulamin Operations (Pty) Ltd. (Hulamin Operations), the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Hulamin Operations is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Hulamin Operations (Pty) Ltd	[8] 8.98
All Others	8.98

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act,Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d) Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in these case briefs, may be submitted no later than seven days after the deadline date for case briefs.[9] Note that Commerce has modified certain of

Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from South Africa,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 6, 2020, (Preliminary Scope Decision Memorandum).

[7] Case briefs, other written comments, and rebuttal briefs submitted in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum; *see also* ''Public Comment'' section of this notice.

[8] *See* Memorandum, ''Antidumping Duty Investigation of Common Alloy Aluminum Sheet from South Africa: Analysis of the Preliminary Determination Margin Calculations for Hulamin Operations (Pty) Ltd.,'' dated concurrently with this notice.

[9] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

its requirements for serving documents containing business proprietary information until further notice.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 9, 2020, pursuant to 19 CFR 351.210(e), Hulamin Operations requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[11] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum sheet from South Africa are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Discussion of the Methodology
  A. Comparisons to Normal Value
  1. Determination of Comparison Method
  2. Results of the Differential Pricing Analysis
  B. Product Comparisons
  C. Date of Sale
  D. Export Price
  E. Constructed Export Price
  F. Normal Value
  1. Comparison Market Viability
  2. Level of Trade
  3. Cost of Production Analysis
  a. Calculation of COP

[10] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[11] *See* Hulamin Operations' Letter, ''Common Alloy Aluminum Sheet from South Africa: Request to Postpone Final Determination and to Extend Provisional Measures,'' dated September 9, 2020.

b. Test of Comparison Market Sales Prices
c. Results of the COP Test
G. Calculation of NV Based on Comparison-Market Prices
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2020–22802 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–906]

Common Alloy Aluminum Sheet From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now October 6, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is aluminum sheet from Korea. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice. The deadlines to submit scope case briefs are established in the Preliminary Scope Decision Memorandum. There will be no further opportunity for comments on scope-related issues.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce calculated an estimated weighted-average dumping margin for Novelis Korea Limited and Ulsan Aluminum Limited (Novelis/Ulsan) that is not zero, *de minimis,* or based entirely on facts otherwise available.[8] Accordingly, Commerce assigned the estimated weighted-average dumping margin calculated for Novelis/Ulsan to all other producers and exporters.[9]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice*, 85 FR at 19445.

[6] *See* Memorandum, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October, 6, 2020 (Preliminary Scope Decision Memorandum).

[7] Case briefs, other written comments, and rebuttal briefs submitted in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum at 4; *see also* ''Public Comment'' section of this notice.

[8] *See* Memorandum, ''Antidumping Duty Investigation of Common Alloy Aluminum Sheet from the Republic of Korea: Preliminary Determination Margin Calculation for Novelis Korea Limited and Ulsan Aluminum Limited,'' dated concurrently with, and hereby adopted by, this notice.

[9] On September 28, 2020, we determined that Novelis Korea Limited and Ulsan Aluminum Limited are affiliated, pursuant to section 771(33)(E) of the Act, and that they should be treated as a single entity, Novelis/Ulsan, pursuant to 19 CFR 351.401(f). *See* Memorandum, ''Antidumping Duty Investigation of Common Alloy Aluminum Sheet from the Republic of Korea: Novelis Korea Limited and Ulsan Aluminum Limited Preliminary Affiliation and Collapsing Memorandum,'' dated September 28, 2020.

Exporter/producer	Estimated weighted-average dumping margin (percent)
Novelis Korea Limited/Ulsan Aluminum Limited	5.04
All Others	5.04

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), where appropriate, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in these case briefs, may be submitted no later than seven days after the deadline date for case briefs.[10] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 18, 2020, pursuant to 19 CFR 351.210(e), Novelis/Ulsan requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[12] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum sheet from Korea are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[12] *See* Novelis/Ulsan's Letter, ''Common Alloy Aluminum Sheet from Korea: Novelis Korea's Request for Postponement of Final Antidumping Determination,'' dated September 18, 2020.

manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Affiliation and Collapsing
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2020–22799 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–835]

Common Alloy Aluminum Sheet From Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Indonesia is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Glenn Bass Jr. or John Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8338 and (202) 482–0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.[1] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are aluminum sheet from Indonesia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[4] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[5]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available, with adverse inferences, for Pt. Alumindo Light Metal Industry Tbk (Pt. Alumindo). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

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[1] *See Common Alloy Aluminum Sheet From Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Indonesia'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[4] *See Initiation Notice.*

[5] *See* Memorandum, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 6, 2020.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available, Commerce may use ''any reasonable method'' to establish the estimated weighted-average dumping margin for all other producers or exporters.

Commerce has preliminarily determined the estimated dumping margin for the individually examined respondent (*i.e.,* Pt. Alumindo) entirely under section 776 of the Act. Consequently, pursuant to section 735(c)(5)(B) of the Act, and consistent with Commerce's practice, the all-others rate in this preliminary determination is based on the only dumping margin alleged in the petition.[6] For a full description of the methodology underlying Commerce's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated dumping margins exist:

Exporter/producer	Estimated dumping margin (percent)
Pt. Alumindo Light Metal Industry Tbk	32.12
All Others	32.12

Critical Circumstances

On September 4, 2020, the petitioners[7] filed timely critical circumstances allegations, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the subject merchandise from Indonesia, Oman, Taiwan, and Turkey.[8]

Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in a LTFV investigation if there is a reasonable basis to believe or suspect that: (A) Either (i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. We preliminarily determine that critical circumstances exist with respect to imports of aluminum sheet from Indonesia.[9]

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated dumping margin determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others rate. These suspension of liquidation instructions will remain in effect until further notice.

Section 733(e)(2) of the Act provides that, given an affirmative preliminary determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) The date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for Pt. Alumindo and for all other companies. In accordance with section 733(e)(2)(A) of the Act, suspension of liquidation of aluminum sheet from Indonesia as described in the ''Scope of the Investigation'' in Appendix I, shall apply to unliquidated entries of merchandise from all producers in Indonesia, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice, the date suspension of liquidation is first ordered.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied adverse facts available (AFA) to the only individually examined company (*i.e.,* Pt. Alumindo) in this investigation, in accordance with section 776 of the Act, and because the applied AFA rate is based solely on the margin alleged in the petition, there are no calculations to disclose.

Verification

Because the examined respondent in this investigation did not provide information requested by Commerce, and Commerce preliminarily determines the examined respondent has been uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination, unless the Secretary alters the time limit.[10] Rebuttal briefs,

[6] *See* Petition at 4.

[7] The petitioners are the Aluminum Association Common Alloy Aluminum Sheet Working Group and its individual members. The individual members include Aleris Rolled Products, Inc.; Arconic, Inc.; Constellium Rolled Products Ravenswood, LLC; JW Aluminum Company; Novelis Corporation; and Texarkana Aluminum, Inc.

[8] *See* Petitioners' Letter, ''Antidumping Investigations of Common Alloy Aluminum Sheet from Indonesia, Oman, Taiwan, and Turkey—Petitioners' Allegation of Critical Circumstances,'' dated September 4, 2020.

[9] For a full description of Commerce's preliminary critical circumstances determination *see* the Preliminary Decision Memorandum for Indonesia at section ''Critical Circumstances.''

[10] *See* 19 CFR 351.309(c)(1)(i); *see also* 19 CFR 351.303 (for general filing requirements). Commerce

Continued

limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination.

Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Scope Comments
VI. Application of Facts Available and Use of Adverse Inference
VII. Preliminary Affirmative Determination of Critical Circumstances
VIII. All-Others Rate
IX. Conclusion

[FR Doc. 2020–22814 Filed 10–14–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–809]

Common Alloy Aluminum Sheet From Romania: Preliminary Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Romania is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Krisha Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4037.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation

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has exercised its discretion under 19 CFR 351.309(c)(1)(i) to alter the time limit for submission of case briefs.

[11] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination in this investigation and the revised deadline is now October 6, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet from Romania. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available, with adverse inferences, for Alro, SA and Vimetco Group.[7] For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

Commerce has preliminarily determined the estimated dumping margins for each of the individually examined respondents (*i.e.,* Alro, SA and Vimetco Group) entirely under section 776 of the Act. Consequently, pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these circumstances has been to calculate the all-others rate as a simple average of the alleged dumping margins from the petition. However, there is only one dumping margin in the petition for this investigation. Therefore, we used that rate as the All Others rate. For a full description of the methodology underlying Commerce's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated dumping margins exist:

Exporter/producer	Estimated dumping margin (percent)
Alro, SA [8]	83.94
All Others	12.51

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated dumping margin determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties any calculations

[1] *See Common Alloy Aluminum Sheet From Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Romania'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations'' (Preliminary Scope Decision Memorandum), dated concurrently with this notice.

[7] Alro, SA noted that its name is ''Alro, SA'' rather than ''Alro, S.A.'' as stated in the *Initiation Notice. See* Alro, SA's Letter, ''Common Alloy Aluminum Sheets from Romania, A–385–809; Clarification of Company Names,'' April 8, 2020.

[8] On April 8, 2020, Alro, SA and its affiliate Vimetco Management Romania, SRL, notified Commerce that ''Vimetco Group'' is not a legal entity but that the name reflects a collection of companies including Alro, SA. Additionally, Alro, SA noted that its name is ''Alro, SA'' rather than ''Alro, S.A.'' as stated in the *Initiation Notice. See* Alro, SA's Letter, ''Common Alloy Aluminum Sheets from Romania, A–385–809; Clarification of Company Names,'' April 8, 2020. Given that Vimetco Group is not a legal entity but refers to a group of companies in which Alro SA is the only producer, seller, and exporter of aluminum sheet, we have assigned the dumping rate to Alro, SA.

performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Because the examined respondents in this investigation did not provide information requested by Commerce, and Commerce preliminarily determines that each of the examined respondents have been uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 21 days after the date of publication of the preliminary determination.[9] Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[10] The deadlines for submitting case and rebuttal briefs on scope issues are in the Preliminary Scope Decision Memorandum.[11] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date and time of the hearing two days before the scheduled date of the hearing.

Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. While the petitioners requested postponement of the final determination, the preliminary determination is affirmative, and no exporter requested postponement of the final determination. In such a scenario, section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary

[9] *See* 19 CFR 351.309(c)(1)(i); and 19 CFR 351.303 (for general filing requirements). Commerce has exercised its discretion under 19 CFR 351.309(c)(1)(i) to alter the time limit for submission of case briefs.

[10] *See* 19 CFR 351.309; and 19 CFR 351.303 (for general filing requirements).

[11] *See* Preliminary Scope Decision Memorandum.

[12] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (Temporary Rule); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Application of Facts Available and Use of Adverse Inferences
VII. All-Others Rate
VIII. Recommendation

[FR Doc. 2020–22815 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–867]

Common Alloy Aluminum Sheet From Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Taiwan is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Kathryn Turlo, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3870.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now October 6, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are aluminum sheet from Taiwan. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations, the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[4] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.*[5] For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

The deadline to submit scope case briefs was established in the Preliminary Scope Decision Memorandum.[7] There will be no further opportunity for comments on scope-related issues.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determines that critical circumstances do not exist with respect to imports of aluminum sheet from C.S. Aluminium Corporation (CSAC) and all other producers and exporters of subject merchandise. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce has preliminarily determined that the estimated weighted-average dumping margin for CSAC is 18.02 percent. Therefore, pursuant to section 735(c)(5)(A) of the Act, we determine that it is reasonable to determine the all-others rate based on CSAC's estimated weighted-average

[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia,* Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations, 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Taiwan,'' dated concurrently with, and hereby adopted by, this notice.

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

[7] Case briefs, other written comments, and rebuttal briefs submitted in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum; and ''Public Comment'' section of this notice.

dumping margin because CSAC's estimated weighted-average dumping margin is the only individually calculated rate that is not zero, *de minimis,* or based entirely on facts otherwise available.[8] For a full description of the methodology underlying Commerce's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
CSAC	18.02
All Others	18.02

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce intends to instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce intends to notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of a timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by producers and/or exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by the producers and/or exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 14, 2020, pursuant to 19 CFR 351.210(e), CSAC requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[10] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum sheet from Taiwan are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

[8] *See, e.g., Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value,* 81 FR 47355 (July 21, 2016).

[9] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[10] *See* CSAC's Letter, ''Antidumping Investigation of Common Alloy Aluminum Sheet from Taiwan—Request for Extension of Final Determination,'' dated September 14, 2020.

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Affiliation
VII. Preliminary Negative Determination of Critical Circumstances
VIII. Discussion of the Methodology
IX. Currency Conversion
X. Recommendation

[FR Doc. 2020–22803 Filed 10–14–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–854]

Common Alloy Aluminum Sheet From Brazil: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Brazil is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Shanah Lee or Kyle Clahane, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6386 or (202) 482–5449, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now October 6, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet from Brazil. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and

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[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Brazil,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 85 FR at 19445.

accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

The Preliminary Scope Decision Memorandum establishes the deadline to submit scope case briefs.[7] There will be no further opportunity for comments on scope-related issues.[8]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. In addition, Commerce has relied upon facts otherwise available with an adverse inference under sections 776(a) and (b) of the Act for Companhia Brasileira de Aluminio (CBA). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to Companhia Brasileira de Aluminio (CBA) and calculated an individual estimated weighted-average dumping margin for Novelis do Brasil Ltda. (Novelis Brasil), the two respondents selected for individual examination in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Novelis Brasil is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent)
Companhia Brasileira de Aluminio	* 136.78	* 135.63
Novelis do Brasil Ltda	[9] 49.48	49.48
All Others	49.48	48.33

* Adverse Facts Available (AFA).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Accordingly, where we preliminarily made an affirmative determination for countervailable export subsidies in the companion CVD proceeding,[10] we offset the estimated weighted-average dumping margin by the appropriate CVD rate. Any such adjusted rates may be found in the ''Preliminary Determination'' section above.[11]

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the

[6] *See* Memorandum, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 6, 2020, (Preliminary Scope Decision Memorandum).

[7] Case briefs, other written comments, and rebuttal briefs submitted by in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum, and ''Public Comment'' section of this notice.

[8] Parties were already permitted the opportunity to file scope case and rebuttal briefs.

[9] *See* Memorandum, ''Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Brazil: Analysis of the Preliminary Determination Margin Calculations for Novelis do Brasil Ltda.,'' dated concurrently with this notice.

[10] *See Common Alloy Aluminum Sheet from Brazil: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 49634 (August 14, 2020) (*CAAS Brazil CVD Prelim*), and accompanying Preliminary Decision Memorandum.

[11] For Novelis Brasil, cash deposit rates are not adjusted for export subsidies, as the subsidy rates found in the companion CVD investigation for the respondent were *de minimis.* For CBA, the preliminary dumping margins are adjusted by 1.15 percent, reflecting the total amount of estimated export subsidies found for CBA in the companion CVD investigation (*i.e.,* for Integrated Drawback Program (1.08) and Reintegra (.07)). As the preliminary all-others rate in the companion CVD investigation is based entirely on the rate of subsidization found for CBA, CBA's rate in this investigation is similarly adjusted by 1.15 percent to reflect the total amount of estimated export subsidies found for CBA. *See CAAS Brazil CVD Prelim* Preliminary Decision Memorandum; and Memorandum, ''Calculation of Export Subsidy Adjustments for the Preliminary Determination,'' dated concurrently with this notice.

information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments will be provided to interested parties at a later date. Rebuttal briefs, limited to issues raised in these case briefs, may be submitted no later than seven days after the deadline date for case briefs.[12] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[13] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 18 and 21, 2020, pursuant to 19 CFR 351.210(e), Novelis Brasil and CBA requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[14] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum sheet from Brazil are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025,

[12] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[13] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (*Temporary Rule*); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[14] *See* Novelis Brasil's Letter, ''Common Alloy Aluminum Sheet from Brazil: Novelis do Brasil's Request for Postponement for Final Antidumping Determination,'' dated September 18, 2020, and CBA's Letter, ''Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Brazil: CBA's Request for Postponement of Final Determination,'' dated September 21, 2020.

7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Application of Facts Available and Use of Adverse Inference
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2020–22818 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–854]

Certain Steel Nails From Taiwan: Partial Rescission of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review, in part, of the antidumping duty order on certain steel nails from Taiwan for the period July 1, 2019 through June 30, 2020.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2020, based on timely requests for review by Mid Continent Steel & Wire, Inc. (the petitioner), a domestic producer and interested party [1] and nine Taiwanese companies,[2] Commerce published in the **Federal Register** a notice of initiation, covering 141 companies, of an administrative review of the antidumping duty order on certain steel nails from Taiwan covering the period July 1, 2019 through June 30, 2020.[3]

On September 21, 2020, the petitioner timely withdrew its request for administrative review for all companies originally requested, except for one company, Create Trading Co., Ltd.[4] However, because eight of the companies withdrawn by the petitioner also self-requested an administrative review, and those companies have not withdrawn their review requests, we will not rescind the review with respect to those eight companies.[5] Apart from the aforementioned eight companies, no other parties requested review of the companies withdrawn by the petitioner. Finally, we note that the petitioner did not request review of Hoyi Plus Co., Ltd., a ninth company that also self-requested a review. Therefore, only 10 companies remain for which all requests for review have not been withdrawn at this time.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. Because all requests for administrative review of the 130 companies listed in the Appendix were withdrawn by the petitioner within 90 days of the date of publication of the *Initiation Notice,* and no other interested party requested a review of these 130 companies, Commerce is rescinding this review with respect to these companies in accordance with 19 CFR 351.213(d)(1). The administrative review remains active with respect to the following 10 companies: China Staple Enterprise Corporation, Create Trading Co., Ltd., Hor Liang Industrial Corp., Hoyi Plus Co., Ltd., Liang Chyuan Industrial Co., Ltd., Romp Coil Nail Industries Inc., Trim International Inc., UJL Industries Co., Ltd., Yu Chi Hardware Co., Ltd., and Zon Mon Co., Ltd.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period July 1, 2019 through June 30, 2020, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**, if appropriate.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

[1] *See* Petitioner's Letter, ''Request for Administrative Review,'' dated July 31, 2020. As the petitioner's request included three instances of duplicated company names, Commerce only counted the duplicated company names one time upon initiation, with the exception of Yu Chi Hardware Co., Ltd. which the petitioner listed twice and was also inadvertently listed twice in the *Initiation Notice. See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 54983 (September 3, 2020) (*Initiation Notice*).

[2] *See* Letter, ''Administrative Review Request,'' dated July 31, 2020, collectively from: Liang Chyuan Industrial Co., Ltd., Romp Coil Nail Industries Inc., UJL Industries Co., Ltd., Hor Liang Industrial Corp., Yu Chi Hardware Co., Ltd., Trim International Inc., China Staple Enterprise Corporation, Hoyi Plus Co., Ltd., and Zon Mon Co., Ltd.

[3] *See Initiation Notice.*

[4] *See* Petitioner's Letter, ''Withdrawal of Request for Administrative Reviews,'' dated September 21, 2020.

[5] Those eight companies are: (1) China Staple Enterprise Corporation; (2) Hor Liang Industrial Corp.; (3) Liang Chyuan Industrial Co., Ltd.; (4) Romp Coil Nail Industries Inc.; (5) Trim International Inc.; (6) UJL Industries Co., Ltd.; (7) Yu Chi Hardware Co., Ltd.; (8) Zon Mon Co., Ltd.

Date: October 8, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

Companies Rescinded From Review

1. A Jax Enterprises Ltd.
2. A Jax International Company Ltd.
3. AA Freight Inc.
4. ABS Metal Industry Corp.
5. Advanced Global Sourcing Ltd.
6. Alishan International Group Co., Ltd.
7. Apex Fastener International, Co., Ltd.
8. Aplus Pneumatic Corp.
9. A-Stainless International Co., Ltd.
10. Astrotech Steels Private Ltd.
11. Autolink International Co., Ltd.
12. Bestwell International Corp.
13. Bon Voyage Logistics Inc.
14. Bonuts Hardware Logistics Co., Ltd.
15. Bulls Technology Co., Ltd.
16. C.H. Robinson Freight Services
17. Canatex Industrial Co., Ltd.
18. Cata Co. Ltd.
19. Chaen Wei Corporation
20. Channg Chin Industry Corp.
21. Charng Yu Industrial Company Ltd.
22. Cheng CH International Co., Ltd.
23. Chia Da Fastener Co. Ltd.
24. China International Freight Co., Ltd.
25. China Mast Forwarders Co., Ltd.
26. China Sea Forwarders Co., Ltd.
27. Chite Enterprises Co., Ltd.
28. Clinch Nutsandstuds Co., Ltd.
29. Cornwall Enterprise Co., Ltd.
30. Co-Wealth Enterprise Co., Ltd.
31. Crane Worldwide Logistics LLC
32. Crown Run Industrial Corp.
33. De Fasteners Inc.
34. De Hui Screw Industry Co. Ltd.
35. Dolphin Logistics Co. Ltd.
36. Easylink Industrial Co., Ltd.
37. Encore Green Co. Ltd
38. Everise Global Logistics Co., Ltd.
39. Faithful Engineering Products Co., Ltd.
40. General Merchandise Consolidators, Inc.
41. Ginfa World Co. Ltd.
42. Home Value Co., Ltd.
43. Honour Lane Logistics Co.
44. International Freight Services
45. J C Grand Corporation
46. Jau Yeou Industry Co., Ltd.
47. Jinhai Hardware Co., Ltd.
48. Jinsco International Corp.
49. Jockey Ben Metal Enterprise Co. Ltd.
50. K.E. & Kingstone Co., Ltd.
51. King Compass Logistics Ltd.
52. Korea Wire Co., Ltd.
53. Kuehne + Nagel Ltd.
54. Liang's Industrial Corp.
55. Linkwell Industry Co., Ltd.
56. Maytrans International Cor.
57. MCL Multi Container Line Ltd.
58. OEC Freight Worldwide Co., Ltd.
59. Orient Express Container Co., Ltd.
60. Orient Star Transport Int'l Ltd.
61. Oriental Logistics Group Ltd.
62. OTS Forwarding (TWN) Ltd.
63. Pacific Concord International Ltd.
64. Pacific Star Express Corp.
65. Panther T & H Industry Co., Ltd.
66. PAR Excellence Industrial Co. Ltd.
67. Patek Tool Co., Limited
68. Pelican Logistics Co., Ltd.
69. PT Enterprise, Inc./Pro Team Coil Nail Enterprise Incor.
70. Pro-in Co., Ltd.
71. Quick Advance Inc.
72. Region Industries Co., Ltd.
73. Rodex Fasteners Corp.
74. Rohlig Taiwan Co., Ltd.
75. Roseter Info Trade Co., Ltd
76. RTG Logistics Ltd.
77. San Shing Fastech Corp.
78. Scanwell Container Line Ltd.
79. Scanwell Logistics (Taiwan) Ltd.
80. Schenker (H.K.) Ltd. (Taiwan Branch)
81. Se Fa Enterprise Co., Ltd.
82. Seamaster Logistics Inc. Co.
83. Shen Fong Industries Co., Ltd.
84. Shenyang Parts Industry Co., Ltd.
85. Shinn Rung Co., Ltd.
86. Shipco Transport Taiwan Co., Ltd.
87. Shun Den Iron Works Co., Ltd.
88. Sino Connections Logistics Inc.
89. Sino Global Logistics Co., Ltd.
90. Sirius Global Logistics Co. Ltd.
91. Six-2 Fastener Imports Inc.
92. Special Fastener Engineering Co., Ltd.
93. Speedier Logistics Co., Ltd.
94. Speedmark Consolidated Service, Ltd.
95. Sun Chen Fasteners Inc.
96. Sysmetal Enterprise, Co., Ltd.
97. SZU I Industries Co., Ltd.
98. T.H.I. Logistics Co. Ltd.
99. T.V.L. Container Line Ltd.
100. Tai Mao Nuts Co., Ltd.
101. Taifas Corporation
102. Taiwan Shan Yin International Co., Ltd.
103. Tang An Enterprise Co., Ltd.
104. Team Builder Enterprise Ltd.
105. Techart Mechanical Corporation
106. Test-Rite Int'l Co., Ltd.
107. The Ultimate Freight Management Ltd.
108. TJN International Ltd.
109. Toll Global Forwarding Ltd.
110. Tong HWEI Enterprise Co., Ltd.
111. Trans Wagon Int'l Co., Ltd.
112. Trans-Top Enterprise Co., Ltd.
113. Transwell Logistics Co. Ltd.
114. TSI Translink Taiwan Co. Ltd.
115. UC Freight Forwarding Co., Ltd.
116. Uni-Protech Industrial Co., Ltd.
117. Unicatch Industrial Co., Ltd.
118. Unistrong Industrial Co., Ltd.
119. Universal Power Shipping Ltd.
120. UPS Supply Chain Solutions Co., Ltd.
121. Wa Tai Industrial Co., Ltd.
122. Wanda International Logistics Co., Ltd.
123. Well-Source Connection Co., Ltd.
124. Whale Logistics Co., Ltd.
125. Wier I Industry Co., Ltd.
126. Win Fastener Corp.
127. Wyser International Corp.
128. Yeong Ming Steel Iron Co., Ltd.
129. Yeou Cherng Industrial Co., Ltd.
130. Yu Chi Taiwan Enterprise Co., Ltd.

[FR Doc. 2020–22808 Filed 10–14–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–820]

Common Alloy Aluminum Sheet From Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Spain is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Rachel Greenberg, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0652.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now October 6, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics

[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Spain,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are aluminum sheet from Spain. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

The deadline to submit scope case briefs are established in the Preliminary Scope Decision Memorandum. There will be no further opportunity for comments on scope-related issues.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export price and constructed export price in accordance with sections 772(a) and (b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied on partial facts otherwise available, with adverse inferences, for Aludium Transformacion de Productos, S.L. (Aludium), and entirely on facts otherwise available, with adverse inferences for Compania Valenciana de Aluminio Baux S.L.U. (Baux). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for Aludium. Because the only individually-calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Aludium is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Aludium Transformacion de Productos, S.L	3.75
Compania Valenciana de Aluminio Baux S.L.U./Bancolor Baux S.L.U	** 23.32
All Others	3.75

** Adverse Facts Available (AFA).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), where appropriate, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments on non-scope issues will be notified to interested parties at a later date. Rebuttal briefs, limited to issues raised in these case briefs, may be submitted no later than seven days after the

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 6, 2020 (Preliminary Scope Decision Memorandum).

[7] Case briefs, other written comments, and rebuttal briefs submitted in response to this preliminary LTFV determination should not include scope-related issues. See Preliminary Scope Decision Memorandum at 4; *see also* ''Public Comment'' section of this notice.

deadline date for case briefs.[8] Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 8, 2020, pursuant to 19 CFR 351.210(e), Aludium and Baux requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[10] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum sheet from Spain are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Application of Facts Available and Use of Adverse Inference
VII. Affiliation/Single Entity
VIII. Discussion of the Methodology
IX. Currency Conversion
X. Recommendation

[FR Doc. 2020–22813 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[10] *See* Aludium's Letter, ''Common Alloy Aluminum Sheet from Spain: Aludium Transformación de Productos, S.L.'s Request to Postpone the Final Determination,'' dated September 8, 2020; *see also* Baux's Letter, ''Common Alloy Aluminum Sheet From Spain: Request to Postpone Final Determination,'' dated September 8, 2020.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–801–001]

Common Alloy Aluminum Sheet From Serbia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Serbia is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Jaron Moore or Katherine Johnson, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3640 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination of this investigation and the revised deadline is now October 6, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are aluminum sheet from Serbia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

The deadline to submit scope case briefs is established in the Preliminary Scope Decision Memorandum. There will be no further opportunity for comments on scope-related issues.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. Furthermore, pursuant to section 776(a) of the Act, Commerce has preliminarily relied on facts otherwise available for parts of Impol d.o.o.'s and Impol Seval, a.d.'s (collectively, Impol's) calculations. In addition, pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied on facts otherwise available, with adverse inferences, for Otovici Doo. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce calculated an individual estimated weighted-average dumping margin for Impol. Commerce also selected a rate based entirely on facts otherwise available, with adverse inferences, to Otovici Doo. Therefore, pursuant to section 735(c)(5)(A) of the Act, we preliminarily determine that it is reasonable to determine the all-others rate based on Impol's estimated weighted-average dumping margin because the only rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Impol. Consequently, the rate calculated for Impol is also assigned as the rate for all other producers and exporters.[7]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

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[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Serbia'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 85 FR at 19445.

[6] *See* Memorandum, ''Antidumping and Countervailing Duty Investigations of Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 6, 2020 (Preliminary Scope Decision Memorandum).

[7] *See, e.g., Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value,* 81 FR 47355 (July 21, 2016).

Exporter/producer	Estimated weighted-average dumping margin (percent)
Impol Seval, a.d./Impol d.o.o.[8]	11.24
Otovici Doo	** 25.84
All Others	11.24

** Adverse Facts Available (AFA).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[9] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 9, 2020, pursuant to 19 CFR 351.210(e), Impol requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[11] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its affirmative preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a

[8] Impol reported that Impol Seval, the producer in Serbia is ''affiliated with Impol d.o.o. {the exporter in Slovenia} by common control.'' This reported affiliation is supported by record evidence. *See* Section A Questionnaire Response dated May 26, 2020, at A–4, Exhibit A–4, and Appendix I, containing the Impol Group 2019 Annual Report, at page 15. Accordingly, the preliminary rate calculated applies to subject merchandise produced by Impol Seval and exported by either Impol Seval (Serbia) or Impol d.o.o. (Slovenia).

[9] *See* 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).

[10] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–10; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[11] *See* Impol's Letter, ''Common Alloy Aluminum Sheet from Slovenia, Croatia, and Serbia—Request Postponement of Final Determination and Extension of Provisional Measures Period,'' dated September 9, 2020.

thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Application of Facts Available and Use of Adverse Inference
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Recommendation

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–525–001]

Common Alloy Aluminum Sheet From Bahrain: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Bahrain is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Allison Hollander, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2805.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now October 6, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are aluminum sheet from Bahrain. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation*

[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Bahrain,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 6, 2020 (Preliminary Scope Comments Decision Memorandum).

Notice. See the revised scope in Appendix I to this notice.

The deadline to submit scope case briefs are established in the Preliminary Scope Decision Memorandum. There will be no further opportunity for comments on scope-related issues.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

In this investigation, the ''all others'' rate is based on the dumping margin calculated for Gulf Aluminium Rolling Mill B.S.C. (GARMCO), the only entity for which Commerce calculated a rate.[8]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Gulf Aluminium Rolling Mill B.S.C	4.21
All Others	4.21

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), where appropriate, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

While Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect, we have preliminarily not adjusted the cash deposit rates listed above because Commerce found no countervailable export subsidies in the preliminary determination of the companion CVD investigation.[9]

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[10] Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be

[7] Case briefs, other written comments, and rebuttal briefs submitted in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Comments Decision Memorandum at 4; *see also* ''Public Comment'' section of this notice.

[8] *See* section 735(c)(5)(A) of the Act.

[9] *See Common Alloy Aluminum Sheet from Bahrain: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 85 FR 49636 (August 14, 2020), and accompanying Preliminary Decision Memorandum.

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 24, 2020, pursuant to 19 CFR 351.210(e), GARMCO requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[12] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum sheet from Bahrain are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

[12] *See* GARMCO's Letter, ''Common Alloy Aluminum Sheet from Bahrain: GARMCO's Request to Extend Final Determination,'' dated September 24, 2020.

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Discussion of the Methodology
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2020–22804 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–484–804]

Common Alloy Aluminum Sheet From Greece: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Greece is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Samantha Kinney, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–2285, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation

on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now October 6, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at h*ttp://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are aluminum sheet from Greece. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Memorandum.[6] As discussed in the Preliminary Scope Memorandum, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

The deadline to submit scope case briefs is established in the Preliminary Scope Memorandum. There will be no further opportunity for comments on scope-related issues.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices and constructed export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. Furthermore, pursuant to section 776(a) of the Act, Commerce has preliminarily relied on facts otherwise available for part of Elval Hellenic Aluminum Industry S.A.'s (Elvalhalcor's) calculations. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

We preliminarily determine that Argiropoulos B.A.E.E. (Argiropoulos) had no shipments of the subject merchandise to the United States during the POI.[7] Consistent with our practice, Commerce will complete the investigation and issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on the final determination.

All-Others Rate

Section 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Commerce calculated an individual estimated weighted-average dumping margin for Elvalhalcor, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Elvalhalcor is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Elval Hellenic Aluminum Industry S.A.[8] /Elval Colour S.A./ Symetal S.A	2.72
All Others	2.72

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct CBP to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Greece,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice*, 85 FR at 19445.

[6] *See* Memorandum, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations'' dated October 6, 2020 (Preliminary Scope Memorandum).

[7] *See* Preliminary Decision Memorandum at 5.

[8] Commerce preliminarily determines that Elvalhalcor, Elval Colour S.A., and Symetal S.A. are affiliated and should be treated as a single entity. *See* Preliminary Decision Memorandum for further discussion.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[9] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 11, 2020, pursuant to 19 CFR 351.210(e), Elvalhalcor requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[11] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its affirmative preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

[9] *See* 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).

[10] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[11] *See* Elvalhalcor's Letter, ''Antidumping Investigation of Common Alloy Aluminum Sheet from Greece—Request for Postponement of Final Determination and Provisional Measures Period,'' dated September 11, 2020.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Preliminary Determination of No Shipments
VII. Affiliation and Collapsing
VIII. Discussion of the Methodology
IX. Currency Conversion
X. Recommendation

[FR Doc. 2020–22798 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–895]

Common Alloy Aluminum Sheet From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from India is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Jasun Moy or Nicolas Mayora, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8194 or (202) 482–3053, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now October 6, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at h*ttp://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are aluminum sheet from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

The deadline to submit scope case briefs is established in the Preliminary Scope Decision Memorandum. There will be no further opportunity for comments on scope-related issues.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied on partial facts otherwise available, with adverse inferences, for Hindalco Industries Limited (Hindalco). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from India,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Antidumping and Countervailing Duty Investigations of Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 6, 2020 (Preliminary Scope Decision Memorandum).

[7] Case briefs, other written comments, and rebuttal briefs submitted in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum at 4; and the ''Public Comment'' section of this notice.

Commerce calculated an individual estimated weighted-average dumping margin for Hindalco. Additionally, Commerce preliminarily determined that the estimated weighted-average dumping margin for Manaksia Aluminium Company Limited (MALCO) is zero. Therefore, for purposes of determining the all-others rate, and pursuant to section 735(c)(5)(A) of the Act, we are using the dumping margin calculated for Hindalco, which is not zero, *de minimis,* or determined entirely under section 776 of the Act. For a full description of the methodology underlying Commerce's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Hindalco Industries Limited	47.92	44.59
Manaksia Aluminium Company Limited	0.00	0.00
All Others	47.92	44.59

Consistent with section 733(b)(3) of the Act, Commerce disregards *de minimis* rates. Accordingly, Commerce preliminarily determines that MALCO, an individually examined respondent with a zero rate, has not made sales of subject merchandise at LTFV.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register,** except for those entries of subject merchandise produced and exported by MALCO. Because the estimated weighted-average dumping margin for MALCO is zero, we are not directing CBP to suspend liquidation of entries of the subject merchandise it produced and exported.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), where appropriate, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Because the estimated weighted-average dumping margin for MALCO is zero, entries of shipments of subject merchandise from this company will not be subject to suspension of liquidation or cash deposit requirements. In such situations, Commerce applies the exclusion from the provisional measures to the producer/exporter combination that was examined in the investigation. Accordingly, Commerce is directing CBP not to suspend liquidation of entries of subject merchandise produced and exported by MALCO. Entries of shipments of subject merchandise from this company in any other producer/exporter combination, or by third parties that sourced subject merchandise from the excluded producer/exporter combination, are subject to the provisional measures at the all-others rate.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for the producer/exporter combination identified above, entries of shipments of subject merchandise from this producer/exporter combination will be excluded from the potential antidumping duty order. Such exclusions are not applicable to merchandise exported to the United States by this respondent in any other producer/exporter combinations or by third parties that sourced subject merchandise from the excluded producer/exporter combination.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies (*i.e.,* Advanced Authorization Program, Duty Drawback Program, Export Promotion of Capital Good Scheme, Merchandise Export from India Scheme, and Export-Oriented Unit Scheme), Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate.[8] Any such adjusted cash deposit rate may be found in the ''Preliminary Determination'' section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments on non-scope issues will be notified to interested parties at a later date. Rebuttal briefs, limited to issues raised in these case briefs, may be submitted no later than seven days after the deadline date for case briefs.[9] Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each

[8] *See Common Alloy Aluminum Sheet from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 85 FR 49631 (August 14, 2020), and accompanying Preliminary Decision Memorandum.

[9] *See* 19 CFR 351.309; and 19 CFR 351.303 (for general filing requirements).

[10] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 7 and 18, 2020, pursuant to 19 CFR 351.210(e), MALCO and Hindalco requested, respectively, that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[11] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum sheet from India are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Application of Facts Available and Use of Adverse Inference
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2020–22810 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See* MALCO's Letter, ''Common Alloy Aluminium Sheet from India: Request to Postpone the Final Determination,'' dated September 7, 2020; and Hindalco's Letter, ''Common Alloy Aluminum Sheet from India: Hindalco's Request for Postponement of Final Antidumping Determination,'' dated September 18, 2020.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Rescission of Antidumping Duty Administrative Review; 2019–2020, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On April 8, 2020, the Department of Commerce (Commerce)

initiated an administrative review of the antidumping duty (AD) order on certain frozen warmwater shrimp (shrimp) from India for the period February 1, 2019 through January 31, 2020, for 235 companies. Because all interested parties timely withdrew their requests for administrative review for certain companies, we are rescinding this administrative review with respect to those companies. For a list of the companies for which we are rescinding this review, *see* Appendix I to this notice. For a list of the companies for which the review is continuing, *see* Appendix II to this notice.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Adam Simons or Ajay Menon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6172 or (202) 482–1993.

Background

On February 3, 2020, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the AD order on shrimp from India for the period February 1, 2019 through January 31, 2020.[1] In February 2020, Commerce received timely requests, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), to conduct an administrative review of this antidumping duty order from the Ad Hoc Shrimp Trade Action Committee (the petitioner), the American Shrimp Processors Association (ASPA), and certain individual companies. Based on these requests, on April 8, 2020, in accordance with section 751(a) of the Act, Commerce published in the **Federal Register** a notice of initiation listing 235 companies for which Commerce received timely requests for review.[2]

On April 24, 2020, Commerce tolled all deadlines for administrative reviews by 50 days, and, on July 21, 2020, Commerce tolled deadlines for preliminary and final results in administrative reviews by an additional 60 days.[3]

In August 2020, all interested parties timely withdrew their requests for an administrative review of certain companies.[4] These companies are listed in Appendix I.

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. As noted above, certain parties withdrew their requests for review by the 90-day tolled deadline. Accordingly, we are rescinding this administrative review with respect to the companies listed in Appendix I.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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 section 751(a)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: October 8, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations

Appendix I

Akshay Food Impex Private Limited
Alashore Marine Exports (P) Limited
Alpha Marine
Ananda Aqua Applications/Ananda Aqua Exports (P) Limited/Ananda Foods
Ananda Enterprises (India) Private Limited
Apex Frozen Foods Limited
Aquatica Frozen Foods Global Pvt. Ltd.
Arya Sea Foods Private Limited
Asvini Fisheries Ltd/Asvini Fisheries Private Ltd
Avanti Frozen Foods Private Ltd.
Bluepark Seafoods Pvt. Ltd.
BMR Exports
BMR Industries Private Limited
B-One Business House Private Limited
C.P. Aquaculture (India) Pvt. Ltd.
Calcutta Seafoods Pvt. Ltd./Bay Seafood Pvt. Ltd./Elque & Co.
Castlerock Fisheries Ltd.
Choice Trading Corporation Pvt. Ltd.
Coastal Aqua Private Limited
Coastal Corporation Ltd.
CPF (India) Private Limited
Devi Fisheries Limited/Satya Seafoods Private Limited/Usha Seafoods/Devi Aquatech Private Limited
Devi Marine Food Exports Private Ltd./Kader Export Private Limited/Kader Investment and Trading Company Private Limited/Liberty Frozen Foods Pvt. Ltd./Liberty Oil Mills Ltd/Premier Marine Products Private Limited/Universal Cold Storage Private Limited
Diamond Seafoods Exports/Edhayam Frozen Foods Pvt. Ltd/Kadalkanny Frozen Foods/Theva & Company
Falcon Marine Exports Limited/KR Enterprises
Five Star Marine Exports Private Limited
Forstar Frozen Foods Pvt. Ltd.
Geo Seafoods
Growel Processors Private Limited
IFB Agro Industries Limited
ITC Ltd.
Jagadeesh Marine Exports
Jayalakshmi Sea Foods Pvt. Ltd.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 5938 (February 3, 2020).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 19730 (April 8, 2020) (*Initiation Notice*).

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020; and Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[4] *See* Magnum Sea Foods Limited and Magnum Estates Limited's Letter, ''Magnum Withdrawal of Review Request for Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from India,'' dated August 17, 2020; *see also* ASPA's Letter, ''Certain Frozen Warmwater Shrimp from India: American Shrimp Processors Association's Partial Withdrawal of Review Requests,'' dated August 20, 2020; Petitioner's Letter, ''Certain Frozen Warmwater Shrimp from India: Domestic Producers' Partial Withdrawal of Review Requests,'' dated August 20, 2020; Indian Producers' Letter, ''Certain Frozen Warmwater Shrimp from India: Withdrawal of Requests for Administrative Review for 24 Indian Producers/Exporters (02/01/19–01/31/20),'' dated August 20, 2020; and West Coast Frozen Foods Private Limited's Letter, ''Frozen Warmwater Shrimp from India-Withdrawal of Request for Antidumping Duty Admin Review of West Coast Frozen Foods Private Limited,'' dated August 24, 2020.

KNC Agro Pvt. Ltd.
K V Marine Exports
Kalyan Aqua & Marine Exp. India Pvt. Ltd.
Magnum Export
Magnum Sea Foods Limited/Magnum Estates Limited [5]
Mangala Marine Exim India Pvt. Ltd.
Mangala Seafoods
Milesh Marine Exports Private Limited
Monsun Foods Pvt. Ltd.
Mourya Aquex Private Limited
Munnangi Seafoods (Pvt) Ltd.
Naga Hanuman Fish Packers
Neeli Aqua Private Limited
Nekkanti Sea Foods Limited
Nezami Rekha Sea Foods Private Limited
Nila Sea Foods Exports
Nila Sea Foods Pvt. Ltd.
Pasupati Aquatics Private Limited
Penver Products (P) Ltd.
Ram's Assorted Cold Storage Ltd.
Razban Seafoods Ltd.
Royale Marine Impex Private Limited
S A Exports
Sagar Grandhi Exports Pvt. Ltd.
Sai Marine Exports Pvt. Ltd.
Sai Sea Foods
Sanchita Marine Products P Ltd
Sandhya Aqua Exports Pvt. Ltd.
Sandhya Marines Limited
Sea Foods Private Limited
Sharat Industries Ltd.
Shree Datt Aquaculture Farms Pvt. Ltd.
Southern Tropical Foods Pvt. Ltd.
Sprint Exports Pvt. Ltd.
Srikanth International
Sunrise Seafoods India Private Limited
Suryamitra Exim (P) Ltd.
V V Marine Products
Vasista Marine
Veerabhadra Exports Private Limited
Wellcome Fisheries Limited
West Coast Fine Foods (India) Private Limited
West Coast Frozen Foods Private Limited
Z.A. Sea Foods Pvt. Ltd.

Appendix II

Abad Fisheries Private Limited
ADF Foods Ltd.
Albys Agro Private Limited
Al-Hassan Overseas Private Limited
Allana Frozen Foods Pvt. Ltd.
Allanasons Ltd.
Alps Ice & Cold Storage Private Limited
Amarsagar Seafoods Private Limited
Amulya Seafoods
Anantha Seafoods Private Limited
Anjaneya Seafoods
Asvini Agro Exports
Ayshwarya Seafood Private Limited
B R Traders
Baby Marine Eastern Exports
Baby Marine Exports
Baby Marine International
Baby Marine Sarass
Baby Marine Ventures
Balasore Marine Exports Private Limited
BB Estates & Exports Private Limited
Bell Exim Private Limited (Bell Foods (Marine Division))
Bell Exim Pvt. Ltd.
Bhatsons Aquatic Products
Bhavani Seafoods
Bijaya Marine Products
Blue Fin Frozen Foods Pvt. Ltd.
Blue Water Foods & Exports P. Ltd.
Britto Seafood Exports Pvt Ltd.
Canaan Marine Products
Capithan Exporting Co.
Cargomar Private Limited
Chakri Fisheries Private Limited
Chemmeens (Regd)
Cherukattu Industries (Marine Div)
Cochin Frozen Food Exports Pvt. Ltd.
Continental Fisheries India Pvt. Ltd.
Coreline Exports
Corlim Marine Exports Pvt. Ltd.
Crystal Sea Foods Private Limited
Delsea Exports Pvt. Ltd.
Devi Sea Foods Limited [6]
Empire Industries Limited
Entel Food Products Private Limited
Esmario Export Enterprises
Everblue Sea Foods Private Limited
Febin Marine Foods
Fouress Food Products Private Limited
Frontline Exports Pvt. Ltd.
G A Randerian Ltd.
Gadre Marine Exports
Galaxy Maritech Exports P. Ltd.
Geo Aquatic Products (P) Ltd.
Godavari Mega Aqua Food Park Private Limited
Grandtrust Overseas (P) Ltd.
Green House Agro Products
GVR Exports Pvt. Ltd.
Hari Marine Private Limited
Haripriya Marine Export Pvt. Ltd.
HIC ABF Special Foods Pvt. Ltd.
Hiravati Exports Pvt. Ltd.
Hiravati International Pvt. Ltd. (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)
Hiravati Marine Products Private Limited
HMG Industries Limited
HN Indigos Private Limited
Hyson Logistics and Marine Exports Private Limited
Indian Aquatic Products
Indo Aquatics
Indo Fisheries
Indo French Shellfish Company Private Limited
International Freezefish Exports
Jinny Marine Traders
Jiya Packagings
Karunya Marine Exports Private Limited
Kaushalya Aqua Marine Products Exports Pvt. Ltd.
Kay Kay Exports
Kings Marine Products
Koluthara Exports Ltd.
Landauer Ltd.
Libran Cold Storages (P) Ltd.
Mangala Sea Products
Marine Harvest India
Megaa Moda Pvt. Ltd.
Milsha Agro Exports Private Limited
Milsha Sea Products
Minaxi Fisheries Private Limited
Mindhola Foods LLP
MMC Exports Limited
MTR Foods
N.K. Marine Exports LLP
Naik Frozen Foods
Naik Oceanic Exports Pvt. Ltd./Rafiq Naik Exports Pvt. Ltd.
Naik Seafoods Ltd.
Nekkanti Mega Food Park Private Limited
Nine Up Frozen Foods
Nutrient Marine Foods Limited
Oceanic Edibles International Limited
Paragon Sea Foods Pvt. Ltd.
Paramount Seafoods
Parayil Food Products Pvt., Ltd.
Pesca Marine Products Pvt., Ltd.
Pijikay International Exports P Ltd.
Pravesh Seafood Private Limited
Premier Exports International
Premier Marine Foods
Premier Seafoods Exim (P) Ltd.
RDR Exports
R F Exports
RF Exports Private Limited
RSA Marines
R V R Marine Products Limited
Raju Exports
Raunaq Ice & Cold Storage
Royal Imports and Exports
Royal Oceans
Rupsha Fish Private Limited
S Chanchala Combines Private Limited
Sagar Samrat Seafoods
Sahada Exports
Salet Seafoods Private Limited
Samaki Exports Private Limited
Sasoondock Matsyodyog Sahakari Society Ltd.
Seagold Overseas Pvt. Ltd.
Shimpo Exports Private Limited
Shimpo Seafoods Private Limited
Shiva Frozen Food Exp. Pvt. Ltd.
Shroff Processed Food & Cold Storage P Ltd.
Silver Seafood
Sita Marine Exports
Sonia Fisheries Private Limited
Sri Sakkthi Cold Storage
SSF Ltd.
Star Agro Marine Exports Private Limited
Star Organic Foods Private Limited
Stellar Marine Foods Private Limited
Sterling Foods
Sun Agro Exim
Supran Exim Private Limited
Suvarna Rekha Exports Private Limited
Suvarna Rekha Marines P Ltd.
TBR Exports Pvt Ltd.
Teekay Marine P. Ltd.
The Waterbase Limited
Triveni Fisheries P Ltd.
U & Company Marine Exports
Ulka Sea Foods Private Limited
Uniroyal Marine Exports Ltd.
Unitriveni Overseas
Vasai Frozen Food Co.
Veronica Marine Exports Private Limited
Victoria Marine & Agro Exports Ltd.
Vinner Marine
Vitality Aquaculture Pvt. Ltd.

[5] In the *Initiation Notice,* we also incorrectly listed the company name Magnum Esates (sic) Limited; however, no interested party requested a review of this variation of the name of Magnum Estates Limited. Therefore, we will not continue to review this name variation.

[6] Shrimp produced and exported by Devi Sea Foods Limited (Devi) was excluded from the order effective February 1, 2009. *See Certain Frozen Warmwater Shrimp from India: Final Results of the Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part,* 75 FR 41813, 41814 (July 19, 2010). Accordingly, we initiated this administrative review with respect to Devi only for shrimp produced in India where Devi acted as either the manufacturer or exporter (but not both).

VRC Marine Foods LLP
Zeal Aqua Limited

[FR Doc. 2020–22821 Filed 10–14–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–729–803]

Common Alloy Aluminum Sheet From Egypt: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Egypt is being, or is likely to be sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Magd Zalok, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4162.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination in this investigation and the revised deadline is now October 6, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet from Egypt. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. In addition, Commerce has relied on partial adverse facts available under sections 776(a) and (b) of the Act for Aluminium Co. of Egypt (Egyptalum)/Egyptian Copper Works Company (Egypt Copper) (collectively Egyptalum-Egypt Copper).[7] For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Commerce calculated an individual estimated weighted-average dumping margin for the single entity Egyptalum-Egypt Copper, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Egyptalum-Egypt Copper is the dumping margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A).

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margin exists:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Aluminium Co. of Egypt (Egyptalum)/Egyptian Copper Works Company [8]	[9] 10.42
All Others	10.42

[1] *See Common Alloy Aluminum Sheet From Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Egypt,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 85 FR at 19445.

[6] *See* Memorandum, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 6, 2020.

[7] Commerce preliminarily determined that Aluminium Co. of Egypt (Egyptalum) and Egyptian Copper Works Company are a single entity. *See* Preliminary Decision Memorandum.

[8] *Id.*

[9] *See* Memorandum ''Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Egypt: Preliminary Determination Analysis Memorandum for Aluminium Co. of Egypt/Egyptian Copper Works Company,'' dated concurrently with this notice.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), where appropriate, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for Egyptalum-Egypt Copper listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not the respondent identified above, but the producer is, then the cash deposit rate will be equal to this company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments on non-scope issues will be announced at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline for case briefs.[10] The deadlines for submitting case and rebuttal briefs on scope issues are in the Preliminary Scope Decision Memorandum.[11] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date and time of the hearing two days before the scheduled date of the hearing.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 18, 2020, pursuant to 19 CFR 351.210(e), Egyptalum requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[13] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See* Memorandum, ''Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 6, 2020.

[12] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (Temporary Rule); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[13] *See* Egyptalum's Letter, ''Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Egypt: Request for Postponement of Final Determination and Provisional Measures,'' dated September 18, 2020.

core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Affiliation/Single Entity
VII. Application of Partial Facts Available and Use of Adverse Inference
VIII. Discussion of The Methodology
IX. Currency Conversion
X. Recommendation

[FR Doc. 2020–22816 Filed 10–14–20; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–891–001]

Common Alloy Aluminum Sheet From Croatia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Croatia is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination of this investigation and the revised deadline is now October 6, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are aluminum sheet from Croatia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Memorandum.[6] As discussed in the Preliminary Scope Memorandum, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

The deadline to submit scope case briefs is established in the Preliminary Scope Memorandum. There will be no further opportunity for comments on scope-related issues.

[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19444 (April 7, 2020) (*Initiation Notice*).

[2] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Croatia'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 85 FR at 19445.

[6] *See* Memorandum, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 6, 2020 (Preliminary Scope Memorandum).

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Commerce calculated an individual estimated weighted-average dumping margin for Impol d.o.o. and Impol TLM d.o.o. (collectively, Impol), the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Impol is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Impol d.o.o./Impol-TLM d.o.o. [7] ..	3.22
All Others	3.22

[7] Impol reported that Impol-TLM, the producer in Croatia, is ''affiliated with Impol d.o.o. {the exporter in Slovenia} by common control.'' This reported affiliation is supported by record evidence. *See* Section A Questionnaire Response dated May 26, 2020, at A–4, Exhibit A–4, and Appendix I, containing the Impol Group 2019 Annual Report, at page 15. Accordingly, the preliminary rate calculated for Impol applies to subject merchandise produced by Impol-TLM d.o.o. and exported by either Impol-TLM d.o.o. (Croatia) or Impol d.o.o. (Slovenia).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[8] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 9, 2020, pursuant to 19 CFR 351.210(e), Impol requested that Commerce postpone the final determination and that provisional measures be extended to a period not to

[8] *See* 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

exceed six months.[10] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its affirmative preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Discussion of the Methodology
VII. Currency Conversion
VIII. Recommendation

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[10] *See* Impol's Letter, ''Request Postponement of Final Determination and Extension of Provisional Measures Period,'' dated September 9, 2020.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–849]

Common Alloy Aluminum Sheet From Germany: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from Germany is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Jonathan Hill or Thomas Hanna, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3518 or (202) 482–0835, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 7, 2020.[1] On July 29, 2020, Commerce postponed the preliminary determination of this investigation and the revised deadline is now October 6, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics

[1] *See Common Alloy Aluminum Sheet From Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 19445 (April 7, 2020) (*Initiation Notice*).

[2] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 45576 (July 29, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Common Alloy

included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are aluminum sheet from Germany. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. Furthermore, pursuant to section 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available, with adverse inferences, for Hydro Aluminium Rolled Products GmbH (HARP). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act.

In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to HARP. Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for Novelis Deutschland GmbH (Novelis). Consequently, the rate calculated for Novelis is also assigned as the rate for all other producers and exporters.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter or producer	Estimated weighted-average dumping margin (percent)
Hydro Aluminium Rolled Products GmbH	352.71
Novelis Deutschland GmbH	[7] 51.18
All Others	51.18

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed in the table above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments on non-scope issues will be announced at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline for case briefs.[8] The deadlines for submitting case and rebuttal briefs on scope issues are in the Preliminary Scope Decision Memorandum.[9] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary

Aluminum Sheet from Germany,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

[7] *See* Memorandum ''Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from Germany: Preliminary Determination Analysis Memorandum for Novelis Deutschland GmbH,'' dated concurrently with this notice.

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See* Preliminary Scope Decision Memorandum.

information, until further notice.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

During the course of this investigation, Commerce collected information from Novelis and HARP relating to the single entity treatment of affiliated producers, as well as the single entity treatment of each mandatory respondent with Aluminum Norf GmbH (AluNorf), consistent with 19 CFR 351.401(f).[11] Interested parties are invited to comment on the application of the criteria in 19 CFR 351.401(f) to Novelis, HARP, and AluNorf, and to Novelis and HARP individually with AluNorf in their case briefs.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date and time of the hearing two days before the scheduled date of the hearing.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 16 and 18, 2020, pursuant to 19 CFR 351.210(e), HARP and Novelis, respectively, requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[12] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into

[10] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[11] *See, e.g.,* Novelis's Letter, ''Common Alloy Aluminum Sheet from Germany: Novelis Deutschland's GmbH's Section A Supplemental Questionnaire Response,'' dated August 5, 2020 at 8–14; *see also* HARP's Letter, ''Common Alloy Aluminum Sheet from Germany; Section A Supplemental Response,'' dated August 13, 2020 at 1–6.

[12] *See* Harp's Letter, ''Common Alloy Aluminum Sheet from Germany; Request to Extend Final Determination,'' dated September 16, 2020; and Novelis's Letter, ''Common Alloy Aluminum Sheet from Germany: Novelis Deutschland's Request for Postponement of Final Antidumping Determination,'' dated September 18, 2020.

the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Scope Comments
VI. Applications of Facts Available and Use of Adverse Inference
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2020–22819 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA514

Pacific Island Fisheries; Marine Conservation Plan for Pacific Insular Areas Other Than American Samoa, Guam, and the Northern Mariana Islands; Western Pacific Sustainable Fisheries Fund

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

ACTION: Notice of agency decision.

SUMMARY: NMFS announces approval of a Marine Conservation Plan (MCP) for Pacific Insular Areas other than American Samoa, Guam, and the Northern Mariana Islands.

DATES: This agency decision is applicable from August 4, 2020, through August 3, 2023.

ADDRESSES: You may obtain a copy of the MCP, identified by NOAA–NMFS–2020–0132, from the Federal e-Rulemaking Portal, *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS=2020=0132,* or from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, 808–522–8220, *http://www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: David O'Brien, Sustainable Fisheries, NMFS Pacific Islands Regional Office, 808–725–5038.

SUPPLEMENTARY INFORMATION: Section 204(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary), and in consultation with the Council, to negotiate and enter into a Pacific Insular Area fishery agreement (PIAFA). A PIAFA would allow foreign fishing within the U.S. Exclusive Economic Zone (EEZ) adjacent to a Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands, that is, in the EEZ around the Pacific Remote Island Areas (PRIA). The PRIA are Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Palmyra Atoll, and Wake Island. Before entering into a PIAFA for the PRIA, the Council must develop and submit to the Secretary a 3-year MCP that details the uses for funds collected by the Secretary under the PIAFA. NMFS is the designee of the Secretary for MCP review and approval.

The Magnuson-Stevens Act requires payments received under a PIAFA, and any funds or contributions received in support of conservation and management objectives for the MCP, to be deposited into the Western Pacific Sustainable Fisheries Fund (Fund) for use by the Council. Additionally, in the case of violations by foreign fishing vessels in the EEZ around the PRIA, amounts received by the Secretary attributable to fines and penalties imposed under the Magnuson-Stevens Act, including sums collected from the forfeiture and disposition or sale of property seized subject to its authority, are deposited into the Fund for use by the Council, after direct costs of the enforcement action are subtracted. Section 204(e)(7)(C) of the Magnuson-Stevens Act also authorizes the Council to use the Fund to meet conservation and management objectives in the State of Hawaii, if funds remain available.

An MCP must be consistent with the Council's fishery ecosystem plans (FEPs), must identify conservation and management objectives (including criteria for determining when such objectives have been met), and must prioritize planned marine conservation projects. Although no foreign fishing in the PRIA is being considered at this time, the Council reviewed and approved the draft MCP at its September 2020 meeting. On September 18, 2020, the Council's Executive Director submitted the MCP to NMFS for review and approval.

The MCP contains the following five conservation and management objectives that are consistent with the FEP for the PRIA and the FEP for Pelagic Fisheries of the Western Pacific:

1. Support quality research and monitoring to obtain the most complete scientific information available to assess and manage fisheries within an ecosystem approach;
2. Conduct education and outreach to foster good stewardship principles and broad and direct public participation in the Council's decision making process;
3. Promote regional cooperation to manage domestic and international fisheries;
4. Encourage development of technologies and methods to achieve the most effective level of monitoring, control and surveillance (MCS) and to ensure safety at sea; and
5. Western Pacific community demonstration projects and Western Pacific Community Development Program.

In addition, the MCP contains seven conservation and management objectives that are consistent with the FEP for the Hawaiian Archipelago:

1. Support quality research and monitoring to obtain the most complete scientific information available to assess and manage fisheries within an ecosystem approach;
2. Promote an ecosystem approach to fisheries management including reducing bycatch in fisheries and minimizing impacts on marine habitat and impacts on protected species and addressing climate change adaptation and mitigation;
3. Conduct education and outreach to foster good stewardship principles and broad and direct public participation in the Council's decision making process;
4. Recognize the importance of island cultures and traditional fishing practices in managing fishery resources and foster opportunities for participation;
5. Promote responsible domestic fisheries development to provide long term economic growth and stability by reducing foreign imports and increasing local seafood production;
6. Promote regional cooperation and capacity building to manage domestic and international fisheries; and
7. Encourage development of technologies and methods to achieve the most effective level of monitoring, control and surveillance and to ensure safety at sea.

Please refer to the MCP for projects and activities designed to meet each objective, the evaluative criteria, and priority rankings.

This notice announces that NMFS has reviewed the MCP and determined that it satisfies the requirements of the Magnuson-Stevens Act. Accordingly, we have approved the MCP for the 3-year

period from August 4, 2020, through August 3, 2023. This MCP supersedes the one approved previously for August 4, 2017, through August 3, 2020 (82 FR 37575, August 11, 2017).

Dated: October 9, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–22786 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA552]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) associated with the Bureau of Reclamation (Reclamation) and the California Department of Fish and Wildlife (CDFW)'s Trinity River Hatchery and Genetic Management Plan (HGMP) for Southern Oregon Northern California Coast coho salmon hatchery production is now available to the public. The Trinity River Hatchery is located in Trinity County, California.

ADDRESSES: The Final Environmental Assessment, Finding of No Significant Impact, and supporting documents are available by visiting the NMFS website (*www.fisheries.noaa.gov/west-coast/laws-and-policies/west-coast-region-national-environmental-policy-act-documents*) or by contacting Seth Naman at *Seth.Naman@noaa.gov*

FOR FURTHER INFORMATION CONTACT: Seth Naman at: (707) 825–5180, or via email: *Seth.Naman@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

Southern Oregon/Northern California Coast (SONCC) Coho Salmon (*Oncorhynchus kisutch*).

Background

Reclamation and CDFW submitted the Trinity River Coho Salmon HGMP to NMFS for determination on whether the HGMP meets Limit 5 criteria of the 4(d) Rule. Reclamation and CDFW's HGMP for Trinity River coho salmon provides the framework through which Reclamation and CDFW can manage hatchery operations, monitoring, and evaluation activities, while meeting requirements specified under the ESA. The hatchery program will propagate coho salmon derived from the Upper Trinity River population in the Trinity River, incorporating natural-origin coho salmon into the hatchery broodstock to help reduce the genetic divergence between hatchery-origin coho salmon and their natural counterparts. Measures will be applied in the hatchery program to reduce the risk of incidental adverse genetic, ecological, and demographic effects on natural-origin steelhead and salmon populations.

NMFS published notification of the HGMP and draft EA's availability for public review and comment on November 7, 2018 for 30-days (83 FR 55697). NMFS received two comment letters. All comments were considered, and where appropriate, changes were made to the final EA.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. Limit 5 of the updated 4(d) rule (50 CFR 223.203(b)(5)) further provides that the prohibitions of paragraph (a) of the updated 4(d) rule (50 CFR 223.203(a)) do not apply to activities associated with artificial propagation programs provided that an HGMP has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005).

Dated: October 8, 2020.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–22746 Filed 10–14–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Intelligence University Board of Visitors; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Intelligence and Security, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the National Intelligence University Board of Visitors will take place.

DATES: Closed to the public Wednesday, October 21, 2020 from 9:00 a.m. to 4:00 p.m.

ADDRESSES: Defense Intelligence Agency 7400 Pentagon ATTN: NIU Washington, DC 20301–7400.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence Markin, Designated Federal Officer, (301) 243–2118 (Voice), *Terrence.Markin@dodiis.mil* (Email). Mailing address is National Intelligence University, 7400 Pentagon, Washington, DC 20301–7400. Website: *http://ni-u.edu/wp/about-niu/leadership-2/board-of-visitors/*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer, the National Intelligence University Board of Visitors was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting of October 21, 2020. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., App.), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The Board will discuss critical issues and advise Director, DIA, on controlled unclassified or classified information as defined in 5 U.S.C. 552b(c)(1) and therefore will be closed to the public.

Agenda: Welcome & Call to Order, President's Report, NIU Transition to ODNI. Resources—Personnel, Budget, Facilities, Break, NIU Transition to ODNI. Resources—IT, Library, Break for Lunch, NIU Transition to ODNI. Governance—Impact of Change in

Control, and NIU Board of Visitors Executive Session.

Meeting Accessibility: The public or interested organizations may submit written statements to the National Intelligence University Board of Visitors about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the National Intelligence University Board of Visitors.

Written Statements: All written statements shall be submitted to the Designated Federal Officer for the National Intelligence University Board of Visitors, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: October 9, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–22806 Filed 10–14–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 10–111–LNG, 13–30–LNG, 13–42–LNG, 13–121–LNG, 15–63–LNG, 19–125–LNG, 19–133–LNG, 20–28–LNG]

Change In Control; Sabine Pass Liquefaction, LLC

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of change in control.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of a Notification in Accordance with Procedures for Changes in Control (Notice) filed by Sabine Pass Liquefaction, LLC (SPL) in the above-referenced dockets on September 22, 2020. The Notice describes a change in indirect equity ownership. The Notice was filed under the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, 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, October 30, 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, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793, *cassandra.bernstein@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Summary of Change in Control

SPL states that it is a wholly-owned, indirect subsidiary of Cheniere Energy Partners, L.P. (CQP), which is a publicly traded Delaware limited partnership. The general partner interest in CQP is owned by Cheniere Energy Partners GP, LLC, which is a wholly-owned indirect subsidiary of Cheniere Energy, Inc. (Cheniere), a publicly traded corporation. As of August 31, 2020, the limited partnership interest in CQP was owned approximately 49.6% by Cheniere, about 8.5% by the public, and 42% by The Blackstone Group, Inc. (Blackstone) through various affiliated entities involved in the transaction described below.

On August 22, 2020, certain Blackstone entities agreed to sell a portion of their limited partner ownership interest in CQP, indirect owner of SPL, to certain entities of Brookfield Asset Management Inc. (Brookfield), with the remainder to be acquired by affiliated Blackstone entities. Specifically, BX CQP SuperHoldCo Holdings Manager L.L.C., BX CQP Common Holdco Holdings Manager L.L.C., and BX Rockies Platform Co Holdings Manager L.L.C. agreed to sell all of the limited liability company interests in BX CQP Target Holdco L.L.C., which in turn owns all of the equity interests in each of BX CQP SuperHoldCo Parent L.P., BX CQP Common Holdco Parent L.P., and BX Rockies Platform Co LLC (each of which directly or indirectly beneficially owns CQP common units), to an entity jointly owned by BIP Aggregator Q L.P., a Delaware limited partnership, BIP Aggregator II L.P., a Delaware limited partnership (together with BIP Aggregator Q L.P., (Blackstone Infrastructure Partners)) and BIF IV Cypress Aggregator (Delaware) LLC, a Delaware limited liability company (Brookfield Infrastructure) (the Transaction). Following the closing of the Transaction, Blackstone Infrastructure Partners and Brookfield Infrastructure are expected to directly or indirectly own 50.01% and 49.99% of the equity interest in BX CQP Target Holdco L.L.C., respectively.[1] SPL states that following the Transaction, the Blackstone and Brookfield entities now jointly own the approximately 42 percent of CQP limited partnership interest currently held by Blackstone, without modifying the other existing ownership of limited partner or general partner interests in CQP.

Blackstone Infrastructure Partners' and Brookfield Infrastructure's respective governance rights over BX CQP Holdco L.L.C. mean that they share beneficial ownership of all of the CQP common units that are now beneficially owned by Blackstone. Blackstone Infrastructure Partners and Brookfield Infrastructure share certain limited governance rights, including the exercise of director nomination rights previously held by Blackstone with respect to the board of the general partner of the SPL and of Cheniere.

Additional details can be found in SPL's Notice, posted on the DOE/FE website at: *https://www.energy.gov/sites/prod/files/2020/09/f79/Sabine%20Pass_Blackstone_Brookfield_CIC_notification.pdf.*

DOE/FE Evaluation

DOE/FE will review SPL's Notice in accordance with its Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas (CIC Procedures).[2] Consistent with the CIC Procedures, this notice addresses SPL's authorizations to export liquefied natural gas (LNG) to non-free trade agreement (non-FTA) countries, granted in DOE/FE Order Nos. 2961–A (FE Docket No. 10–111–LNG), 3669 (FE Docket Nos. 13–30–LNG, 13–42–LNG, 13–121–LNG), 3792 (FE Docket No. 15–63–LNG), 4487 (FE Docket No. 19–133–LNG), 4545 (FE Docket No. 20–28–

[1] SPL informed DOE/FE that the Transaction closed on September 24, 2020. *See* Email from J. Patrick Nevins, Partner, Latham & Watkins LLP, to DOE/FE, Update to Notification Regarding Change in Indirect Equity Ownership (Sept. 24, 2020).

[2] 79 FR 65541 (Nov. 5, 2014).

LNG).[3] If no interested person protests the change in control and DOE takes no action on its own motion, the proposed change in control will be deemed granted 30 days after publication in the **Federal Register**. If one or more protests are submitted, DOE will review any motions to intervene, protests, and answers, and will issue a determination as to whether the proposed change in control has been demonstrated to render the underlying authorization inconsistent with the public interest.

Public Comment Procedures

Interested persons will be provided 15 days from the date of publication of this notice in the **Federal Register** in order to move to intervene, protest, and answer SPL's Notice.[4] Protests, motions to intervene, notices of intervention, and written comments are invited in response to this notice only as to the change in control described in SPL's Notice. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by DOE's regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Preferred method: Emailing the filing to *fergas@hq.doe.gov;* (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 the individual FE Docket Number(s) in the title line, or Sabine Pass Liquefaction, LLC Change in Control in the title line. *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.

SPL's Notice, and any filed protests, motions to intervene, notices of intervention, and comments, are 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.

SPL's Notice, and any filed protests, motions to intervene, notices of intervention, and comments, will also be available electronically by going to the following DOE/FE web address: *https://fossil.energy.gov/ng_regulation/.*

Signed in Washington, DC, on October 8, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

[FR Doc. 2020–22771 Filed 10–14–20; 8:45 am]

BILLING CODE 6450–01–P

[3] SPL's Notice also applies to its existing authorizations to export LNG to FTA countries and to import natural gas from various international sources, but DOE/FE will respond to those portions of the document separately pursuant to the CIC Procedures, 79 FR 65542. Further, SPL's application to export LNG to non-FTA countries in FE Docket No. 19–125 remains pending.

[4] Intervention, if granted, would constitute intervention only in the change in control portion of this proceeding, as described herein.

DEPARTMENT OF ENERGY

[FE Docket No. 12–156–LNG]

Golden Pass LNG Terminal LLC; Application To Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization

AGENCY: Office of Fossil Energy, Department of Energy.

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 October 2, 2020, by Golden Pass LNG Terminal LLC (Golden Pass LNG). Golden Pass 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. 3978, as amended, to a term ending on December 31, 2050. Golden Pass LNG filed the Application under 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, October 30, 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:

Beverly Howard 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) 586–9387; (202) 586–2627, *beverly.howard@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 April 25, 2017, in Order No. 3978, DOE/FE authorized Golden Pass LNG (then Golden Pass Products, LLC) to export domestically produced LNG in a volume equivalent to 808 billion cubic feet per year of natural gas, pursuant to NGA section 3(a), 15 U.S.C. 717b(a).[1] Golden Pass LNG is authorized to export this LNG by vessel from the Golden Pass LNG Terminal—which is currently under construction in Sabine Pass, 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

[1] *Golden Pass LNG Terminal LLC,* DOE/FE Order No. 3978, FE Docket No. 12–156–LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Golden Pass LNG Terminal Located in Jefferson County, Texas, to Non-Free Trade Agreement Nations (Apr. 25, 2017), *reh'g denied,* DOE/FE Order No. 3978–A (Mar. 30, 2018), *amended by* DOE/FE Order No. 3978–B (Mar. 4, 2020) (transferring authorization from Golden Pass Products LLC to Golden Pass LNG), DOE/FE Order No. 3978–C (Mar. 24, 2020) (extending export commencement deadline).

prohibited by U.S. law or policy (non-FTA countries) for a 20-year term. In the Application,[2] Golden Pass 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/sites/prod/files/2020/10/f79/FE12-156-LNG%20GPLNG%20Term%20Extension%20Application%20FINAL10-2-20.pdf.*

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 Golden Pass 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 Golden Pass 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. 12–156–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. 12–156–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.*

[2] *Golden Pass LNG Terminal LLC,* Application to Amend Export Term for Existing Long-Term Authorization Through December 31, 2050, FE Docket Nos. 12–156–LNG and 12–88–LNG (Oct. 2, 2020). Golden Pass 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].

[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.*

Signed in Washington, DC, on October 9, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy.

[FR Doc. 2020–22873 Filed 10–14–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho Cleanup Project

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of cancellation of open in-person/virtual hybrid meeting.

SUMMARY: On October 1, 2020, the Department of Energy published a notice of open meeting announcing an in-person/virtual hybrid meeting on October 22, 2020, of the Environmental Management Site-Specific Advisory Board, Idaho Cleanup Project. This notice announces the cancellation of this in-person/virtual hybrid meeting.

DATES: The in-person/virtual hybrid meeting scheduled for October 22, 2020, announced in the October 1, 2020, issue of the **Federal Register** (FR Doc. 2020–21743, 85 FR 61941), is cancelled.

FOR FURTHER INFORMATION CONTACT: Danielle Miller, Federal Coordinator, U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, Idaho 83415. Phone (208) 526–5709; or email: *millerdc@id.doe.gov* or visit the Board's internet home page at: *https://www.energy.gov/em/icpcab/.*

Signed in Washington, DC, on October 9, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–22796 Filed 10–14–20; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–527–000]

Columbia Gulf Transmission, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on September 24, 2020, Columbia Gulf Transmission, LLC (Columbia Gulf), 700 Louisiana Street, Suite 700, Houston, TX 77002–2700, filed an application under section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization of its East Lateral XPress Project (Project). The Project consists of the construction: (i) Two new compressor stations, (ii) a new point of delivery meter station, (iii) approximately 8 miles of new 30-inch-diameter natural gas pipeline lateral, (iv) two new mainline valves, a tie-in facility, launcher and receiver facilities, and other auxiliary appurtenant facilities all located in St. Mary, Lafourche, Jefferson, and Plaquemines Parishes, Louisiana. The Project will create 183,000 dekatherms per day (Dth/d) of incremental capacity. The incremental capacity created by the Project, in conjunction with the utilization of existing capacity, will allow for open access firm transportation service on approximately 725,000 Dth/d on Columbia Gulf's East Lateral. Columbia Gulf estimates the total cost of the Project to be $363,898,548 and proposes a new incremental recourse rate to apply to the Project capacity, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the proposed project should be directed to Alexander Kass, Legal Counsel, Columbia Gulf Transmission, LLC, 700 Louisiana Street, Suite 700, Houston, Texas, by phone at (832) 320–5226, or by email at *alexander_kass@tcenergy.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

[1] 18 CFR 157.9.

Public Participation

There are two ways to become involved in the Commission's review of this project: You can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on October 29, 2020.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before October 29, 2020.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP20–527–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. 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; first select General and then select Comment on a Filing; or

(3) You can file a paper copy of your comments by mailing them to the

following address below.[2] Your written comments must reference the Project docket number (CP17–490–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is October 29, 2020. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as the your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP20–527–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. 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; first select General and then select Intervention. The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number CP20–527–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail or email at: 700 Louisiana Street, Suite 700, Houston, Texas or at *alexander_kass@tcenergy.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be 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 as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. 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. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on October 29, 2020.

Dated: October 8, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–22779 Filed 10–14–20; 8:45 am]

BILLING CODE 6717–01–P

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0009; DS63644000 DRT000000.CH7000 212D1113RT; OMB Control Number 1012–0008]

Agency Information Collection Activities; Collection of Monies Due the Federal Government; and Processing Refund Requests Related to Overpayments Made to ONRR

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of Natural Resources Revenue (ONRR) is proposing to renew an information collection with revisions. Through this Information Collection Request (ICR), ONRR seeks authority to collect information related to the

paperwork requirements covering cross-lease netting in the calculation of late-payment interest; a lessee's designation of designee for payment obligations; tribal permission for recoupment on Indian oil and gas leases; and refund requests for overpayments made to ONRR.

DATES: Interested persons are invited to submit comments on or before December 14, 2020.

ADDRESSES: Send your comments on this ICR by mail to Mr. Luis Aguilar, Regulatory Specialist, ONRR, Building 85, MS 64400B, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225, or by email to *Luis.Aguilar@onrr.gov.* Please reference Office of Management and Budget (OMB) Control Number 1012–0008 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mr. Hans Meingast, Financial Management, ONRR by email at *Hans.Meingast@onrr.gov* or by telephone at (303) 231–3221. To inquire about form ONRR–4425, please contact Ms. April Lockler, Reference & Reporting Management, ONRR by email at *April.Lockler@onrr.gov* or by telephone at (303) 231–3105. To inquire about refund requests, please contact Jennifer Dougherty, Revenue, Reporting, and Compliance Management, ONRR by email at *Jennifer.Dougherty@onrr.gov* or by telephone at (303) 231–3563.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. ONRR may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, ONRR is inviting the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps ONRR to 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.

ONRR is especially interested in public comments addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. ONRR will include or summarize each comment in its request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Secretary of the United States Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). Under various laws, the Secretary's responsibilities include maintaining a comprehensive inspection, collection, and fiscal and production accounting and auditing system that provides the capability to: (1) Accurately determine mineral royalties, interest, and other payments owed, (2) collect and account for such amounts in a timely manner, and (3) disburse the funds collected. ONRR performs these mineral revenue management functions for the Secretary.

Laws pertaining to mineral leases on Federal and Indian lands and the OCS are posted at *http://www.onrr.gov/Laws_R_D/PubLaws/default.htm.*

(a) *General Information:* ONRR collects, audits, and disburses royalties, interest, and other payments owed by lessees on minerals produced from Federal and Indian lands. If a lessee overpays the amount due on minerals produced from Federal lands, it may request a refund from ONRR. If a lessee overpays the amount due on minerals produced from tribal lands, it may, with the tribe's permission, recoup the overpayment against other royalties or other revenues owed in that month under other leases for which that tribe is the lessor. If a lessee fails to pay or underpays an amount it owes on Federal or Indian mineral production, it generally must pay interest on the underpayment from the date the payment was due. For royalties and other amounts owed on oil and gas produced from Federal lands, the Federal Oil and Gas Royalty Management Act (FOGRMA, 30 U.S.C. 1701 *et seq.*) permits a lessee to designate a designee for its payment obligations.

(b) *Information Collections:* This ICR covers certain information required pursuant to FOGRMA and 30 CFR part 1218 for (1) cross-lease netting in the calculation of late-payment interest; (2) a lessee's designation of designee for payment obligations; (3) tribal permission for recoupment on Indian oil and gas leases; and (4) refund requests for overpayments made to ONRR.

(1) Cross-Lease Netting in Calculation of Late-Payment Interest: Pursuant to 30 CFR 1218.42(b), if certain conditions are met, ''[r]oyalties attributed to production from a lease or leases which should have been attributed to production from a different lease or leases may be offset to determine whether and to what extent an underpayment exists on which interest is due . . . .'' ONRR calls this process cross-lease netting. To determine whether a lessee is entitled to cross-lease netting, ONRR must collect lease, production, payor, recipient, and other information specified in 30 CFR 1218.42(b). This information is necessary for ONRR to calculate the correct interest amount.

(2) Designation of Designee for Payment Obligations: FOGRMA allows a lessee to notify the Secretary in writing of its designation of ''a person to make all or part of the payments due under a lease on the lessee's behalf . . . in which event said designated person may, in its own name, pay, offset or credit monies, make adjustments, request and receive refunds and submit reports with respect to payments required by the lessee.'' *See* 30 U.S.C. 1712(a). ONRR created form ONRR–4425, Designation Form for Royalty Payment Responsibility, for lessees to notify it of such designation. ONRR requires the information required in this form to ensure proper mineral revenue collection.

(3) Tribal Permission for Recoupment on Indian Oil and Gas Leases: Pursuant to 30 CFR 1218.53(b), a payor may, with written permission authorized by tribal statute or resolution, recoup an overpayment against royalties or other revenues owed in that month under other leases for which that tribe is the

lessor. *See* 30 CFR 1218.53(b). The payor must provide ONRR with a copy of the tribe's written permission. *Id.*

(4) Processing Refund Requests: FORGMA authorizes a Federal oil and gas lessee to request a refund for an overpayment in certain situations. *See* 30 U.S.C. 1721a(b). FOGRMA requires the lessee to supply certain information to support its refund request. *Id.* ONRR collects certain banking information from the refund recipient in order to disburse the overpaid amount to the correct account.

Title: Collection of Monies Due the Federal Government; and Processing Refund Requests Related to Overpayments Made to ONRR.

OMB Control Number: 1012–0008.

Bureau Form Number: Form ONRR–4425.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Federal and Indian lessees.

Total Estimated Number of Annual Respondents: 170.

Total Estimated Number of Annual Responses: 170.

Total Estimated Number of Annual Burden Hours: 93.75 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: We have identified no ''non-hour cost'' burden associated with this collection of information.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA.

Kimbra G. Davis,

Director, Office of Natural Resources Revenue.

[FR Doc. 2020–22773 Filed 10–14–20; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21–6–000.

Applicants: Wilmot Energy Center, LLC, NEP US SellCo, LLC, NextEra Energy Partners Acquisitions, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Wilmot Energy Center, LLC, et al.

Filed Date: 10/7/20.

Accession Number: 20201007–5182.

Comments Due: 5 p.m. ET 10/28/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–3–000.

Applicants: Wapello Solar LLC.

Description: Self-Certification of Exempt Wholesale Generator of Wapello Solar LLC.

Filed Date: 10/7/20.

Accession Number: 20201007–5091.

Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: EG21–4–000.

Applicants: Dartmouth Power Associates Limited Partnership.

Description: Notice of Self-Recertification of Exempt Wholesale Generator Status of Dartmouth Power Associates Limited Partnership.

Filed Date: 10/8/20.

Accession Number: 20201008–5042.

Comments Due: 5 p.m. ET 10/29/20.

Docket Numbers: EG21–5–000.

Applicants: Vistra Corp., Upton County 2 Solar LLC.

Description: Upton County 2 Solar EWG Self-Certification.

Filed Date: 10/8/20.

Accession Number: 20201008–5048.

Comments Due: 5 p.m. ET 10/29/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2822–018; ER10–1776–002; ER10–2824–002; ER10–2825–003; ER10–2831–003; ER10–2957–003; ER10–2995–003; ER10–2996–002; ER10–2998–002; ER10–2999–002; ER10–3000–002; ER10–3009–004; ER10–3013–003; ER10–3014–002; ER10–3029–002; ER11–2196–010; ER16–1250–010; ER17–1243–002; ER17–1769–003; ER19–2360–001.

Applicants: Atlantic Renewables Projects II LLC, Avangrid Renewables, LLC, Big Horn Wind Project LLC, Big Horn II Wind Project LLC, Colorado Green Holdings LLC, Hay Canyon Wind LLC, Juniper Canyon Wind Power LLC, Klamath Energy LLC, Klamath Generation LLC, Klondike Wind Power LLC, Klondike Wind Power II LLC, Klondike Wind Power III LLC, Leaning Juniper Wind Power II LLC, Montague Wind Power Facility, LLC, Pebble Springs Wind LLC, San Luis Solar LLC, Solar Star Oregon II, LLC, Star Point Wind Project LLC, Twin Buttes Wind LLC, Twin Buttes Wind II LLC.

Description: Supplement to December 31, 2019 Updated Market Power Analysis for the Northwest Region of Avangrid Northwest MBR Sellers.

Filed Date: 10/7/20.

Accession Number: 20201007–5179.

Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER20–2654–000.

Applicants: Clear Power LLC.

Description: Amendment to August 12, 2020 Clear Power LLC tariff filing.

Filed Date: 10/5/20.

Accession Number: 20201005–5168.

Comments Due: 5 p.m. ET 10/15/20.

Docket Numbers: ER21–47–000.

Applicants: Tucson Electric Power Company.

Description: Compliance filing: Report Regarding Wholesale Sales in WECC to be effective 2/25/2016.

Filed Date: 10/7/20.

Accession Number: 20201007–5131.

Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER21–48–000.

Applicants: UNS Electric, Inc.

Description: Compliance filing: Report Regarding Wholesale Sales in WECC to be effective 2/25/2016.

Filed Date: 10/7/20.

Accession Number: 20201007–5133.

Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER21–49–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: Limited Modifications to Formula Rate Template to be effective 6/1/2020.

Filed Date: 10/7/20.

Accession Number: 20201007–5137.

Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER21–50–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 5816; Queue No. AF2–271 to be effective 9/8/2020.

Filed Date: 10/7/20.

Accession Number: 20201007–5139.

Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER21–51–000.

Applicants: BP Energy Company.

Description: Compliance filing: Report of bp Energy, LLC Regarding Certain WECC Spot Market Sales to be effective N/A.

Filed Date: 10/7/20.

Accession Number: 20201007–5141.

Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER21–51–001.

Applicants: BP Energy Company.

Description: Compliance filing: Corrected Report of bp Energy Company Regarding Certain WECC Spot Market Sales to be effective N/A.

Filed Date: 10/8/20.

Accession Number: 20201008–5037.

Comments Due: 5 p.m. ET 10/29/20.

Docket Numbers: ER21–52–000.

Applicants: Public Service Company of New Mexico.

Description: Compliance filing: WECC Price cap to be effective 6/7/2014.

Filed Date: 10/7/20.
Accession Number: 20201007–5142.
Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER21–53–000.
Applicants: Virginia Electric and Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Dominion submits a WDSA, SA No. 5765 to be effective 9/19/2020.
Filed Date: 10/7/20.
Accession Number: 20201007–5144.
Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER21–54–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC-New River Power and Light Co. Reimbursement Agreement RS 543 to be effective 12/7/2020.
Filed Date: 10/7/20.
Accession Number: 20201007–5146.
Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER21–55–000.
Applicants: Mesquite Power, LLC.
Description: Compliance filing: Report of Mesquite Power, LLC Regarding Certain WECC Spot Market Sales to be effective N/A.
Filed Date: 10/7/20.
Accession Number: 20201007–5147.
Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER21–56–000.
Applicants: Guzman Energy, LLC.
Description: Compliance filing: Compliance filing to be effective N/A.
Filed Date: 10/7/20.
Accession Number: 20201007–5150.
Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER21–57–000.
Applicants: Shell Energy North America (US), L.P.
Description: Compliance filing: Spot Market Sales Above Soft Cap to be effective N/A.
Filed Date: 10/7/20.
Accession Number: 20201007–5155.
Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER21–58–000.
Applicants: TransAlta Energy Marketing (U.S.) Inc.
Description: Compliance filing: Notice and Justification for Spot Sales above WECC Soft Cap to be effective N/A.
Filed Date: 10/7/20.
Accession Number: 20201007–5157.
Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER21–59–000.
Applicants: Brookfield Renewable Trading and Marketing LP.
Description: Compliance filing: Justification of Spot Market Sales Above Soft Cap to be effective N/A.
Filed Date: 10/7/20.
Accession Number: 20201007–5159.
Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER21–60–000.
Applicants: PacifiCorp.
Description: Compliance filing: WECC Soft Cap Filing 2020–10 to be effective 9/30/2010.
Filed Date: 10/7/20.
Accession Number: 20201007–5162.
Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER21–61–000.
Applicants: El Paso Electric Company.
Description: Compliance filing: WECC Soft Cap Justification to be effective N/A.
Filed Date: 10/7/20.
Accession Number: 20201007–5165.
Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER21–62–000.
Applicants: Uniper Global Commodities North America.
Description: Compliance filing: UGCNA WECC Spot Sales Report 2020.10.07 to be effective 12/31/9998.
Filed Date: 10/8/20.
Accession Number: 20201008–5000.
Comments Due: 5 p.m. ET 10/29/20.

Docket Numbers: ER21–63–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–10–08_SA 2929 Termination of Huron Wind-ITC Amended GIA (J308) to be effective 2/17/2020.
Filed Date: 10/8/20.
Accession Number: 20201008–5038.
Comments Due: 5 p.m. ET 10/29/20.

Docket Numbers: ER21–64–000.
Applicants: Macquarie Energy LLC.
Description: Macquarie Energy LLC submits Explanation for Bilateral Spot Sales In Western Electricity Coordinating Council to be effective N/A.
Filed Date: 10/7/20.
Accession Number: 20201007–5184.
Comments Due: 5 p.m. ET 10/28/20.

Docket Numbers: ER21–65–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tri-State Generation and Transmission Association, Inc. submits Report Justifying Costs of Short-Term Sales Above Soft Cap Price, et al. to be effective N/A.
Filed Date: 10/7/20.
Accession Number: 20201007–5186.
Comments Due: 5 p.m. ET 10/28/20.

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: October 8, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–22775 Filed 10–14–20; 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: CP21–3–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Joint Application to Amend Certificates of Public Convenience and Necessity of Columbia Gas Transmission, LLC.
Filed Date: 10/6/20.
Accession Number: 20201006–5126.
Comments Due: 5 p.m. ET 10/27/20.

Docket Numbers: RP20–1226–001.
Applicants: Equitrans, L.P.
Description: Tariff Amendment: Negotiated Rate Agreement—Eclipse—Amendment to be effective 11/1/2020.
Filed Date: 10/7/20.
Accession Number: 20201007–5042.
Comments Due: 5 p.m. ET 10/19/20.

Docket Numbers: RP21–40–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Sequent SP359512, SP100239 & Equinor SP101733 to be effective 11/1/2020.
Filed Date: 10/7/20.
Accession Number: 20201007–5056.
Comments Due: 5 p.m. ET 10/19/20.

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: October 8, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–22777 Filed 10–14–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–41–000]

La Joya Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced La Joya Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 28, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 8, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–22780 Filed 10–14–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1683–002.
Applicants: Wabash Valley Power Association, Inc.
Description: Compliance filing: Compliance Filing of Amended Distributed Generation Policy D–11 to be effective 12/6/2020.
Filed Date: 10/8/20.
Accession Number: 20201008–5147.
Comments Due: 5 p.m. ET 10/29/20.

Docket Numbers: ER20–2696–000.
Applicants: VESI Pomona Energy Storage, Inc.
Description: Supplement to August 19, 2020 VESI Pomona Energy Storage, Inc. tariff filing.
Filed Date: 10/2/20.
Accession Number: 20201002–5234.
Comments Due: 5 p.m. ET 10/23/20.

Docket Numbers: ER20–2938–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to ER20–2938–000; IISA No. 5627; Queue No. AD2–180 to be effective 3/17/2020.
Filed Date: 10/8/20.
Accession Number: 20201008–5137.
Comments Due: 5 p.m. ET 10/29/20.

Docket Numbers: ER21–66–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: § 205(d) Rate Filing: Request for Change in Rates to Distribution Cooperative Member-Owners to be effective 1/1/2021.
Filed Date: 10/8/20.
Accession Number: 20201008–5051.
Comments Due: 5 p.m. ET 10/29/20.

Docket Numbers: ER21–67–000.
Applicants: Basin Electric Power Cooperative.
Description: § 205(d) Rate Filing: Basin Electric Submission of Revised Wholesale Power Contract to be effective 9/15/2020.
Filed Date: 10/8/20.
Accession Number: 20201008–5067.
Comments Due: 5 p.m. ET 10/29/20.

Docket Numbers: ER21–68–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 5821; Queue No. AF2–101 to be effective 9/10/2020.
Filed Date: 10/8/20.
Accession Number: 20201008–5075.
Comments Due: 5 p.m. ET 10/29/20.

Docket Numbers: ER21–69–000.
Applicants: American Electric Power Service Corporation, Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: AEP on behalf of affilate AEP West Op Cos revised depreciation rates to be effective 1/1/2020.
Filed Date: 10/8/20.
Accession Number: 20201008–5085.
Comments Due: 5 p.m. ET 10/29/20.

Docket Numbers: ER21–70–000.
Applicants: Wilderness Line Holdings, LLC.
Description: Renewed Request for Waiver of Order No. 1000 Requirements of Wilderness Line Holdings, LLC.
Filed Date: 10/8/20.
Accession Number: 20201008–5089.
Comments Due: 5 p.m. ET 10/29/20.

Docket Numbers: ER21–71–000.
Applicants: Florida Power & Light Company.
Description: § 205(d) Rate Filing: FPL & Seminole Second Revised NITSA RS No. 162 to be effective 12/7/2020.
Filed Date: 10/8/20.
Accession Number: 20201008–5090.
Comments Due: 5 p.m. ET 10/29/20.

Docket Numbers: ER21–72–000.

Applicants: Indiana Michigan Power Company.

Description: § 205(d) Rate Filing: I&M-Wabash Valley Power Agency Operations Agreement (Meridian 345) to be effective 1/1/2021.

Filed Date: 10/8/20.

Accession Number: 20201008–5091.

Comments Due: 5 p.m. ET 10/29/20.

Docket Numbers: ER21–73–000.

Applicants: Southwestern Public Service Company.

Description: § 205(d) Rate Filing: Sagamore Wind Project to be effective 1/1/2020.

Filed Date: 10/8/20.

Accession Number: 20201008–5092.

Comments Due: 5 p.m. ET 10/29/20.

Docket Numbers: ER21–74–000.

Applicants: Florida Power & Light Company.

Description: Tariff Cancellation: FPL Notice of Cancellation of SA No. 327 to be effective 10/9/2020.

Filed Date: 10/8/20.

Accession Number: 20201008–5112.

Comments Due: 5 p.m. ET 10/29/20.

Docket Numbers: ER21–75–000.

Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: DEF-Chattahoochee—Amended and Restated NITSA SA–154 to be effective 1/1/2021.

Filed Date: 10/8/20.

Accession Number: 20201008–5141.

Comments Due: 5 p.m. ET 10/29/20.

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: October 8, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–22776 Filed 10–14–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10015–35–Region 4]

Public Water System Supervision Program Revision for the State of South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended approval.

SUMMARY: This notice is hereby given that the State of South Carolina is revising its approved Public Water System Supervision Program. South Carolina has adopted drinking water regulations for the Ground Water Rule, Lead and Copper Rule Short-Term Regulatory Revisions and Clarifications, and Revised Total Coliform Rule. The Environmental Protection Agency (EPA) has determined that South Carolina's regulations are no less stringent than these federal rules and the revisions otherwise meet applicable Safe Drinking Water Act requirements. Therefore, the EPA intends to approve these revisions to the State of South Carolina's Public Water System Supervision Program.

DATES: Any interested person may request a public hearing. A request for a public hearing must be submitted by November 16, 2020, to the Regional Administrator at the following address: U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by November 16, 2020, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective on November 16, 2020. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday (excluding legal holidays), at the following location: The main office of the South Carolina Department of Health and Environmental Control (SCDHEC), 2600 Bull Street, Columbia, South Carolina 29201. Due to COVID–19, those intending to view documents at this location should contact Richard Welch, Bureau of Water, SCDHEC, by telephone at (803) 898–3546 at least 24 hours prior to arriving at SCDHEC to coordinate viewing. Documents relating to the determination are also available online at *https://www.scdhec.gov/public-water-system-supervision-program-revision* for inspection.

FOR FURTHER INFORMATION CONTACT: Dale Froneberger, EPA Region 4, Safe Drinking Water Branch, by mail at the Atlanta street address given above, by telephone at (404) 562–9446, or by email at *froneberger.dale@epa.gov.*

SUPPLEMENTARY INFORMATION: The State of South Carolina has submitted requests that the EPA approve revisions to the State's Safe Drinking Water Act Public Water System Supervision Program to include the authority to implement and enforce the Ground Water Rule, Lead and Copper Rule Short-Term Regulatory Revisions and Clarifications, and Revised Total Coliform Rule. For the requests to be approved, the EPA must find the state regulations codified at S.C. Code Ann. Regs. 61–58 to be no less stringent than the federal rules codified at 40 CFR part 141. The EPA reviewed South Carolina's applications using the federal statutory provisions (Section 1413 of the Safe Drinking Water Act), federal regulations (at 40 CFR parts 141 and 142), state regulations, state policies and procedures for implementing the rules, regulatory crosswalks, and the EPA regulatory guidance to determine whether the requests for revision are approvable. The EPA determined that the South Carolina regulations are no less stringent than the corresponding federal rules and the revisions otherwise meet applicable Safe Drinking Water Act requirements. Therefore, the EPA intends to approve these revisions. If the EPA does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on her own motion, this approval shall become final and effective on November 16, 2020.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142.

Dated: September 29, 2020.

Mary Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–22730 Filed 10–14–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1248; FRS 17131]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written comments should be submitted on or before December 14, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–1248.

Title: Transition from TTY to Real-Time Text Technology, CG Docket No. 16–145 and GN Docket No. 15–178.

Form Number: N/A.

Type of Review: Extension and update of collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents and Responses: 967 respondents; 5,235 responses.

Estimated Time per Response: 0.2 hours (12 minutes) to 60 hours.

Frequency of Response: Annual, ongoing, and semiannual reporting requirements; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority can be found at sections 4(i), 225, 255, 301, 303(r), 316, 403, 715, and 716 of the Communications Act of 1934, as amended, and section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, 47 U.S.C. 154(i), 225, 255, 301, 303(r), 316, 403, 615c, 616, 617; Public Law No. 111–260, § 106, 124 Stat. 2751, 2763 (2010).

Total Annual Burden: 114,212 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: This information collection does not affect individuals or households; therefore, the Privacy Act is not impacted.

Needs and Uses: Text telephone (TTY) technology provides the primary means for people with disabilities to send and receive text communications over the public switched telephone network (PSTN). Changes to communications networks, particularly ongoing technology transitions from circuit switched to IP-based networks and from copper to wireless and fiber infrastructure, have affected the quality and utility of TTY technology, prompting discussions on transitioning to an alternative advanced communications technology for text communications. Accordingly, on December 16, 2016, the Commission released *Transition from TTY to Real-Time Text Technology,* Report and Order, document FCC 16–169, 82 FR 7699, January 23, 2017, amending its rules that govern the obligations of wireless service providers and manufacturers to support TTY technology to permit such providers and manufacturers to provide support for real-time text (RTT) over wireless IP-based networks to facilitate an effective and seamless transition to RTT in lieu of continuing to support TTY technology. In document FCC 16–169, the Commission adopted measures requiring the following:

(a) Each wireless provider and manufacturer that voluntarily transitions from TTY technology to RTT over wireless IP-based networks and services is encouraged to develop consumer and education efforts that include (1) the development and dissemination of educational materials that contain information pertinent to the nature, purpose, and timelines of the RTT transition; (2) internet postings, in an accessible format, of information about the TTY to RTT transition on the websites of covered entities; (3) the creation of a telephone hotline and an online interactive and accessible service that can answer consumer questions about RTT; and (4) appropriate training of staff to effectively respond to consumer questions. All consumer outreach and education should be provided in accessible formats including, but not limited to, large print, Braille, videos in American Sign Language and that are captioned and video described, emails to consumers who have opted to receive notices in this manner, and printed materials. Service providers and manufacturers are also encouraged to coordinate with consumer, public safety, and industry stakeholders to develop and distribute education and outreach materials. The information will inform consumers of alternative accessible technology

available to replace TTY technology that may no longer be available to the consumer through their provider or on their device.

(b) Each wireless provider that requested or will request and receive a waiver of the requirement to support TTY technology over wireless IP-based networks and services must apprise its customers, through effective and accessible channels of communication, that (1) until TTY is sunset, TTY technology will not be supported for calls to 911 services over IP-based wireless services, and (2) there are alternative PSTN-based and IP-based accessibility solutions for people with disabilities to reach 911 services. These notices must be developed in coordination with public safety answering points (PSAPs) and national consumer organizations, and include a listing of text-based alternatives to 911, including, but not limited to, TTY capability over the PSTN, various forms of PSTN-based and IP-based TRS, and text-to-911 (where available). The notices will inform consumers on the loss of the use of TTY for completing 911 calls over the provider's network and alert them to alternatives service for which TTY may be used.

(c) Once every six months, each wireless provider that requests and receives a waiver of the requirement to support TTY technology must file a report with the Commission and inform its customers regarding its progress toward and the status of the availability of new IP-based accessibility solutions. Such reports must include (1) information on the interoperability of the provider's selected accessibility solution with the technologies deployed or to be deployed by other carriers and service providers, (2) the backward compatibility of such solution with TTYs, (3) a showing of the provider's efforts to ensure delivery of 911 calls to the appropriate PSAP, (4) a description of any obstacles incurred towards achieving interoperability and steps taken to overcome such obstacles, and (5) an estimated timetable for the deployment of accessibility solutions. The information will inform consumers of the progress towards the availability of alternative accessible means to replace TTY, and the Commission will be able to evaluate the reports to determine if any changes to the waivers are warranted or of any impediments to progress that it may be in a position to resolve.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–22822 Filed 10–14–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0120; FRS 17132]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before December 14, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0120.

Title: Broadcast EEO Program Model, FCC Form 396–A.

Form Number: FCC–396–A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Not-for-profit institutions.

Number of Respondents and Responses: 5,000 respondents, 5,000 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection of information is contained in Section 154(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 5,000 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Broadcast Equal Employment Opportunity (EEO) Model Report, FCC Form 396–A, is filed in conjunction with applicants seeking authority to construct a new broadcast station, to obtain assignment of construction permit or license and/or seeking authority to acquire control of an entity holding construction permit or license. This program is designed to assist the applicant in establishing an effective EEO program for its stations.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–22823 Filed 10–14–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1156; FRS 17127]

Information Collection Being Reviewed by the Federal Communications Commission under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as

required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written comments should be submitted on or before December 14, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control No.: 3060–1156.

Title: 47 CFR 43.82, Annual International Circuit Capacity Reports.

Form No.: N/A.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit entities and State, Local or Tribal Governments.

Number of Respondents: 90 respondents; 213 responses.

Estimated Time per Response: 1–14 hours.

Frequency of Response: Annual reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. The Commission's statutory authority for this information collection under Sections 1, 4(i), 4(j), 11, 201–205, 214, 219–220, 303(r), 309, and 403 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 161, 201–205, 214, 219–220, 303(r), 309, and 403, the Cable Landing License Act of 1921, 47 U.S.C. 34–39, and 3 U.S.C. 301.

Total Annual Burden: 1,368 hours.

Annual Cost Burden: $10,200.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission will allow filing entities to seek confidential treatment of their data.

Needs and Uses: The Federal Communications Commission (Commission) is requesting that the Office of Management and Budget (OMB) approve a three-year extension of the information collection, titled ''47 CFR 43.82, Annual International Circuit Capacity Reports.'' Pursuant to 47 CFR 43.82, cable landing licensees and entities holding capacity on submarine cables file electronically annual circuit capacity reports, in a format set out in a Filing Manual.

Section 43.82 reads as follows:

§ 43.82 Circuit Capacity Reports

(a) *International submarine cable capacity.* Not later than March 31 of each year:

(1) The licensee(s) of a submarine cable between the United States and any foreign point shall file a report showing the capacity of the submarine cable as of December 31 of the preceding calendar year. The licensee(s) shall also file a report showing the planned capacity of the submarine cable (the intended capacity of the submarine cable two years from December 31 of the preceding calendar year).

(2) Each cable landing licensee and common carrier shall file a report showing its capacity on submarine cables between the United States and any foreign point as of December 31 of the preceding calendar year.

Note to Paragraph (a): United States is defined in Section 3 of the Communications Act of 1934, as amended, 47 U.S.C. 153.

(b) Registration Form. A Registration Form, containing information about the filer, such as address, phone number, email address, etc., shall be filed with each report. The Registration Form shall include a certification enabling the filer to check a box to indicate that the filer requests that its circuit capacity data be treated as confidential consistent with Section 0.459(a)(4) of the Commission's rules.

(c) Filing Manual. Authority is delegated to the Chief of the International Bureau to prepare instructions and reporting requirements for the filing of these reports prepared and published as a Filing Manual. The information required under this Section shall be filed electronically in conformance with the instructions and reporting requirements in the Filing Manual.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–22845 Filed 10–14–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 17140]

Announcement of Renewal of Charter of the FCC Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Federal Communications Commission announces that the renewal of the charter of the FCC Consumer Advisory Committee (CAC) has been approved by the General Services Administration (GSA) for a two-year period. The CAC is a federal advisory committee under the Federal Advisory Committee Act.

DATES: Renewed for two years, starting October 16, 2020.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Designated Federal Officer, FCC Consumer Advisory Committee, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554; phone: 202–418–2809 (voice or Relay); email: *scott.marshall@fcc.gov;* or Gregory V. Haledjian, Deputy Designated Federal Officer, FCC Consumer Advisory Committee, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554; phone: 202–418–7440; email: *gregory.haledjian@fcc.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons that the GSA has approved the renewal of the charter of the CAC for two years, commencing October 16, 2020. In keeping with its advisory role, the FCC Consumer Advisory Committee will continue to provide recommendations to the Commission on consumer topics, as specified by the Commission, gather data and information, and perform analyses that are necessary to respond to the questions or matters before it.

Federal Communications Commission.

Cecilia Sigmund,

Associate Secretary.

[FR Doc. 2020–22751 Filed 10–14–20; 8:45 am]

BILLING CODE P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, October 20, 2020 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC (This meeting will be a virtual meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Investigatory records compiled for law enforcement purposes and production would disclose investigative techniques.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2020–22991 Filed 10–13–20; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201350.

Agreement Name: King Ocean/Seaboard St. Maarten Space Charter Agreement.

Parties: King Ocean Services Limited, Inc. and Seaboard Marine Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes King Ocean to charter space to Seaboard in the trade between the U.S. and St. Maarten.

Proposed Effective Date: 11/22/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/35502.

Dated: October 9, 2020.

Rachel E. Dickon,

Secretary.

[FR Doc. 2020–22812 Filed 10–14–20; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''Clinical Decision Support (CDS) for Chronic Pain Management.''

This proposed information collection was previously published in the **Federal Register** on July 14, 2020 and allowed 60 days for public comment. AHRQ received no substantive comments. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received within 30 days of publication date.

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: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Clinical Decision Support (CDS) for Chronic Pain Management

Prescription opioid pain medication overuse, misuse, and abuse have been a significant contributing factor in the opioid epidemic. The goal of this project is to develop, implement, disseminate, and evaluate clinical decision support (CDS) tools for both patients and providers in the management of chronic pain. The CDS tools are intended to be interoperable and publicly-shareable and will be designed to meet the needs of patients and providers through both patient-facing and provider-facing channels and formats.

The development and deployment of CDS tools designed to optimize opioid dose reduction is intended to support

primary care providers (including physicians and advanced practice providers) who are not pain-management specialists as well as pain specialists as they care for patients who are at high risk of harm from opioids. This goal will be achieved through the design, development, implementation, and evaluation of a provider-facing CDS tool for chronic pain management that optimize presentation of patient data and evidence-based guidelines to support opioid tapering. The provider-facing CDS tool will help providers detect patients at high risk of harm from opioids, provide personalized evidence-based guidelines to support opioid tapering, optimize the presentation of patient data, and reduce unnecessary variation in clinical practice.

The provider-facing CDS tool will also assist providers in determining if an opioid taper is necessary for a specific patient, aid in performing the taper, and aid in providing follow-up and support during the taper. The provider-facing CDS tool is meant to accomplish three goals: (1) Better monitor the patient's functional pain and opioid use, (2) visualize patient data, and (3) incorporate guidelines for prescribing and tapering opioids for chronic pain.

The patient-facing CDS tool will be used to help patients at high-risk of harm from opioids track and manage chronic pain and daily function to support reduced opioid use. This goal will be achieved through the design, development, implementation, and evaluation of a CDS tool that facilitates continued patient-provider engagement. This patient-facing CDS tool will deliver support in ways that enhance patient activation, education and engagement, and collaborative decisions and actions between patients and their care teams. The patient-facing CDS tool should enhance the quality of clinical discussion between healthcare providers and patients by allowing for continued patient engagement outside of the clinical setting.

This study is being conducted by AHRQ through its contractor, MedStar Health, pursuant to AHRQ's statutory authority to assist users of health information technology focused on CDS to promote the timely incorporation of comparative clinical effectiveness research into clinical practices. 42 U.S.C 299b–37(c).

Method of Collection

To achieve the goals of this project the following data collections will be implemented.

(1) Post-Use Survey with Providers ''Evaluation Provider Survey:'' This evaluation includes the collection of qualitative data through a short survey with providers who used the provider-facing CDS tool for chronic pain management (up to a maximum of 60). The research team will collect insights from providers on their experience of implementing and using the provider-facing CDS tool for chronic pain management. The survey will be accessible in both online and paper formats.

(2) Post-Use Survey with Patients ''Evaluation Patient Survey:'' This evaluation includes the collection of qualitative data through a short survey with patients who used the patient-facing CDS tool for pain management (up to a maximum of 150). The research team will collect insights from patients on their experience of implementing and using patient-facing CDS. The survey will be accessible in both online and paper formats.

(3) Post-Use Interview with Providers ''Evaluation Provider Interview:'' This evaluation component includes the collection of qualitative data through an in-depth thirty-minute interview with providers who used the provider-facing CDS tool for chronic pain management (up to a maximum of 10). The research team will collect insights from providers on their experience of implementing and using this provider-facing CDS tool.

(4) Post-Use Interviews with Patients ''Evaluation Patient Interview:'' This evaluation component includes the collection of qualitative data through an in-depth thirty-minute interview with patients who used the patient-facing CDS tool for pain management (up to a maximum of 20). The research team will collect insights from patients on their experience of implementing and using the patient-facing CDS tool.

(5) Post-Use Interviews with Site Champions ''Evaluation Site Champion Interview:'' This evaluation component includes the collection of qualitative data through thirty-minute interviews with site leads (up to a maximum of 15) and site visits during which the research team will collect insights from providers and patients on their experience of implementing and using the clinical-facing and patient-facing CDS tools from the perspective of the site champions.

Estimated Annual Respondent Burden

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Post-Use Survey with Providers	60	1	0.25	15
Post-Use Survey with Patients	150	1	0.25	37.5
Post-Use Interview with Providers	10	1	0.5	5
Post-Use Interview with Patients	20	1	0.5	10
Post-Use Interview with Site Champions	15	1	0.5	7.5
Total	255	5	2	75

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Post-Use Survey with Providers	60	15	[b] $102.73	$1,540.95
Post-Use Survey with Patients	150	37.5	[a] 25.72	964.50
Post-Use Interview with Providers	10	5	[b] 102.73	513.65
Post-Use Interview with Patients	20	10	[a] 25.72	257.20
Post-Use Interview with Site Champions	15	7.5	[b] 102.73	770.48

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN—Continued

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Total	255	75	53.95	4,046.78

* National Compensation Survey: Occupational wages in the United States May 2019, ''U.S. Department of Labor, Bureau of Labor Statistics'', *https://www.bls.gov/oes/current/oes_nat.htm#b29-0000.htm.*
[a] Based on the mean wages for *all occupations (00–0000).*
[b] Based on the mean wages for *Family Medicine Physicians (29–1215).*

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 8, 2020.

Marquita Cullom-Stott,

Associate Director.

[FR Doc. 2020–22837 Filed 10–14–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''Programmatic Information Collection for the AHRQ Initiative to Support Primary Care to Advance Cardiovascular Health in States with High Prevalence of Preventable CVD Events.''

This proposed information collection was previously published in the **Federal Register** on August 5th, 2020 and allowed 60 days for public comment. AHRQ received no substantive comments from members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received within 30 days of the date of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Programmatic Information Collection for the AHRQ Initiative To Support Primary Care To Advance Cardiovascular Health in States With High Prevalence of Preventable CVD Events

Despite improvements in recent years, cardiovascular disease (CVD) is a significant national health burden and the leading cause of death, involved in nearly one of every three deaths. Modifiable risk factors for CVD, such as high blood pressure, high cholesterol, and smoking, remain poorly controlled. Evidence from patient-centered outcomes research (PCOR) shows that increasing the delivery of the ABCS of heart health—Aspirin in high-risk individuals, Blood pressure control, Cholesterol management, and Smoking cessation—can reduce risk and reduce heart attacks and strokes.

In 2010, Congress established the Patient-Centered Outcomes Research (PCOR) Trust Fund and instructed AHRQ to support the dissemination of PCOR findings. In accordance with its mandated role, AHRQ issued a Request for Applications (RFA) entitled Supporting Primary Care to Advance Cardiovascular Health in States with High Prevalence of Preventable CVD Events. AHRQ anticipates investing up to $18 million to support a maximum of 4 awards. Each grantee will establish a state-level entity—known as a Cooperative—to support primary care improvement and run a Heart Health Quality Improvement (QI) project. The expected earliest start date for the grants is December 30, 2020.

This initiative has the following goals:

1. To improve heart health and help reduce CVD disparities by engaging with primary care practices, and disseminating and implementing PCOR findings to improve care delivery.

2. To learn how to develop sustainable state-level primary care QI infrastructure to improve the uptake of PCOR evidence in primary care.

3. To disseminate lessons learned, which take into consideration the context in which each program operated, on how to replicate successes and avoid challenges.

This new grant initiative is being conducted pursuant to AHRQ's statutory authority to support the agency's dissemination of PCOR findings. 42 U.S.C. 299b–37(a)–(c). The information collection described in this request is being collected under AHRQ's authority in 42 U.S.C. 299b–37(c), which authorizes AHRQ to gather feedback about the value of the PCOR information it disseminates. The information described in this request will be collected by AHRQ's contractor, Abt Associates.

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

1. Key informant interviews. AHRQ will conduct phone interviews with a variety of state-level organizations involved in primary care support and

with primary care practices. This information will be used to develop case studies for each Cooperative as well as program-level generalizations and lessons learned that might inform other efforts to improve care delivery.

2. Member check-in sessions. AHRQ will conduct group phone discussions with a subset of participants in the key informant interviews to corroborate case studies and lessons learned, and to provide additional shared insights across participants.

Key Informant Interviews

Individual key informant interviews will be conducted with the following groups:

• Grantee and Cooperative leadership, and Cooperative partners—about decision to participate in the project, prior collaborations, organization and governance of the Cooperative, nature and extent of partnerships, what worked well and barriers, changes to the Cooperative and their impact on provision of quality improvement (QI) support, QI support strategies and their perceived effectiveness, successful strategies for recruiting practices and types of practices recruited, success in establishing state-level capacity to provide QI support, factors associated with successful implementation of QI, longer-term impact of the grant and sustainability of capacity developed, suggestions for improvement, and lessons learned from the project.

• Unaffiliated organizations involved in or knowledgeable about primary care in the states—nature and extent of connection to the Cooperatives, awareness of the project, views about the organization and effectiveness of the Cooperatives and their networks, other local activities that may have affected the work of the Cooperatives, views on changes in practice capacity to deliver better care and on sustainability of improvements, benefits to and any potential adverse consequences for patients, suggestions for improvement and lessons learned from the project.

• Practices within the network not participating in the Heart Health QI project—prior collaboration and experience of recruitment to the network, decision to participate, nature of engagement with the Cooperative and network, benefits and drawbacks of network participation, interest in participating in Heart Health QI project, strategies employed to improve heart health, knowledge of and views on QI strategies at participating practices, concurrent efforts to improve care delivery, plans to continue participating in the network, suggestions for improvement and lessons learned.

• Practices within the network participating in the Heart Health QI project—prior collaboration and experience of recruitment to the network and Heart Health QI project, decision to participate, nature of engagement with the Cooperative and network, benefits and drawbacks of network participation, weaknesses in care delivery that QI strategies are designed to address and how the practices handle these, expectations for improvements stemming from QI projects and any potential challenges, nature of and satisfaction with support for Heart Health QI project, contribution of QI support to practice capacity to improve heart health outcomes, concurrent efforts to improve care delivery, plans to continue implementing the intervention, other benefits of participation in the Heart Health QI project, plans to remain in the project, suggestions for improvement and lessons learned.

A total of 200 interviews is anticipated over the course of three years.

All interviews will be conducted by telephone and are expected to take 45–60 minutes. Grantee and Cooperative leadership and Cooperative partner groups will be interviewed annually for three years, while the grants are active. Unaffiliated organizations and network practices, including those participating in the Heart Health QI project, will be interviewed in years 2 and 3 of the grants . This schedule of interviews reflects the anticipated evolution of the state-level entity, development of new partnerships, recruitment of practices to the network, and implementation of Heart Health QI project.

All interviews will include at least one lead interviewer and a note-taker and will be recorded with respondents' permission as a back-up. Detailed notes will be prepared after each interview. The purpose of the proposed information collection effort is to explore each grantee's primary care quality improvement, including their members and partners; and their experiences and achievements. Additionally, this information collection will serve to help synthesize insights from across grantees, identify key themes, and distill lessons learned, taking into consideration the context in which each program operated.

The following knowledge will be generated to understand the contribution of the program to developing sustainable state-level capacity to implement PCOR findings in primary care and the pros and cons of various Cooperative models, as well as lessons learned about approaches to assisting practices in implementing evidence to improve care.

Estimated Annual Respondent Burden

Table 1 presents estimates of the reporting burden hours for the information collection efforts. Time estimates are based on prior experiences and what can reasonably be requested of participating entities.

Key-informant interviews. In-depth interviews will be conducted with the total of up to 88 individuals. Respondents from Grantee and Cooperative leadership and Cooperative partner groups will be interviewed every year for three years. Respondents from unaffiliated organizations and non-participating practices will be interviewed twice, in years 2 and 3, and respondents from participating practices once or twice in years 2 and 3. The interviews are expected to last for up to 1 hour.

Member-checking sessions. Three member-checking sessions will be conducted with a total of up to 36 participants. Grantee and Cooperative leadership and key Cooperative organizations and partners will participate in two sessions, in year 1 and year 3. Network practices (those participating and not participating in heart health QI project) will participate in a member-checking session only in year 3. The sessions are expected to last for up to 1.5 hours.

TABLE 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection method or project activity	A. Number of respondents	B. Number of responses per respondent	C. Hours per response	D. Total burden hours A * B * C
Key Informant Interviews:				

TABLE 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Data collection method or project activity	A. Number of respondents	B. Number of responses per respondent	C. Hours per response	D. Total burden hours A * B * C
Grantee leadership	12	3	1	36
Cooperative leadership	12	3	1	36
Cooperative partners	24	* 2.5	1	60
Unaffiliated organizations	12	2	1	24
Practices in network not participating in Heart Health QI project	8	2	1	16
Practices in network participating in Heart Health QI project	20	** 1.4	1	28
Member Checking Sessions:				
Grantee leadership	4	2	1.5	12
Cooperative leadership	4	2	1.5	12
Cooperative partners	2	2	1.5	6
Unaffiliated organizations	2	2	1.5	6
Network practices	12	1	1.5	18
Total	112			254

* **Note:** This number reflects that in Year 1 we will only interview 12 respondents, but 24 in years 2 and 3, hence 2.5 # of responses.
** This number reflects that in Year 2 we will interview 8 respondents and in year 3 we will interview 20 respondents.

Table 2 presents the estimated annualized cost burden associated with the respondents' time to participate in this research. The total cost burden is estimated to be $29, 260.96.

TABLE 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection method or project activity	A. Number of respondents	B. Total burden hours	C. Average hourly rate	D. Total cost burden B * C
Key Informant Interviews:				
Grantee leadership	12	36	$110.74	$3,986.64
Cooperative leadership	12	36	110.74	3,986.64
Cooperative partners	24	60	110.74	6,644.40
Unaffiliated organizations	12	24	110.74	2,657.76
Practices in network not participating in Heart Health QI project	8	16	136.49	2,183.84
Practices in network participating in Heart Health QI project	20	28	136.49	3,821.72
Member Checking Sessions:				
Grantee leadership	4	12	110.74	1,328.88
Cooperative leadership	4	12	110.74	1,328.88
Cooperative partners	4	6	110.74	664.44
Unaffiliated organizations	2	6	110.74	664.44
Network practices	12	18	110.74	1,993.32
Total	112	254		29,260.96

Note: the rates were based on the mean hourly wages from the Bureau of Labor & Statistics for the closest categories of respondents and doubled to account for overhead and fringe.

The mean hourly wage rates were obtained from the Bureau of Labor & Statistics and doubled to account for overhead and fringe benefits. The occupational codes used were as follows:

- For grantee and cooperative leadership, partners, and unaffiliated organizations—medical and health service managers (11–9111, $53.37)
- For practices—an average of physicians (29–1228, $97.81), medical and health services managers (11–9111, $53.37), and nurse practitioners (29–1171, $53.77)

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and

included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 8, 2020.

Marquita Cullom-Stott,

Associate Director.

[FR Doc. 2020–22795 Filed 10–14–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–1261]

Technical Considerations for Non-Clinical Assessment of Medical Devices Containing Nitinol; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Technical Considerations for Non-Clinical Assessment of Medical Devices containing Nitinol.'' The Agency has developed this guidance to provide FDA's current thinking on technical considerations specific to devices using nitinol due to the unique properties of nitinol. This guidance document is intended to provide clarity and consistency in recommended non-clinical assessments across a variety of medical devices that contain nitinol.

DATES: The announcement of the guidance is published in the **Federal Register** on October 15, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–1261 for ''Technical Considerations for Non-Clinical Assessment of Medical Devices containing Nitinol.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Technical Considerations for Non-Clinical Assessment of Medical Devices containing Nitinol'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Matthew Di Prima, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 62, Rm. 2124, Silver Spring, MD 20993–0002, 301–796–2507.

SUPPLEMENTARY INFORMATION:

I. Background

The use of nitinol in medical devices began over three decades ago in product areas such as orthodontic archwires, cardiovascular guidewires, and surgical instruments. Its use has increased over the past two decades into different device areas such as orthopaedic fracture fixation, coronary stents, and transcatheter heart valves. With an increasing trend to treat patients using minimally invasive procedures, nitinol has become a popular choice of material due to its ability to return to its original shape after being mechanically deformed or after heat is applied. Given

the complex thermomechanical behavior of nitinol, there are unique considerations when assessing the safety and performance of nitinol devices.

The Agency has developed this guidance to provide FDA's current thinking on technical considerations specific to devices using nitinol. These recommendations are intended to be general and apply to medical devices that have at least one patient contacting component comprised of nitinol. The following technical areas are covered by this guidance: general information, mechanical testing, corrosion, biocompatibility, and labeling of nitinol devices.

A notice of availability of the draft guidance appeared in the **Federal Register** of April 19, 2019 (84 FR 16516). FDA considered comments received and revised the guidance as appropriate in response to the comments, including minor technical clarifications.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on technical considerations for non-clinical assessment of medical devices containing nitinol. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Technical Considerations for Non-Clinical Assessment of Medical Devices containing Nitinol'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 17013 and the complete guidance title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

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

21 CFR part or guidance	Topic	OMB Control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
812	Investigational Device Exemption	0910–0078
''De Novo Classification Process (Evaluation of Automatic Class III Designation)''.	De Novo classification process	0910–0844
''FDA and Industry Procedures for Section 513(g) Requests for Information under the Federal Food, Drug, and Cosmetic Act''.	513(g) Request for Information	0910–0705
''Requests for Feedback on Medical Device Submissions: The Q-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-submissions	0910–0756
801	Medical Device Labeling Regulations	0910–0485
820	Current Good Manufacturing Practice; Quality System Regulation.	0910–0073

Dated: October 9, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–22877 Filed 10–14–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0350]

Select Updates for Biocompatibility of Certain Devices in Contact With Intact Skin; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Select Updates for Biocompatibility of Certain Devices in Contact with Intact Skin.'' FDA has developed this draft guidance to propose select updates to FDA's current thinking regarding the type of biocompatibility information that should be provided in a premarket submission for certain devices made from common polymers and fabrics that are in contact with intact skin. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by December 14, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact

information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–D–0350 for ''Select Updates for Biocompatibility of Certain Devices in Contact with Intact Skin.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Select Updates for Biocompatibility of Certain Devices in Contact with Intact Skin'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Jennifer Goode, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1656, Silver Spring, MD 20993–0002, 301–796–5701.

SUPPLEMENTARY INFORMATION:

I. Background

Many devices have intact skin contacting component materials that are made from polymers and fabrics. FDA believes these materials pose a very low biocompatibility risk because they have a long history of safe use in medical devices that contact intact skin. For such devices, significant FDA review resources are expended to obtain sufficient rationales to justify omission of biocompatibility testing for frequently used intact skin contacting medical devices, consistent with FDA's recommendations in the FDA guidance ''Use of International Standard ISO 10993–1, 'Biological evaluation of Medical Devices—Part 1: Evaluation and testing within a risk management process' '' (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/use-international-standard-iso-10993-1-biological-evaluation-medical-devices-part-1-evaluation-and*).

This select update describes a least burdensome approach for these devices that recommends specific material information in a premarket submission in lieu of biocompatibility testing. This approach also supports the principles of the ''3Rs,'' to reduce, refine, and replace animal use in testing when feasible. This approach is partially based on FDA's experience with these common polymers and fabrics. This approach also relies on certain parts of the Quality System Regulation (21 CFR part 820) and other postmarket controls that already require compliance (*e.g.,* 21 CFR part 803) to identify potential biocompatibility-related issues.

After FDA finalizes this guidance, FDA intends to periodically reassess the list of component materials and exclusion characteristics identified in this guidance. FDA requests that external stakeholders submit comments to the docket to suggest the addition or removal of component materials or exclusion characteristics from this policy, including a rationale. FDA intends to review comments received in the docket and periodically assess whether any changes to this policy are warranted. When FDA believes changes are warranted, FDA will issue updated guidance in accordance with the procedures in the Good Guidance Practices Regulation (21 CFR 10.115).

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Select Updates for Biocompatibility of Certain Devices in Contact with Intact Skin.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Select Updates for Biocompatibility of Certain Devices in Contact with Intact

Skin'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 19007 to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

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

21 CFR part or guidance	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
812	Investigational Device Exemption	0910–0078
''De Novo Classification Process (Evaluation of Automatic Class III Designation)''.	De Novo classification process	0910–0844
''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-submissions	0910–0756
800, 801, and 809	Medical Device Labeling Regulations	0910–0485
803	Medical Devices; Medical Device Reporting; Manufacturer reporting, importer reporting, user facility reporting, distributor reporting.	0910–0437
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation.	0910–0073

Dated: October 8, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–22876 Filed 10–14–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3926]

Request for Nominations for Voting Members on Public Advisory Panels or Committees; Device Good Manufacturing Practice Advisory Committee and the Medical Devices Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Device Good Manufacturing Practice Advisory Committee (DGMPAC) and the Medical Devices Advisory Committee (MDAC) device panels in the Center for Devices and Radiological Health. This annual notice is also in accordance with the 21st Century Cures Act, which requires the Secretary of Health and Human Services (the Secretary) to provide an annual opportunity for patients, representatives of patients, and sponsors of medical devices that may be specifically the subject of a review by a classification panel to provide recommendations for individuals with appropriate expertise to fill voting member positions on classification panels. FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees, and therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Nominations received on or before December 14, 2020 will be given first consideration for membership on the DGMPAC and Panels of the MDAC. Nominations received after December 14, 2020 will be considered for nomination to the committee as later vacancies occur.

ADDRESSES: All nominations for membership should be submitted electronically by logging into the FDA Advisory Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Regarding all nomination questions for membership, contact the following persons listed in table 1:

TABLE 1—PRIMARY CONTACT AND COMMITTEE OR PANEL

Primary contact person	Committee or panel
Joannie Adams-White, Office of the Center Director, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5561, Silver Spring, MD 20993, 301–796–5421, email: *Joannie.Adams-White@fda.hhs.gov*.	Medical Devices Dispute Resolution Panel
Aden S. Asefa, Office of Management, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5214, Silver Spring, MD 20993, 301–796–0400, email: *Aden.Asefa@fda.hhs.gov*.	Dental Products Panel, Immunology Devices Panel, Microbiology Devices Panel, Neurological Devices Panel, Ophthalmic Devices Panel, DGMPAC.

TABLE 1—PRIMARY CONTACT AND COMMITTEE OR PANEL—Continued

Primary contact person	Committee or panel
CDR Patricio G. Garcia, Office of Management, Center for Devices and Radiological Health, Food and Drug Administration,10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993, 301–796–6875, email: *Patricio.Garcia@fda.hhs.gov*.	Clinical Chemistry and Clinical Toxicology Devices Panel, Gastroenterology and Urology Devices Panel, General and Plastic Surgery Devices Panel, Obstetrics and Gynecology Devices Panel, Orthopaedic and Rehabilitation Devices Panel.
James P. Swink, Office of Management, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993, 301–796–6313, email: *James.Swink@fda.hhs.gov*.	Anesthesiology and Respiratory Therapy Devices Panel, Circulatory System Devices Panel, Ear, Nose and Throat Devices Panel, Hematology and Pathology Devices Panel, General Hospital and Personal Use Devices Panel, Molecular and Clinical Genetics Panel, Radiological Devices Panel.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members for vacancies listed in table 2:

TABLE 2—EXPERTISE NEEDED, VACANCIES, AND APPROXIMATE DATE NEEDED

Expertise needed	Vacancies	Approximate date needed
Device Good Manufacturing Practice Advisory Committee—Experts in medical device quality management system requirements/current Good Manufacturing Practices, with experience in both 21 CFR part 820 and International Organization for Standardization (ISO) 13485, are needed to provide cross-cutting scientific or clinical expertise concerning the particular issue in dispute. Vacancies include a representative of the interests of the general public, government, and representatives of the interests of physicians and other health professionals.	4 1 2 1	Immediately. General Public Representative. Health Professional Representatives. Government Representative.
Anesthesiology and Respiratory Therapy Devices Panel of the Medical Devices Advisory Committee—Anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilator support, sleep medicine, pharmacology, physiology, or the effects and complications of anesthesia. FDA is also seeking applicants with pediatric expertise in these areas.	2	Immediately.
Circulatory System Devices Panel of the Medical Devices Advisory Committee—Interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.	1	July 1, 2021.
Clinical Chemistry and Clinical Toxicology Panel of the Medical Devices Advisory Committee—Doctors of medicine or philosophy with experience in clinical chemistry (e.g., cardiac markers), clinical toxicology, clinical pathology, clinical laboratory medicine, and endocrinology.	2 3	Immediately. 3/1/2021.
Dental Products Panel of the Medical Devices Advisory Committee—Dentists, engineers, and scientists who have expertise in the areas of dental implants, dental materials, oral and maxillofacial surgery, endodontics, periodontology, tissue engineering, snoring/sleep therapy, and dental anatomy.	1	11/01/2020.
Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee—Otologists, neurotologists, audiologists.	3	11/01/2020.
Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee—Gastroenterologists, urologists, and nephrologists.	2 3	Immediately. 1/1/2021.
General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee—Surgeons (general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic and endoscopic); dermatologists; experts in biomaterials, lasers, wound healing, and quality of life; and biostatisticians.	1 3	Immediately. 09/01/2021.
General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee—Internists, pediatricians, neonatologists, endocrinologists, gerontologists, nurses, biomedical engineers, human factors experts, or microbiologists/infection control practitioners or experts.	1	Immediately.
Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee—Hematologists (benign and/or malignant hematology), hematopathologists (general and special hematology, coagulation and hemostasis, and hematological oncology), gynecologists with special interests in gynecological oncology, cytopathologists, and molecular pathologists with special interests in development of predictive and prognostic biomarkers, molecular oncology, cancer screening, cancer risk, digital pathology, whole slide imaging; and devices utilizing artificial intelligence/machine learning.	2	3/1/2021.
Immunology Devices Panel of the Medical Devices Advisory Committee—Persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine.	5 2	Immediately. 3/1/2021.
Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee—Experts with cross-cutting scientific, clinical, analytical, or mediation skills.	1	10/1/2021.

TABLE 2—EXPERTISE NEEDED, VACANCIES, AND APPROXIMATE DATE NEEDED—Continued

Expertise needed	Vacancies	Approximate date needed
Microbiology Devices Panel of the Medical Devices Advisory Committee—Infectious disease clinicians (e.g. pulmonary disease specialists, sexually transmitted disease specialists, pediatric ID specialists, tropical diseases specialists) and clinical microbiologists experienced in emerging infectious diseases; clinical microbiology laboratory directors; molecular biologists with experience in in vitro diagnostic device testing; virologists; hepatologists; or clinical oncologists experienced with tumor resistance and susceptibility.	2 3	Immediately. 3/1/2021.
Molecular and Clinical Genetics Panel of the Medical Devices Advisory Committee—Experts in human genetics, molecular diagnostics, and in the clinical management of patients with genetic disorders, e.g., pediatricians, obstetricians, and neonatologists. Individuals with training in inborn errors of metabolism, biochemical, and/or molecular genetics, population genetics, epidemiology and related statistical training, bioinformatics, computational genetics/genomics, variant classification, cancer genetics/genomics, molecular oncology, radiation biology, and clinical molecular genetics testing, (e.g., sequencing, whole exome sequencing, whole genome sequencing, non-invasive prenatal testing, cancer screening, circulating cell free/circulating tumor nucleic acid testing, digital PCR, genotyping, array CGH, etc.). Individuals with experience in genetics counseling and medical ethics are also desired, and individuals with experience in ancillary fields of study will be considered.	1 1	Immediately. 6/1/2021.
Neurological Devices Panel of the Medical Devices Advisory Committee—Neurosurgeons (cerebrovascular and pediatric), neurologists (stroke, pediatric, pain management, and movement disorders), interventional neuroradiologists, psychiatrists, and biostatisticians.	3 3	Immediately. 12/1/2020.
Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee—Experts in perinatology, embryology, reproductive endocrinology, pediatric gynecology, gynecological oncology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, contraception, postoperative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; experts in gynecology in the older patient; experts in diagnostic (optical) spectroscopy; experts in midwifery; and labor and delivery nursing.	1 2	Immediately. 2/1/2021.
Ophthalmic Devices Panel of the Medical Devices Advisory Committee—Ophthalmologists specializing in cataract and refractive surgery and vitreo-retinal surgery, in addition to vision scientists, optometrists, and biostatisticians practiced in ophthalmic clinical trials.	2 2	Immediately. 11/01/2020.
Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee—Orthopaedic surgeons (joint, spine, trauma, reconstruction, sports medicine, hand, foot and ankle, and pediatric orthopaedic surgeons); rheumatologists; engineers (biomedical, biomaterials, and biomechanical); experts in rehabilitation medicine, and musculoskeletal engineering; and radiologists specializing musculoskeletal imaging and analyses and biostatisticians.	2	9/1/2021.
Radiological Devices Panel of the Medical Devices Advisory Committee—Physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging, and image analysis.	2	2/1/2021.

I. General Description of the Committees Duties

A. DGMPAC

The DGMPAC reviews regulations proposed for promulgation regarding good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage and installation of devices, and makes recommendations to the Commissioner of Food and Drugs (the Commissioner) regarding the feasibility and reasonableness of those proposed regulations. The DGMPAC also advises the Commissioner on any petition submitted by a manufacturer for an exemption or variance from good manufacturing practice regulations that is referred to the committee.

B. MDAC

The MDAC reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels engage in many activities to fulfill the functions the Federal Food, Drug, and Cosmetic Act (FD&C Act) envisions for device advisory panels. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, performs the following duties: (1) Advises the Commissioner regarding recommended classification or reclassification of devices into one of three regulatory categories, (2) advises on any possible risks to health associated with the use of devices, (3) advises on formulation of product development protocols, (4) reviews premarket approval applications for medical devices, (5) reviews guidelines and guidance documents, (6) recommends exemption of certain devices from the application of portions of the FD&C Act, (7) advises on the necessity to ban a device, and (8) responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area,

may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or Agency decisions or actions.

II. Criteria for Voting Members

A. DGMPAC

The DGMPAC consists of a core of nine members including the Chair. Members and the Chair are selected by the Secretary. Persons nominated for membership as a health professional or officer or employee of any Federal, State, or local government should have knowledge of or expertise in any one or more of the following areas—quality assurance concerning the design, manufacture, and use of medical devices in accordance with 21 CFR part 820 and/or ISO 13485. To be eligible for selection as a representative of the general public, nominees should possess appropriate qualifications to understand and contribute to the DGMPAC's work. Three of the members shall be officers or employees of any State or local government or of the Federal Government; two shall be representative of the interests of the device manufacturing industry; two shall be representatives of the interests of physicians and other health professionals; and two shall be representatives of the interests of the general public. FDA is publishing a separate document announcing the Request for Nominations Notification for Non-Voting Representatives of the interests of the device manufacturing industry. Almost all non-Federal members of this committee serve as Special Government Employees. Members are invited to serve for overlapping terms of 4 years. The current needs for the DGMPAC are listed in table 2.

B. Panels of the MDAC

The MDAC with its 18 panels shall consist of a maximum of 159 standing members. Members are selected by the Commissioner or designee from among authorities in clinical and administrative medicine, engineering, biological and physical sciences, and other related professions. Almost all non-Federal members of this committee serve as Special Government Employees. A maximum of 122 members shall be standing voting members and 37 shall be nonvoting members who serve as representatives of consumer interests and of industry interests. FDA is publishing separate documents announcing the Request for Nominations Notification for Non-Voting Representatives on certain panels of the MDAC. Persons nominated for membership on the panels should have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The current needs for each panel are listed in table. Members will be invited to serve for terms of up to 4 years.

III. Nomination Procedures

Any interested person may nominate one or more qualified individuals for membership on one or more of the advisory panels or advisory committees. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee, including current business address, telephone number, and email address if available and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Nomination Portal (see **ADDRESSES**). Nominations must also specify the advisory committee(s) for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 7, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–22875 Filed 10–14–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS–CoV–2) and Coronavirus Disease 2019 (COVID–19).

Date: November 12, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G50, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Louis A. Rosenthal, 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 3G50, Bethesda, MD 20892–9834, (240) 669–5070. *rosenthalla@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: October 8, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22789 Filed 10–14–20; 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; NIAID Investigator Initiated Program Project Applications (P01).

Date: November 13, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G50, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Louis A. Rosenthal, 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 3G50, Bethesda, MD 20892–9834, (240) 669–5070, *rosenthalla@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: October 8, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22787 Filed 10–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict Applications.

Date: November 23, 2020.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Bethesda, MD 20892, (301) 443–8599, *espinozala@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: October 9, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22788 Filed 10–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bone, Dental, Dermal and Muscle.

Date: November 12, 2020.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Baljit S. Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Learning, Memory, Language, Communication, and Related Neuroscience.

Date: November 12–13, 2020.

Time: 8:30 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: Jyothi Arikkath, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, Bethesda, MD 20892, (301) 435–1042, *arikkathj2@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Aging and Development, Auditory, Vision and Low Vision Technologies.

Date: November 12–13, 2020.

Time: 8:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Barbara Susanne Mallon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Bethesda, MD

20892, (301) 435–1042, *mallonb@mail.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neural Oxidative Metabolism and Death Study Section.

Date: November 12–13, 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: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–19–367: Maximizing Investigators' Research Award (R35—Clinical Trial Optional).

Date: November 12–13, 2020.

Time: 9:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Emily Foley, Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–3016, *emily.foley@nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

Date: November 12–13, 2020.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Guangyong Ji, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7808, Bethesda, MD 20892, 301–435–1146, *jig@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: The Cancer Biotherapeutics Development (CBD).

Date: November 12–13, 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: Laura Asnaghi, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, (301) 443–1196, *laura.asnaghi@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Infectious Diseases and Microbiology.

Date: November 12–13, 2020.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Tamara Lyn McNealy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, Bethesda, MD 20892, 301–827–2372, *tamara.mcnealy@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Brain Disorders and Related Neurosciences.

Date: November 12–13, 2020.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Vilen A Movsesyan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov*

Name of Committee: AIDS and Related Research Integrated Review Group; HIV/AIDS Intra- and Inter-personal Determinants and Behavioral Interventions Study Section.

Date: November 12–13, 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: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; COVID–19 Digital Health Interventions.

Date: November 12, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Catherine Hadeler Maulsby, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1266, *maulsbych@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 8, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–22750 Filed 10–14–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0484]

Collection of Information under Review by Office of Management and Budget; OMB Control Number 1625—NEW

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625—NEW, Transportation Worker Identification Credential (TWIC) Card Readers: Updated Risk Analysis.

Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before November 16, 2020.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2020–0484]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King JR. Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2020–0484], and must be received by November 16, 2020.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625—NEW.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (85 FR 46684, August 3, 2020) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Transportation Worker Identification Credential (TWIC) Card Readers: Updated Risk Analysis.

OMB Control Number: 1625—NEW.

Summary: The Coast Guard is conducting a risk analysis to determine which maritime facilities subject to TWIC Reader Rule would most benefit from the electronic TWIC inspection requirements. The purpose of this information collection is to gather the necessary information to conduct that analysis. This collection implements authorities set forth in the Maritime Transportation Security Act of 2002 (MTSA) (Pub. L. 107–295; Nov. 25, 2002; sec. 102) and Transportation Security Card Program Assessment Act (Pub. L. 114–278). Participation is voluntary.

Need: This risk analysis will satisfy the mandate of the Transportation Security

Card Program Assessment Act (Pub. L. 114–278).

Forms: None.

Respondents: Maritime facility owners, operators and representatives.

Frequency: One-time interview.

Hour Burden Estimate: The estimated burden is 600 hours for this new information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: October 8, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–22727 Filed 10–14–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2018–0001]

Surface Transportation Security Advisory Committee (STSAC) Meeting

AGENCY: Transportation Security Administration, DHS.

ACTION: Committee management; notice of federal advisory committee public meeting.

SUMMARY: The Transportation Security Administration (TSA) will hold a meeting of the Surface Transportation Security Advisory Committee (STSAC) to discuss issues listed in the Meeting Agenda section below. This meeting will be open to the public as stated in the Supplemental section below. In light of the current COVID–19 public health crisis, the meeting will be virtual.

DATES: The meeting will take place virtually on Thursday, November 5, 2020. The meeting will begin at 1:00 p.m. and will adjourn at 4:00 p.m. Eastern Standard Time. As listed in the Public Participation section below, requests to attend the meeting must be received by October 26, 2020. Requests to address the Committee must be received by October 26, 2020.

Requests for accommodation because of a disability must be received by October 26, 2020.

ADDRESSES: The meeting will be held virtually by teleconference. See Public Participation below for information on how to register to attend the meeting. Attendance information will be provided upon registration.

FOR FURTHER INFORMATION CONTACT: Judith Harroun-Lord, Surface Transportation Security Advisory Committee, Designated Federal Officer, Transportation Security Administration (TSA–28), 601 South 12th Street, Arlington, VA 20598–6028, *STSAC@tsa.dhs.gov,* 571–227–2283.

SUPPLEMENTARY INFORMATION:

I. Background

Notice of this meeting is given in accordance with the provisions of sec. 1969, Division K, TSA Modernization Act, of the FAA Modernization Act of 2018 (Pub. L. 115–254, 132 Stat. 3186,

Oct. 5, 2018). The STSAC will advise, consult with, report to, and make recommendations to the Administrator on surface transportation security matters, including the development, refinement, and implementation of policies, programs, initiatives, rulemakings, and security directives pertaining to surface transportation security. The STSAC will also consider risk-based security approaches in the performance of its duties. Provisions of sec. 1969 stipulate that this Committee is exempt from the Federal Advisory Committee Act (5 U.S.C. App.). Copies of STSAC meeting minutes, participant rosters, and general information about the committee are available on TSA.gov. The meeting will be open to the public and will focus on items listed in the Meeting Agenda section.

II. Meeting Agenda

- Welcoming Remarks/Introductions
- Committee and Subcommittee briefings on activities, key issues, and focus areas for FY 2020—Cybersecurity Information Sharing; Emergency Management and Resiliency; Insider Threat; and Security Risk and Intelligence
- Public Comments
- Closing Comments and Adjournment

III. Public Participation

The meeting will be open to the public and attendance may be limited due to technological and telephonic meeting constraints. Members of the public, all non-STSAC members, and non-TSA staff who wish to attend must register via email by submitting their name, contact number, and affiliation to *STSAC@tsa.dhs.gov* by October 26, 2020. Attendees will be admitted on a first-to-register basis. Attendance information will be provided upon registration.

In addition, members of the public must make advance arrangements by October 26, 2020 to present oral or written statements. The statements must specifically address issues pertaining to the items listed in the Meeting Agenda section; requests must be submitted via email to: *STSAC@tsa.dhs.gov.* The public comment period will begin at approximately 3:25 p.m. and will end at 3:40 p.m. Speakers are requested to limit their comments to three minutes.

The STSAC and TSA are committed to providing equal access to this virtual meeting for all participants. If you need alternative formats or services because of a disability, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section before October 26, 2020.

Dated: October 8, 2020.

Eddie D. Mayenschein,

Assistant Administrator, Policy, Plans, and Engagement (PPE).

[FR Doc. 2020–22749 Filed 10–14–20; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–35; OMB Control No.: 2502–0108]

60-Day Notice of Proposed Information Collection: Multifamily Project Monthly Accounting Reports

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

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 14, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Multifamily Project Monthly Accounting Reports.

OMB Approval Number: 2502–0108.

OMB Expiration Date: 9/30/2020.

Type of Request: Revision of currently approved collection.

Form Number: HUD–93479, HUD–93480, and HUD–93481.

Description of the Need for the Information and Proposed Use: This information is necessary for HUD to monitor compliance with contractual agreements and to analyze cash flow trends as well as occupancy and rent collection levels.

Respondents (*i.e.* affected public): Business and other for profit and non-profit entities.

Estimated Number of Respondents: 8,192.

Estimated Number of Responses: 1,638.

Frequency of Response: 12.

Average Hours per Response: 0.08 each.

Total Estimated Burden: 4,719 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dana T. Wade,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2020–22794 Filed 10–14–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X.LLAZ920000.L14400000.ET0000; AZA30749]

Public Land Order No. 7898; Extension of Public Land Order 7467 San Francisco Peaks/Mount Elden Recreation Area; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public land order.

SUMMARY: This Public Land Order (PLO) extends for an additional 20-year term the withdrawal originally created by PLO No. 7467, published October 16, 2000. This extension is necessary to protect the capital investments, scenic values, and dispersed recreation in the U.S. Forest Service's (USFS) San Francisco Peaks/Mount Elden Recreation area, encompassing 74,689 acres. PLO No. 7467 withdrew these National Forest System Lands from location and entry under the United States mining laws for a 20-year period.

DATES: This Public Land Order takes effect on October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sara Ferreira, Land Law Examiner, Bureau of Land Management (BLM), at 602–417–9598 or by email at *sferreir@blm.gov,* or contact the BLM, Arizona State Office, One North Central Ave., Suite 800, Phoenix, AZ 85004. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Ferreira. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose of the original withdrawal requires an extension in order to continue to protect those areas withdrawn by PLO No. 7467 for an additional 20-year term and to protect the capital investments and dispersed recreation resources in the San Francisco Peaks/Mount Elden Recreation area, Coconino National Forest, Arizona.

ORDER

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, PLO No. 7467, (65 FR 61180 (2000)), which withdrew National Forest System lands from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws, is hereby extended for an additional 20-year period to protect the San Francisco Peaks/Mount Elden Recreation area, Coconino National Forest, Arizona.

The October 16, 2000, **Federal Register** publication (65 FR 61180) identified 74,380.50 acres of National Forest System Lands for the San Francisco Peaks/Mount Elden Recreation Area withdrawal. Since 2000, a Land Survey Report was completed and approved by BLM Cadastral Survey. The revised legal description and acreage set forth herein are consistent with the Specifications for Descriptions of Land (2015) and are used in place of the land description in the application and original PLO issued in 2000. The cadastral survey program reviewed the legal description and maps within the withdrawal boundary against all recent plat documents and found the acreage to be 74,689, a difference of 308.5 acres from the PLO issued in 2000. For the purposes of this withdrawal extension, the withdrawal boundary remains unchanged, and the total acreage reflects the more accurate calculation of 74,689 acres, which are legally described as follows:

Gila and Salt River Meridian, Arizona

T. 21 N, R. 7 E,
Sec. 1;
Sec. 2, excepting H.E.S. No. 86.
T. 21 N, R. 8 E,
Sec. 6, excepting SE¼NE¼SE¼NE¼, E½SE¼SE¼NE¼, E½SE¼SW¼, S½SW¼SE¼SW¼, NE¼SE¼SE¼NE¼SE¼, E½SW¼SE¼SE¼NE¼SE¼, SE¼SE¼SE¼NE¼SE¼, S½SE¼. T. 22 N, R. 6 E,
Secs. 1 thru 3;
Sec. 4, excepting SE¼NW¼;
Secs. 9 thru 11;
Sec. 12, excepting NW¼;
Sec. 13, N½;
Secs. 14 and 15;
Sec. 16, E½.
T. 22 N, R. 7 E,
Secs. 1 thru 18;
Secs. 20 thru 26;
Sec. 27, excepting NE¼;
Secs. 28 and 29;
Sec. 32, N½;
Sec. 33, N½, N½SW¼, N½SE¼, SW¼SE¼, W½NW¼NW¼SE¼SE¼, W½SW¼NW¼SE¼SE¼, W½NW¼SW¼SE¼SE¼, W½SW¼SW¼ SE¼SE¼;
Sec. 34, N½, N½SW¼, E½SW¼SW¼, NW¼SE¼;
Secs. 35 and 36.
T. 22 N, R. 8 E,
Secs. 5 thru 7;
Sec. 8, excepting E½SE¼;
Sec. 17, excepting N½NE¼NE¼NE¼, N½NW¼NE¼NE¼;
Secs. 18 and 19;
Sec. 20, excepting S½SE¼NE¼NE¼, SE¼SW¼NE¼NE¼, S½SE¼NE¼;
Sec. 29, excepting E½SW¼SE¼SE¼, SE¼SE¼SE¼;
Secs. 30 and 31;
Sec. 32, N½, N½SW¼, SW¼SW¼, N½NE¼NE¼SE¼SW¼, N½NW¼NE¼SE¼SW¼, W½SE¼SW¼, N½SE¼, E½SW¼SE¼, N½NE¼NW¼SW¼SE¼, N½NW¼NW¼SW¼SE¼, SE¼SE¼.
T. 23 N, R. 6 E,
Sec. 8, lots 1, 2, 7, and 8;
Sec. 9;
Sec. 10, excepting W½NW¼NE¼NW¼, SE¼NW¼NE¼NW¼, E½NW¼NW¼, NE¼NW¼NW¼NW¼;
Sec. 11, excepting W½SE¼SE¼NE¼SW¼, W½NE¼NE¼SE¼SW¼, W½SE¼NE¼SE¼SW¼, W½NE¼SE¼SE¼SW¼, W½SE¼SE¼SW¼, W½SE¼SE¼SE¼SW¼;
Sec. 12;
Sec. 13, excepting SW¼NE¼NE¼, NE¼SE¼NE¼NE¼, W½SE¼NE¼NE¼, SE¼NW¼NE¼, N½NE¼SW¼NE¼, N½NW¼SE¼NE¼
Sec. 14, excepting N½NE¼NE¼, N½NE¼SW¼NE¼NE¼, N½NW¼SW¼NE¼NE¼, N½NE¼SE¼NE¼NE¼, N½NW¼SE¼NE¼NE¼, N½NW¼NE¼, N½NE¼SW¼NW¼NE¼, N½NW¼SW¼NW¼NE¼, N½NE¼SE¼NW¼NE¼, N½NW¼SE¼NW¼NE¼, N½NE¼NW¼, N½NE¼SW¼NE¼NW¼, N½NW¼SW¼NE¼NW¼, N½NE¼SE¼NE¼NW¼, N½NW¼SE¼NE¼NW¼, N½NW¼NW¼, N½NE¼SW¼NW¼NW¼, N½NW¼SW¼NW¼NW¼, N½NE¼SE¼NW¼NW¼, N½NW¼SE¼NW¼NW¼, SW¼SW¼;
Sec. 15, excepting SE¼SE¼;
Secs. 16 and 17;
Secs. 20 and 21;
Sec. 22, excepting NE¼NE¼, NW¼, S½SW¼SW¼, W¼NE¼SE¼SW¼, S½NW¼SE¼SW¼, SW¼SE¼SW¼, W½SE¼SE¼SW¼;
Sec. 23, excepting NW¼NW¼, SW¼NE¼SW¼SW¼, S½SW¼SW¼SW¼, SE¼SW¼SW¼, S½SE¼SW¼, SW¼SW¼SE¼;
Secs. 24 and 25;
Sec. 26, excepting SE¼SW¼NE¼NE¼, N½NE¼NW¼NE¼, N½NW¼NW¼NE¼,

NE¼NW¼SE¼NE¼, NW¼, N½SW¼, subject to a reservation by Summit Properties, Inc., described in a Warranty Deed recorded in Coconino County, Arizona in Docket 663, Pages 481 thru 484;
Sec. 27, lot 1, N½NE¼NE¼, SW¼NE¼NE¼, N½NE¼SE¼NE¼NE¼, W½SE¼NE¼NE¼, NW¼NE¼, E½SW¼NE¼, E½NW¼SW¼NE¼, E½SW¼SW¼NE¼, S½NE¼NE¼SE¼NE¼, W½NE¼SE¼NE¼, SE¼NE¼SE¼NE¼, W½SE¼NE¼, SE¼SE¼NE¼, S½SW¼NW¼NW¼, SW¼SE¼NW¼NW¼, W½NE¼SW¼NW¼, W½SW¼NW¼, SE¼SW¼NW¼, SW¼SE¼NW¼, N½NE¼SW¼, N½SW¼NE¼SW¼, N½SE¼NE¼SW¼, W½NW¼SW¼, W½SW¼SW¼, SE¼SW¼SW¼, S½SE¼SW¼, N½NE¼SE¼, N½SW¼NE¼SE¼, SE¼NE¼SE¼, N½NW¼SE¼, N½SW¼NW¼SE¼, N½SE¼NW¼SE¼, SW¼SW¼SE¼, W½SE¼SW¼SE¼, E½SE¼SE¼;
Secs. 28 and 29;
Secs. 32 and 33;
Sec. 34, SW¼NW¼NE¼, NW¼, SE¼;
Sec. 35, lots 1 thru 5, N½NE¼, E½NW¼SE¼NE¼, E½SW¼SE¼NE¼, E½SE¼NE¼, N½NE¼NW¼, W½SW¼NE¼NW¼, SE¼NE¼NW¼, N½NW¼NW¼, SW¼NW¼NW¼, W½SW¼NW¼, N½SW¼, N½SW¼SW¼, SE¼;
Sec. 36.
T. 23 N, R. 7 E,
Secs. 7 thru 12;
Sec. 13, excepting S½SE¼SW¼, M.S. No. 4652;
Secs. 14 thru 17;
Sec. 18, lots 3 thru 5, E½, N½NE¼NW¼, SE¼NE¼NW¼, N½NE¼NW¼NW¼, E½SE¼NW¼, S½SW¼SE¼NW¼, E½SW¼;
Secs. 19 thru 23;
Sec. 24, lots 1 thru 4, N½NW¼NE¼, E½SW¼NW¼NE¼, E½NW¼SW¼NW¼NE¼, E½NW¼NW¼SW¼NW¼NE¼, E½SW¼NW¼SW¼NW¼NE¼, E½SW¼SW¼NW¼NE¼, E½NW¼SW¼SW¼NW¼NE¼, E½SW¼SW¼SW¼NW¼NE¼, SE¼NW¼NE¼, NE¼SW¼NE¼, E½NW¼SW¼NE¼, E½NW¼NW¼SW¼NE¼, E½NW¼NW¼NW¼SW¼NE¼, E½SW¼NW¼NW¼SW¼NE¼, E½SW¼NW¼SW¼NE¼, E½NW¼SW¼NW¼SW¼NE¼, E½SW¼SW¼NW¼SW¼NE¼, S½SW¼NE¼, W½NW¼NW¼SW¼NE¼NW¼, W½SW¼NW¼SW¼NE¼NW¼, W½NW¼SW¼SW¼NE¼NW¼, W½SW¼SW¼SW¼NE¼NW¼, W½NW¼, W½NW¼NW¼NW¼SE¼NW¼, W½SW¼NW¼NW¼SE¼NW¼, W½NW¼SW¼NW¼SE¼NW¼, W½SW¼SW¼NW¼SE¼NW¼, S½SE¼NW¼, SW¼, W½SE¼, excepting M.S. No. 4652;
Secs. 25 thru 34;
Sec. 35, excepting a right-of-way described in two Quit-claim Deeds recorded in Coconino County, Arizona in Book 34 of Deeds, Pages 598 and 604;
Sec. 36.
T. 23 N., R. 8 E.,
Sec. 7;
Sec. 17, SW¼;
Sec. 18, excepting NW¼NE¼;
Sec. 19;
Sec. 20, W½;
Sec. 29, N½, SW¼, E½NE¼SE¼, E½NW¼NE¼SE¼, W½NE¼NW¼SE¼, W½NW¼SE¼, W½SE¼NW¼SE¼, W½SW¼SE¼, W½NE¼SW¼SE¼, N½NE¼SE¼SE¼;
Secs. 30 and 31;
Sec. 32, W½NW¼NE¼, W½SE¼NW¼NE¼, S½NE¼, W½, SE¼.
The areas described aggregate 74,689 acres.

2. This withdrawal will expire 20 years from the effective date of this Order, unless as a result of review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Dated: October 9, 2020.

David L. Bernhardt,

Secretary of the Interior.

[FR Doc. 2020–22975 Filed 10–14–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 211S180110; S2D2S SS08011000 SX064A000 21XS501520; OMB Control Number 1029–0039]

Agency Information Collection Activities; Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 14, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C. Street NW, Room 4556–MIB, Washington, DC 20240; or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0039 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at 202–208–2716.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the OSMRE; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the OSMRE enhance the quality, utility, and clarity of the information to be collected; and (5) how might the OSMRE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Sections 507(b), 508(a) and 516(b) of Public Law 95–87 require underground coal mine permit applicants to submit an operations and reclamation plan and establish performance standards for the mining operation. Information submitted is used by the regulatory authority to determine if the applicant can comply with the applicable performance and

environmental standards required by the law.

Title of Collection: Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan.

OMB Control Number: 1029–0039.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses and State governments.

Total Estimated Number of Annual Respondents: 80.

Total Estimated Number of Annual Responses: 1000.

Estimated Completion Time per Response: Varies from 2 hours to 80 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 22,000.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $400,000.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2020–22851 Filed 10–14–20; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 211S180110; S2D2S SS08011000 SX064A000 21XS501520; OMB Control Number 1029–0083]

Agency Information Collection Activities; Certification of Blasters in Federal Program States and on Indian Lands

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 14, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240; or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0083 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at 202–208–2716.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the OSMRE; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the OSMRE enhance the quality, utility, and clarity of the information to be collected; and (5) how might the OSMRE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The information is being collected to ensure that the applicants for blaster certification are qualified. This information, with blasting tests, will be used to determine the eligibility of the applicant.

Title of Collection: Certification of blasters in Federal program states and on Indian lands.

OMB Control Number: 1029–0083.

Form Number: OSM–74.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Respondents: 25.

Total Estimated Number of Annual Responses: 25.

Estimated Completion Time per Response: 1 hour.

Total Estimated Number of Annual Burden Hours: 25.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $2,000.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2020–22850 Filed 10–14–20; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 211S180110; S2D2S SS08011000 SX064A000 21XS501520; OMB Control Number 1029–0047]

Agency Information Collection Activities; Permanent Program Performance Standards—Surface and Underground Mining Activities

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 14, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the Mark Gehlhar, Office of

Surface Mining Reclamation and Enforcement, 1849 C. Street NW, Room 4556–MIB, Washington, DC 20240; or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0047 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at 202–208–2716.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the OSMRE; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the OSMRE enhance the quality, utility, and clarity of the information to be collected; and (5) how might the OSMRE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Sections 515 and 516 of the Surface Mining Control and Reclamation Act of 1977 provide that permittees conducting coal mining operations shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority to monitor and inspect surface coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

Title of Collection: Permanent Program Performance Standards—Surface and Underground Mining Activities.

OMB Control Number: 1029–0047.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses and State governments.

Total Estimated Number of Annual Respondents: 400.

Total Estimated Number of Annual Responses: 400,000.

Estimated Completion Time per Response: Varies from 1 hour to 240 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 1,600,000.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: $25,000,000.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Signed:

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2020–22852 Filed 10–14–20; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Electrified Vehicle and Energy Storage Evaluation

Notice is hereby given that, on September 24, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Electrified Vehicle and Energy Storage Evaluation (''EVESE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Allison Transmission, Inc.≪Client≫, Indianapolis, IN; BAE Systems Controls Inc., Endicott, NY; Castrol Limited, Pangbourne, England; Infineum USA L.P., Linden, NJ; Komatsu America Corp, Chicago, IL; Shell Global Systems (US) Inc., Wilmington, DE; and Underwriters Laboratories, Northbrook, IL.

The general area of EVESE's planned activities are to test and analyze cutting-edge technology for electrified vehicles (plug-in hybrids and battery electric vehicles) to understand the performance of the battery cells and pack, the electric motor and operating strategies that maximize fuel economy, efficiency and range. Additionally, EVESE will conduct research focused on improving the performance and durability of lithium-ion batteries, electric motors and the electrified vehicle's powertrain as a whole.

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–22856 Filed 10–14–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act Of 1993—Cooperative Research Group On ROS-Industrial Consortium Americas

Notice is hereby given that, on October 1, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium-Americas (''RIC-Americas'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aerobotix, Inc., Madison, AL, has been added as a party to this venture.

Also, Siemens Energy, Inc., Orlando, FL, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research

project remains open, and RIC-Americas intends to file additional written notifications disclosing all changes in membership.

On April 30, 2014, RIC-Americas filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on July 24, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 5, 2020 (85 FR 47404).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–22863 Filed 10–14–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Open RF Association, Inc.

Notice is hereby given that, on October 6, 2020 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open RF Association, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Intel Corporation, Santa Clara, CA has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open RF Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On February 21, 2020, Open RF Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 11, 2020 (85 FR 14247).

The last notification was filed with the Department on May 07, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 19, 2020 (85 FR 29976).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–22864 Filed 10–14–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on September 17, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODVA, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Dover Flexo Electronics, Inc., Rochester, NH, has been added as a party to this venture.

Also, Dalian SeaSky Automation, Co., Ltd., Dalian City, PEOPLE'S REPUBLIC OF CHINA; Ametek HDR Power Systems, Worthington, OH; Balogh T.A.G., Corporation, Brighton, MI; Hohner Corporation, Beamsville, Ontario, CANADA; Leonton Technologies, Co., Ltd., New Taipei City, TAIWAN; SYNTEC TECHNOLOGY CO., LTD., Hsinchu City, TAIWAN; and Atop Technologies, Jubei, Hsinchu, TAIWAN, have withdrawn as parties to this venture.

In addition, Grace Engineered Products, Inc. has changed its name to Grace Technologies, Inc., Davenport, IA; 3S-Smart Software Solutions GmbH to CODESYS GmbH, Kempten, GERMANY; Festo to Festo SE & Co. KG, Esslingen, GERMANY; and LS Industrial Systems to LS ELECTRIC CO., Ltd., Seoul, SOUTH KOREA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on June 25, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 16, 2020 (85 FR 43260).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–22854 Filed 10–14–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Naval Energetic Systems and Technologies Enterprise Consortium

Notice is hereby given that, on October 5, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Naval Energetic Systems and Technologies Enterprise Consortium (''NEC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture, and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Fathom 4, LLC, Charleston, SC; Logistic Services International, Inc., Jacksonville, FL; Milwaukee School of Engineering, Milwaukee, WI; Netorian, LLC, Aberdeen, MD; SIA Solutions, Baltimore, MD; and Tiburon Associates, Inc., Grand Rapids, MI.

The general area of NEC's planned activity is (a) to collaborate with the U.S. Navy to conduct coordinated research, prototype development and follow-on production of technologies that address current and future security threats in the surface, subsurface, littoral and expeditionary environments (''NEC Mission'') through the use of an Other Transaction Agreement (''OTA'') with the U.S. Government (''Government''). These efforts will enhance the capabilities of the Government and its departments and agencies in the development of prototypes and full production thereof in the naval energetic systems and technologies field; (b) to participate in

the establishment of sound technical and programmatic performance goals based on the technical needs and the requirements of the Government; (c) to provide a unified voice to effectively articulate the global and strategically important role the NEC Mission plays in furthering national security objectives; and (d) to maximize the utilization of the Government's and NEC Members' capabilities to effectively develop critical technologies which can be transitioned to the U.S. Navy and commercialized.

Suzanne Morris,

Chief, Premerger and Division Statistics Antitrust Division.

[FR Doc. 2020–22861 Filed 10–14–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—UHD Alliance, Inc.

Notice is hereby given that, on September 22, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), UHD Alliance, Inc. (''UHD Alliance'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BenQ Corporation, Taipei, TAIWAN; and JVCKENWOOD Corporation, Kanagawa, JAPAN have been added as parties to this venture.

In addition, Intel Corporation, Folsom, CA; NVIDIA Corporation, Santa Clara, CA; and Vestel Elektronik Sanayi ve Ticaret A.S., Manisa, TURKEY have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UHD Alliance intends to file additional written notifications disclosing all changes in membership.

On June 17, 2015, UHD Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on July 28, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 28, 2020(85 FR 53401).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–22848 Filed 10–14–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research And Production Act of 1993—R Consortium, Inc.

Notice is hereby given that, on October 1, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), R Consortium, Inc. (''R Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Janssen Pharmaceutical Companies of Johnson & Johnson, New Brunswick, NJ, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and R Consortium intends to file additional written notifications disclosing all changes in membership.

On September 15, 2015, R Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 2, 2015 (80 FR 59815).

The last notification was filed with the Department on April 29, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 19, 2020 (85 FR 29978).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–22860 Filed 10–14–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Digital Manufacturing Design Innovation Institute

Notice is hereby given that, on September 30, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Digital Manufacturing Design Innovation Institute (''DMDII'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, RTMA, Rochester, NY; American Machining Efficiency Consultants (AMEC–LLC), Shady Shores, TX; Maxxion Technologies, Hoffman Estates, IL; Aerobotix, Madison, AL; RAAD360, Newark, DE; Cyberstrike Solutions, Williamsburg, IA; Fuzehub, Albany, NY; Los Alamos National Laboratory, Los Alamos, NM; Innovative Manufacturing and Design (M&D), Greenville, SC; Canvas GFX, Boston, MA; RPI Group, Fredricksburg, VA; Verdasee, Gurnee, IL; RGBSI, Troy, MI; Magna Machine Company, Cincinnati, OH; Plethora Corporation, Marietta, GA; Aeroserv Inc., Mason, OH; BASF, Florham Park, NJ; Cleaning Technologies Group, Cincinnati, OH; Eccalon, Hanover, MD; General Stress Optics, Chicago, IL; Printforia, Washougal, WA; Delaware Valley Industrial Resource Center (DVIRC), Philadelphia, PA; and Defense Logistics Agency, Washington DC have been added as parties to this venture.

Also, TYGES International, Williamsburg, VA; Simio, Sewickely, PA; Xometry (formerly MakeTime), Lexington, KY; Mantel Technologies, Fort Collins, CO; SWARM Engineering, San Juan Capistrano, CA; EC Solutions, Newark, DE; and ClearObject, Fishers, IN have withdrawn as parties from this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DMDII intends to file additional written notifications disclosing all changes in membership.

On January 5, 2016, DMDII filed its original notification pursuant to Section

6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 9, 2016 (81 FR 12525).

The last notification was filed with the Department on June 30, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 16, 2020 (85 FR 43260).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–22862 Filed 10–14–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CHEDE–8

Notice is hereby given that, on September 11, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), CHEDE–8 (''CHEDE–8'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Hino Motors, Ltd., Tokyo, JAPAN has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CHEDE–8 intends to file additional written notifications disclosing all changes in membership.

On December 4, 2019, CHEDE–8 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 30, 2019 (84 FR 71977).

The last notification was filed with the Department on August 10, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 28, 2020 (85 FR 53402).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–22853 Filed 10–14–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Fire Protection Association

Notice is hereby given that, on September 17, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Fire Protection Association (''NFPA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities.

The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NFPA has provided an updated and current list of its standards development activities, related technical committee and conformity assessment activities. Information concerning NFPA regulations, technical committees, current standards, standards development and conformity assessment activities are publicly available at *nfpa.org.*

On September 20, 2004, NFPA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 21, 2004 (69 FR 61869). The last notification was filed with the Department on April 7, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 5, 2020 (84 FR 26712).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–22855 Filed 10–14–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on September 16, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, edX, Cambridge, MA; Follett Corporation, Westchester, IL; Gainesville City Schools, Gainesville, GA; Greenville County Schools, Greenville, SC; New Mexico Public Department of Education, Ruidoso, NM; Northwest Tri-County IU5, Edinboro, PA; and PSI Services, Glendale, CA, have been added as parties to this venture.

Also, BPS Bildungsportal Sachsen GmbH, Chemnitz, GERMANY; Brigham Young University, Provo, UT; Genius Plaza, Miami, FL; Portfolium, Inc., San Diego, CA; Schoology, New York, NY; Colorado Technical University, Schaumburg, IL; and AccelerEd, Bethesda, MD, have withdrawn as parties to this venture.

In addition, Digitalme has changed its name to City & Guilds, Leeds, UNITED KINGDOM; and Advance Education, LLC to Cognia, Inc., Atlanta, GA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on July 1, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 16, 2020 (85 FR 43260).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020–22849 Filed 10–14–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0030]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection: Capital Punishment Report of Inmates Under Sentence of Death

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-day Notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until December 14, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tracy L. Snell, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Tracy.L.Snell@usdoj.gov;* telephone: 202–616–3288).

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 Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* Capital Punishment Report of Inmates Under Sentence of Death.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form numbers for the questionnaire are NPS–8 (Report of Inmates Under Sentence of Death; NPS–8A (Update Report of Inmates Under Sentence of Death); NPS–8B (Status of Death Penalty Statutes—No Statute in Force); and NPS–8C (Status of Death Penalty Statutes—Statute in Force). The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be staff from state departments of correction, state Attorneys General, the Federal Bureau of Prisons, and the U.S. Attorney for the District of Columbia. Staff responsible for keeping records on inmates under sentence of death in their jurisdiction and in their custody are asked to provide information for each individual under sentence of death for the following characteristics: Condemned inmates' demographic characteristics, legal status at the time of capital offense, capital offense for which imprisoned, number of death sentences imposed, criminal history information, reason for removal and current status if no longer under sentence of death, method of execution, and cause of death by means other than execution. Personnel in the offices of each Attorney General are asked to provide information regarding the status of death penalty laws and any changes to the laws enacted during the reference year. The Bureau of Justice Statistics uses this information in published reports and in responding to queries from the U.S. Congress, Executive Office of the President, the U.S. Supreme Court, state officials, international organizations, researchers, students, the media, and others interested in criminal justices statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 35 responses at 30 minutes each for the NPS–8; 2,625 responses at 30 minutes for the NPS–8A; and 52 responses at 15 minutes each for the NPS–8B and NPS–8C. The 35 NPS–8/8A respondents and 52 NPS–8B/8C respondents have the option to provide responses using either paper or web-based questionnaires. The burden estimate is based on feedback from respondents in the most recent data collection.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There is an estimated 1,343 total burden hours associated with this collection.

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: October 9, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–22857 Filed 10–14–20; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0043]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement of Previously Approved Collection: Drug Questionnaire

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until November 16, 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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* Reinstatement of Previously Approved Collection.

(2) *The Title of the Form/Collection:* Drug Questionnaire.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is the DEA–341. The sponsoring component is the Drug Enforcement Administration.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public are individuals seeking employment with the Drug Enforcement Administration.

(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 15,000 respondents will complete the questionnaire in approximately 5 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 1,250 hours. It is estimated that applicants will take 5 minutes to complete the questionnaire. The burden hours for collecting respondent data sum to 1,250 hours (15,000 respondents × 5 minutes = 75,000 hours. 75,000/60 seconds = 1,250 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.405B, Washington, DC 20530.

Dated: October 9, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–22858 Filed 10–14–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

203rd Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Teleconference Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 203rd open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held via a teleconference on Friday, November 13, 2020.

The meeting will begin at 10 a.m. and end at approximately 3:30 p.m. with a one-hour break for lunch. The purpose of the open meeting is for the members of the ERISA Advisory Council to discuss potential recommendations for the Secretary of Labor on the issues of: (1) Examining Top Hat Plan Participation and Reporting, and (2) Considerations for Recognizing and Addressing Participants with Diminished Capacity. Descriptions of these topics are available near the bottom of the ERISA Advisory Council's web page at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council.*

Instructions for public access to this teleconference meeting will be posted on the ERISA Advisory Council's web page at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council* prior to the meeting.

Organizations or members of the public wishing to submit a written statement may do so on or before Friday, November 6, 2020, to Christine Donahue, Executive Secretary, ERISA Advisory Council. Statements should be transmitted electronically as an email attachment in text or pdf format to *donahue.christine@dol.gov.* Statements transmitted electronically that are included in the body of the email will not be accepted. Relevant statements received on or before Friday, November 6, 2020, will be included in the record of the meeting and made available through the Employee Benefits Security Administration Public Disclosure Room. No deletions, modifications, or redactions will be made to the statements received as they are public records.

Individuals or representatives of organizations wishing to address the ERISA Advisory Council should forward their requests to the Executive Secretary no later than Friday, November 6, 2020, via email to *donahue.christine@dol.gov* or by telephoning (202) 693–8641. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record.

Individuals who need special accommodations should contact the Executive Secretary no later than Friday, November 6, 2020, via email to *donahue.christine@dol.gov* or by telephoning (202) 693–8641.

For more information about the meeting, contact the Executive Secretary via email to *donahue.christine@dol.gov* or by telephoning (202) 693–8641.

Signed at Washington, DC, this 7th day of October, 2020.

Jeanne Klinefelter Wilson,

Acting Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2020–22766 Filed 10–14–20; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Electric Power Generation, Transmission, and Distribution Standards for Construction and General Industry and Electrical Protective Equipment for Construction and General

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 16, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/*

PRAMain. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at 202–693–0456, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Under the authority granted by the Occupational Safety and Health Act (OSH Act), OSHA published a rule covering construction work involving electric power transmission and distribution lines and equipment (29 CFR part 1926, subpart V), general industry work involving electric power generation, transmission, and distribution lines and equipment (29 CFR 1910.269), and electrical protective equipment for both construction work and general industry work (29 CFR 1926.97 and 29 CFR 1910.137, respectively) to ensure safe work practices for workers performing maintenance and repair in and around electric power lines and equipment. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 26, 2020 (85 FR 38391).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Electric Power Generation, Transmission, and Distribution Standards for Construction and General Industry and Electrical Protective Equipment for Construction and General.

OMB Control Number: 1218–0253.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 20,593.

Total Estimated Number of Responses: 1,992,283.

Total Estimated Annual Time Burden: 380,735 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Crystal Rennie,

Acting Departmental Clearance Officer.

[FR Doc. 2020–22765 Filed 10–14–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Vacancy Posting: Member of the Administrative Review Board

Summary of Duties: A Member of the Administrative Review Board (the Board) serves in all matters of the Board as assigned, including policy decisions and technology proposals. The incumbent participates in rendering decisions of the Board. Each decision is set forth in a written opinion which sets forth the basis of the decision. The Member of the Board analyzes and evaluates the legal and factual aspects of each case and conducts necessary research. Research includes examination of laws, regulations, procedures as well as prior Board decisions on whistleblower, immigration, child labor, employment discrimination, federal construction, and service contract cases made under other jurisdiction, general statutory, or common law.

Appointment Type: Excepted—The term of appointment is for four years or less and may be extended.

Qualifications: The applicant should be well versed in law and the appeals process, as well as have the ability to interpret regulations and to come to a consensus to determine an overall appeals determination with Members of Board.

To Be Considered: Applicants must provide a detailed resume containing a demonstrated ability to perform as a Member of the Board.

Closing Date: Resumes must be submitted (postmarked, if sending by mail; submitted electronically; or received, if hand-delivered) by 11:59 p.m. EDT on December 9, 2020. Resumes must be submitted to: *white.robert.t@dol.gov* or mailed to: U.S. Department of Labor, 200 Constitution Avenue NW, ATTN: Division of Executive Resources, Room N2495, Washington, DC 20210, phone: 202–693–2457. This is not a toll-free number.

Dated: October 9, 2020.

Bryan Slater,

Assistant Secretary for Administration & Management.

[FR Doc. 2020–22791 Filed 10–14–20; 8:45 am]

BILLING CODE 4510–HW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Rigging Equipment for Material Handling

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 16, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4)

ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at 202–693–0456, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The collection of information provisions of the standard specify affixing identification tags or marking on rigging equipment, developing and maintaining inspection records, and retaining proof-testing certificates. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 24, 2020 (85 FR 37960).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Rigging Equipment for Material Handling.

OMB Control Number: 1218–0233.

Affected Public: Private Sector, Business or other for-profits institutions.

Total Estimated Number of Respondents: 263,953.

Total Estimated Number of Responses: 263,953.

Total Estimated Annual Time Burden: 49,160 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Crystal Rennie,

Acting Departmental Clearance Officer.

[FR Doc. 2020–22768 Filed 10–14–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Anhydrous Ammonia Storage and Handling Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 16, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at 202–693–0456, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The collections of information are necessary for the safe handling and storage of anhydrous ammonia, a substance which is extremely dangerous to humans (toxic and corrosive). For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 3, 2020 (85 FR 34251).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Anhydrous Ammonia Storage and Handling Standard.

OMB Control Number: 1218–0208.

Affected Public: Private Sector.

Total Estimated Number of Respondents: 201,300.

Total Estimated Number of Responses: 2,013.

Total Estimated Annual Time Burden: 336 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Crystal Rennie,

Acting Departmental Clearance Officer.

[FR Doc. 2020–22767 Filed 10–14–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Data Users Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Data Users Advisory Committee will meet on Tuesday, November 10, 2020. In light of the travel restrictions and social distancing requirements resulting from the COVID–19 outbreak, this meeting will be held virtually.

The Committee provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government communities, on technical matters related to the collection, analysis, dissemination, and use of the Bureau's statistics, on its published reports, and

on the broader aspects of its overall mission and function.

The schedule and agenda for the meeting are as follows:

12:00 p.m. Introductions
12:30 p.m. Commissioner's welcome and review of agency developments
1:15 p.m. Overview of BLS programs
1:45 p.m. Business Response Survey
2:30 p.m. Reporting operational measures of accuracy and relevance
3:15 p.m. State level Productivity
4:00 p.m. Meeting wrap-up

The meeting is open to the public. Anyone planning to attend the meeting should contact Kathy Mele, Data Users Advisory Committee, at *mele.kathy@bls.gov.* Any questions about the meeting should be addressed to Ms. Mele. The presentation link will be sent upon request to individuals planning to attend the meeting approximately 24 hours prior to the meeting. Individuals who require special accommodations should contact Ms. Mele at least two days prior to the meeting date.

Signed at Washington, DC, this 9th day of October 2020.

Mark Staniorski,

Chief, Division of Management Systems.

[FR Doc. 2020–22825 Filed 10–14–20; 8:45 am]

BILLING CODE 4510–24–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Legal Services Corporation's Board of Directors and its six committees will meet October 19–20, 2020. On Monday, October 19, the first meeting will commence at 11:00 a.m., Eastern Daylight Time (EDT), with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Tuesday, October 20, the first meeting will commence at 12:00 p.m., EDT, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Tuesday, October 20, the closed session meeting of the Board of Directors will commence at 4:15 p.m., EDT.

PLACE: *Public Notice of Virtual Remote Meeting.*

Due to the COVID–19 public health crisis, the Legal Services Corporation (LSC) will be conducting the October 19–20, 2020 meetings remotely via ZOOM.

Public Observation: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who wish to participate remotely in the public proceedings may do so by following the directions provided below.

Directions for Open Sessions

Monday, October 19, 2020

- To join the Zoom Meeting by computer: *Please click the below link. __https://lsc-gov.zoom.us/j/96168178150?pwd=ejRyWVB1WjhPdzBWUFgyU3RWL1lRdz09*
- *Meeting ID:* 961 6817 8150
- *Passcode:* 924291
- To join the Zoom meeting with one touch from your mobile phone, click below:

+16468769923,,96168178150# US (New York)
+13017158592,,96168178150# US (Germantown)

- To join the Zoom meeting by phone, use this information:

Dial by Your Location

+1 646 876 9923 US (New York)
+1 301 715 8592 US (Germantown)
+1 312 626 6799 US (Chicago)
+1 408 638 0968 US (San Jose)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)

- *Meeting ID:* 961 6817 8150
- *Find your local number: https://lsc-gov.zoom.us/u/adWoHtjdDC*

Tuesday, October 20, 2020

- *To join the Join Zoom Meeting by computer:* Please click the link below. *https://lsc-gov.zoom.us/j/99617220941?pwd=UERGbWgxSGNxMXY2R3I3cVdGN0tOZz09*
- *Meeting ID:* 996 1722 0941
- *Passcode:* 100975
- To join the Zoom meeting with one touch from your mobile phone, click below:

+13126266799,,99617220941# US (Chicago)
+16468769923,99617220941# US (New York)

To join the Zoom meeting by phone, use this information:

Dial by Your Location

+1 312 626 6799 US (Chicago)
+1 646 876 9923 US (New York)
+1 301 715 8592 US (Germantown)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 408 638 0968 US (San Jose)

- *Meeting ID:* 996 1722 0941
- *Find your local number: https://lsc-gov.zoom.us/u/awqnEjm69*
- When connected to the call, please immediately ''MUTE'' your telephone. Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.
- To participate in the meeting during public comment you will be notified when your microphone is no longer ''MUTED'' and you may give your questions, and or comments.

MEETING SCHEDULE

	Time**
Monday, October 19, 2020	
1. Governance and Performance Review Committee. 2. Institutional Advancement Committee. 3. Communications Subcommittee of the Institutional Advancement Committee. 4. Operations & Regulations Committee. 5. Delivery of Legal Services Committee.	11:00 a.m.
Tuesday, October 20, 2020	
1. Finance Committee ..... 2. Audit Committee. 3. Board of Directors.	12:00 p.m.

**Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b (a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3. Please note all meetings are Eastern Daylight Time (EDT).

Status of Meeting: Open, except as noted below.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to hear briefings by management and LSC's Inspector General, and to consider and act on the General Counsel's report on potential and pending litigation involving LSC.**

Institutional Advancement Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to consider and act on recommendation of new Leaders Council invitees and to receive a briefing on the Development activities.**

Audit Committee—Open, except that the meeting may be closed to the public to hear a briefing on the Office of Compliance and Enforcement's active enforcement matters.**

A verbatim written transcript will be made of the closed session of the Board, Institutional Advancement Committee, and Audit Committee meetings. The transcript of any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) and

(10), will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

October 19, 2020

Governance and Performance Review Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on July 27, 2020
3. Report on process and timeline for preparation for Administration Transition teams
   - Carol Bergman, Vice President for Government Relations & Public Affairs
4. Report on annual Board and Committee evaluations
   - Carol Bergman, Vice President for Government Relations & Public Affairs
5. Consider and act on other business
6. Public comment
7. Consider and act on motion to adjourn the meeting

Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of July 27, 2020
3. Update on Leaders Council and Emerging Leaders Council
   - John G. Levi, Chairman of the Board
4. Development report
   - Nadia Elguindy, Director of Institutional Advancement
   - Ron Flagg, President
5. Report on Fundraising Training
   - Leo Latz, Latz & Company
6. Update on Veterans Task Force and Opioid Task Force Implementation
   - Stefanie Davis, Senior Assistant General Counsel
7. Update on Disaster Task Force Implementation
   - Lynn Jennings, Vice President for Grants Management
8. Report on ABA Young Lawyers Division's Innovation Committee's Short Legal Tech Story Competition
   - Matthew Stubenberg, Harvard Access to Justice Lab Emerging Leaders Council Member
   - Miguel Willis, Access to Justice Technology Fellows Program & Emerging Leaders Council Member
9. Public Comment
10. Consider and act on other business
11. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

1. Approval of minutes of the Committee's Closed Session meeting of July 27, 2020
2. Development activities report
   - Nadia Elguindy, Director of Institutional Advancement
3. Consider and act on motion to approve Leaders Council and Emerging Leaders Council invitees
4. Consider and act on other business
5. Consider and act on motion to adjourn the meeting

October 19, 2020

Communications Subcommittee of the Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Subcommittee's Open Session meeting of July 27, 2020
3. Communications and social media update
   - Carl Rauscher, Director of Communications and Media Relations
4. Public comment
5. Consider and act on other business
6. Consider and act on motion to adjourn the meeting

October 19, 2020

Operations & Regulations Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of July 27, 2020
3. Consider and act on Proposed Final Rule for 45 CFR part 1635—Timekeeping
   - Stefanie Davis, Senior Assistant General Counsel
   - Ron Flagg, President and General Counsel
4. Update on public comment on the draft Financial Guide to replace the Accounting Guide
   - Mark Freedman, Senior Associate General Counsel
   - Stuart Axenfeld, Deputy Director for Fiscal Compliance, Office of Compliance and Enforcement
5. Public comment
6. Consider and act on other business
7. Consider and act on adjournment of meeting

October 19, 2020

Delivery of Legal Services Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on July 27, 2020
3. LSC Performance Criteria Update
   - Lynn Jennings, Vice President for Grants Management
4. Presentation on California's Sargent Shriver Counsel Act Evaluation
   - Estela Casas, Executive Director, Greater Bakersfield Legal Assistance
   - Gina Cervantes, Self Help Attorney, Superior Court of California, Kern County
   - Bonnie Rose Hough, Principal Managing Attorney, Judicial Council of California
5. Eviction Update
   - Emily A. Benfer, Visiting Professor of Law, Wake Forest University School of Law
6. Public comment
7. Consider and act on other business
8. Consider and act on motion to adjourn the meeting

October 20, 2020

Finance Committee

Open Session

1. Approval of agenda
2. Approval of the minutes of the Committee's Open Session meeting of July 14, 2020
3. Approval of the minutes of the Committee's Open Session meeting of July 28, 2020
4. Presentation of LSC's Financial Report for the quarter ending September 30, 2020
   - Debbie Moore, Chief Financial Officer & Treasurer
5. Report on the status of FY 2021 appropriations process and COVID–19 Supplemental Appropriations
   - Carol Bergman, Vice President for Government Relations & Public Affairs
6. Report of FY 2021 Budget
   - Ron Flagg, President
   - Debbie Moore, Treasurer and Chief Financial Officer
7. Consider and Act on *Resolution #2020–XXX* on a Temporary Operating Budget and Special Circumstance Operating Authority for Fiscal Year 2021
8. Report of FY 2022 appropriations process
   - Carol Bergman, Vice President, Government Relations & Public Affairs
9. Public comment
10. Consider and act on other business
11. Consider and act on adjournment of meeting

October 20, 2020

Audit Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on July 28, 2020

3. Briefing of Office of Inspector General
   - Jeffrey Schanz, Inspector General
   - Roxanne Caruso, Assistant Inspector General for Audits
4. FY 2020 Audit Update
   - Debbie Moore, Chief Financial Officer & Treasurer
   - Jeffrey Schanz, Inspector General
   - Roxanne Caruso, Assistant Inspector General for Audits
5. Accounting Manual Update
   - Debbie Moore, Chief Financial Officer & Treasurer
6. Review LSC's efforts, including training and education, to help ensure that LSC employees and grantees act ethically and safeguard LSC funds
   - Rebecca Weir, Senior Assistant General Counsel and Chief Ethics Officer
   - Debbie Moore, Chief Financial Officer & Treasurer
   - Lynn Jennings, Vice President for Grants Management
   - Jeffrey Schanz, Inspector General
7. Management update regarding risk management
   - Ron Flagg, President
   - Jada Breegle, Chief Information Officer
8. Briefing about follow-up by the Office of Compliance and Enforcement on referrals by the Office of Inspector General regarding audit reports and annual Independent Public audits of grantees
   - Lora Rath, Director of Compliance and Enforcement
   - Roxanne Caruso, Assistant IG for Audits
9. Public comment
10. Consider and act on other business
11. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

1. Approval of minutes of the Committee's Closed Session meeting of July 28, 2020
2. Briefing on Office of Compliance and Enforcement on active enforcement matter(s) and follow-up on open investigations referrals from the Office of Inspector General
   - Lora Rath, Director, Compliance and Enforcement
3. Consider and act on adjournment of meeting

October 20, 2020

Board of Directors

Open Session—October 20, 2020

1. Pledge of Allegiance
2. Approval of agenda
3. Approval of minutes of the Board's Open Session meeting of July 28, 2020
4. Chairman's Report
5. Members' Report
6. President's Report
7. Inspector General's Report
8. Consider and act on the report of the Governance and Performance Committee
9. Consider and act on the report of the Operations and Regulations Committee
10. Consider and act on the report of the Finance Committee
11. Consider and act on the report of the Audit Committee
12. Consider and act on the report of the Institutional Advancement Committee
13. Consider and act on the report of the Delivery of Legal Services Committee
14. Consider and act on contract for LSC President
15. Report on process and timeline for Strategic Plan
    - Ronald Flagg, President
    - Ron Prater, Bent Ear Solution
16. Public Comment
17. Consider and act on other business
18. Consider and act on whether to authorize a closed session of the Board to address items listed below

Closed Session

1. Approval of minutes of the Board's Closed Session meeting of July 28, 2020
2. Management briefing
3. Inspector General briefing
4. Consider and act on General Counsel's report on potential and pending litigation involving LSC
5. Consider and act on prospective Leaders Council and Emerging Leaders Council invitees
7. Consider and act on motion to adjourn meeting

CONTACT PERSON FOR MORE INFORMATION: Karly Satkowiak, Special Counsel at (202) 295–1633 and Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *http://www.lsc.gov/board-directors/meetings/board-meeting-notices/non-confidential-materials-be-considered-open-session.*

Dated: October 9, 2020.

Stefanie Davis,

Senior Assistant General Counsel.

[FR Doc. 2020–22899 Filed 10–13–20; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: (20–082)]

Request for Public Nominations for Authors and Scientific/Technical Inputs and Notice of Planned Public Engagement Opportunities for the Fifth National Climate Assessment

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Request for public nominations for authors and scientific/technical inputs and notice of planned public engagement opportunities.

SUMMARY: NASA, on behalf of the U.S. Global Change Research Program (USGCRP), is soliciting nominations for authors and scientific/technical inputs for the Fifth National Climate Assessment (NCA5). Refer to the NCA5 Draft Prospectus (presented in a previous **Federal Register** Notice and accessible via *www.globalchange.gov/notices*) for further information on the scope, topics, and overarching themes for the report. This document also serves as a notice of planned public engagement opportunities. NCA5 will adhere to the Global Change Research Act (GCRA), Information Quality Act, and Evidence Act requirements for quality, transparency, and accessibility as appropriate for a Highly Influential Scientific Assessment.

DATES: Nominations should be submitted via the web address specified below and must be received by the close of this notice (30 days after publication). For best consideration, scientific/technical inputs should be submitted by the close of this notice but will be accepted on an ongoing basis throughout the planned 12-month initial report development process.

ADDRESSES: Nominations for authors must be submitted electronically using a web form accessible via *https://www.globalchange.gov/notices.* A short Curriculum Vitae (CV) of no more than four (4) pages must be included. Scientific/technical inputs should also be submitted electronically using a web form accessible via *https://www.globalchange.gov/notices.*

Instructions: Response to this notice is voluntary. Responses to this notice may be used by the Government for program planning on a non-attribution basis. NASA therefore requests that no business proprietary information or copyrighted information be submitted in response to this notice. Please note that the U.S. Government will not pay for response preparation or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Chris Avery, U.S. Global Change Research Program, (202) 419–3474, *cavery@usgcrp.gov.*

SUPPLEMENTARY INFORMATION: The Global Change Research Act (GCRA) of 1990 mandates that the U.S. Global Change Research Program (USGCRP) deliver a National Climate Assessment (NCA) to Congress and the President not less frequently than every four years that ''(1) integrates, evaluates, and interprets the findings of the Program; (2) analyzes the effects of global change on the natural environment, agriculture, energy production and use, land and water resources, transportation, human health and welfare, human social systems, and biological diversity; and (3) analyzes current trends in global change, both human-induced and natural, and projects major trends for the subsequent 25 to 100 years.''

To date, four NCAs have been released. The first NCA was published in 2000, and the second was published in 2009. The third NCA was published in 2014, and the most recent assessment, NCA4, was released in two volumes and completed in November 2018.

NCA5 development will be transparent and inclusive, offering opportunities for public participation throughout the process. The production and review processes are designed to result in a report that is authoritative, timely, relevant, and policy neutral; valued by authors and users; accessible to the widest possible audience; and fully compliant with the GCRA. In July 2020, comments were solicited through a 30-day request for information on the draft Fifth National Climate Assessment (NCA5) Prospectus (*https://www.federalregister.gov/documents/2020/07/10/2020/14904/request-for-comment-on-the-draft-prospectus-of-the-fifth-national-climate-assessment*). Comments received on the draft Prospectus informed the list of potential topics included in Section I of the current request.

Author nominees may be invited to serve as Chapter Lead Authors, Authors, or Technical Contributors to NCA5. Both federal and non-federal experts may serve as Chapter Lead Authors. Chapter Lead Authors will, with input and guidance from the Federal Steering Committee (FSC), establish author teams comprising federal and non-federal experts. A Federal Coordinating Lead Author selected by the FSC will serve as a liaison between the author team and federal agencies. For more information on author roles, see *www.globalchange.gov/nca5.*

In addition, this request presents an opportunity to submit relevant scientific/technical inputs to inform the assessment. This request also outlines planned opportunities for the public to engage in the NCA5 development process.

Additional details and instructions for submitting nominations for authors and scientific/technical inputs are available at *www.globalchange.gov/notices.* For the responsibilities and expectations of the different types of authors and contributors, please see *www.globalchange.gov/nca5.* For more information about the NCA and for access to previous NCA reports and activities, please see *www.globalchange.gov/nca5.*

All participation in and contributions to the NCA will be without compensation and will be potentially included in the publicly released NCA. By voluntarily participating in the NCA, you acknowledge the following understandings:

1. Participation in the NCA means facilitating the development of the NCA, contributing new work to the NCA, or contributing preexisting work for the NCA. Any such work will be incorporated into the NCA at the Federal Government's discretion, including the possibility of modification, without any compensation and without redaction under the Freedom of Information Act (FOIA) or otherwise.

2. All contributions to the NCA of text and original figures (those newly created for NCA and not previously published) will be released under the Creative Commons 1.0 Universal Public Domain Dedication (*CC0 1.0*). Such contributions will not be protected by copyright or other intellectual property rights. Data, algorithms/models, and software code used to create or support the creation of text and original figures will also be publicly released in connection with the NCA. In some cases, such data, algorithms/models, and software code may be subject to copyright restrictions prohibiting both their use for commercial purposes and the creation of derivative works, such as *CC BY–NC–ND 4.0,* but any such restrictions may not prohibit their use for the purpose of reproducing results.

3. Participants assume any and all risks associated with participation in the NCA. By participating, participants inherently waive all claims against the Federal Government and its related entities, except for claims based on willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits (whether direct, indirect, or consequential) arising from participation in the NCA.

4. By participating, participants agree to indemnify the Federal Government in the event that it suffers liability or damages as a result of its use of the contribution.

I. Call for Nominations for Authors

Nominations are sought for authors with pertinent subject matter expertise and background in the natural or social sciences. Nominees should be accomplished scholarly writers with a demonstrated history of scientific and technical expertise and academic proficiency in at least one of the regions/climate-related topics delineated below. Nominations are encouraged from all non-governmental sectors (academia, not-for-profit, and private). Submissions must document that nominees have demonstrated technical backgrounds such that they could contribute to the development of a robust scientific and technical assessment as subject matter experts in one or more of the listed topics. In addition, individuals interested in being considered for chapter leadership positions should have experience with leading collaborative teams under deadlines. Authors volunteering to assist in writing NCA5 are providing an important service to the United States. The Global Change Research Act of 1990 calls for the preparation of this quadrennial report and directs that it be delivered to the President and the Congress. Author roles allow these volunteers to contribute to the premier national assessment of the state of the science regarding global change. In addition to providing an opportunity to inform policy, participation in NCA5 will allow authors to expand their professional networks and visibility, and to explore opportunities to create derivative products. The Federal Government will not provide financial compensation for these roles. The Federal Government is expected to provide travel costs to authors to attend meetings requested for NCA5. USGCRP is working to streamline processes in order to make the author role as easy and satisfying as possible. Formal acknowledgment will be provided to each author's institution.

Responses to this request for nominations for authors must be submitted by 30 days from the opening of this notice. The nominations forms can be accessed via *www.globalchange.gov/notices.* Interested persons may nominate themselves or third parties for these roles, and individuals may submit multiple nominations. Each nomination

must include (1) the nominee's full name, title, institutional affiliation, and contact information; (2) the nominee's area(s) of expertise; (3) the proposed NCA5 topic(s) (see below) for which the nominee is qualified; (4) a short description of the nominee's qualifications relative to contributing to the report; and (5) a current CV [maximum length four (4) pages]. Nominations with missing information, or for nominees who do not meet the eligibility requirements above, may not be considered.

NCA5 will attempt to address the full breadth of each topic and seeks a suitably diverse author pool, including experts representing the natural and social sciences, as well as traditionally underrepresented groups. Selection criteria for all author positions will consider technical expertise, disciplinary background, career status, and geographic representation. Nominees may be invited to serve as Chapter Lead Authors, Authors, or Technical Contributors to NCA5. Persons selected as Chapter Lead Authors will be informed after the close of the nominations window. Eligible nominees not selected as Chapter Lead Authors will be considered for roles as Authors or Technical Contributors.

In accordance with statutory language in the GCRA, NCA5 seeks authors with expertise in the areas of climate/earth system science, as well as sectoral, issue-specific, and regional impacts. This includes expertise in the following broad topic areas (subject to change):

- Climate/earth system science expertise to integrate, evaluate, and interpret the latest scientific findings; discuss the associated uncertainties; analyze current trends in global change; and project major trends for the subsequent 25 to 100 years.
- Sectoral and issue-specific impacts expertise, including in the social sciences, to analyze the effects of global change on the natural environment (including terrestrial, aquatic, and marine ecosystems); agriculture (including food); energy production and use; land and water resources (including land cover/land-use change, forests, coasts, oceans, and terrestrial/marine resources); transportation; human health and welfare (including air quality); human social systems (including the built environment, urban/rural systems, cities, and economics); biological diversity; tribes and Indigenous peoples; and response.
- Regional expertise that integrates across relevant natural and social science areas for the NCA regions (available at *https://www.globalchange.gov/nca5*).

Further, authors are welcome to nominate themselves for topics not listed above that are consistent with the GCRA mandate.

II. Call for Relevant Scientific/Technical Inputs To Inform NCA5

Submissions of scientific/technical inputs are sought for NCA5. Relevant scientific and/or technical research studies—including observed, modeled, and/or projected global change and climate science information, as well as societal drivers, vulnerability, impacts, and responses—are requested. Scientific/technical inputs that are peer-reviewed and published, or accepted for publication, in journals and/or government reports are welcome. Please refer to the NCA5 topics list above to target submissions. Submissions of regional information and information for cross-cutting or new topics since NCA4 are encouraged. For best consideration, please submit by the close of this notice.

Submissions must be uploaded electronically via the link provided at *www.globalchange.gov/notices.*

III. Notice of Planned Public Engagement Opportunities for NCA5

Multiple opportunities for public engagement to inform NCA5 will be presented throughout the report's development. The following planned public engagement schedule is presented to notify the public of these coming opportunities. We note that the time ranges proposed are tentative and subject to change based on the timing of various development stages for NCA5.

- Public comment on NCA5 annotated outline (Q2 2021)
- Public engagement workshops and webinars (Q2 2021 through Q3 2021)
- Public call for Review Editors (Q2 2022)
- Public comment on NCA5 Third Order Draft (Q3 & Q4 2022)
- National Academies of Sciences, Engineering, and Medicine peer review of NCA5 Third Order Draft (Q3 & Q4 2022)

Interested parties are invited to participate in these public engagement opportunities to ensure robust public input to NCA5. Specific dates and locations for all engagements will be provided on *www.globalchange.gov/notices* as they are determined. Members of the public may also sign up to receive updates through USGCRP's bimonthly newsletter at *www.globalchange.gov/newsletter-signup.*

Karen St Germain,

Director of Earth Science.

[FR Doc. 2020–22729 Filed 10–14–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extensions of a currently approved collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before December 14, 2020 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; Fax No. 703–548–2279; or email at *PRAComments@NCUA.gov.* Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Mackie Malaka at the address above or telephone 703–548–2279.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0067.

Title: Corporate Credit Union Monthly Call Report and Annual Report of Officers.

Form: NCUA 5310.

Type of Review: Revision of a currently approved collection.

Abstract: Section 202(a)(1) of the Federal Credit Union Act (Act) requires federally insured credit unions to make reports of condition to the NCUA Board upon dates selected by it. Corporate credit unions report this information monthly on NCUA Form 5310, also known as the Corporate Credit Union Call Report. The financial and statistical information is essential to NCUA in carrying out its responsibility for supervising corporate credit unions. The

Federal Credit Union Act, 12 U.S.C. 1762, specifically requires federal credit unions to report the identity of credit union officials. Section 741.6(a) requires federally-insured credit unions to submit a Report of Officials annually to NCUA containing the annual certification of compliance with security requirements. The branch information is requested under the authority of § 741.6 of the NCUA Rules and Regulations.

NCUA utilizes the information to monitor financial conditions in corporate credit unions, §§§ and to allocate supervision and examination resources.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 11.

Estimated Number of Responses per Respondent: 13.

Estimated Total Annual Responses: 143.

Estimated Burden Hours per Response: 3.77.

Estimated Total Annual Burden Hours: 539.

Reason for Change: The changes to the NCUA Form 5310, Corporate Credit Union Call Report, are being made to align the form with recently approved Generally Accepted Accounting Principles (GAAP) related to ASC 326 Current Expected Credit Losses (CECL). These changes will allow corporate credit unions to early adopt CECL. A corporate credit union would continue to complete the form as is or they can voluntarily elect to early adopt ASC 326 and report under the CECL standard. Additional changes will also be made to better defined investments, consolidate duplicative questions, and clarify other data collection elements. These revisions will not alter the estimated burden hours necessary to review the instrument and complete the form.

OMB Number: 3133–0186.

Title: Higher-Risk Mortgage Appraisals.

Type of Review: Extension of a currently approved collection.

Abstract: Section 1471 of the Dodd-Frank Act established Truth in Lending section 129H, which contains appraisal requirements applicable to higher-risk mortgages and prohibits a creditor from extending credit in the form of a higher-risk mortgage loan to any consumer without meeting those requirements. A higher-risk mortgage is defined as a residential mortgage loan secured by a principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by certain enumerated percentage point spreads. To implement this statutory requirement, a final rule was promulgated to amend 12 CFR part 1026, Regulation Z, by the Bureau of Consumer Financial Protection, the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Federal Housing Finance Authority, the NCUA, and the Office of the Comptroller of the Currency.

The information collections under § 1026.35(c) include (1) providing a disclosure within three days of application that informs the consumer regarding the purpose of the appraisal, that the creditor will provide the consumer a copy of any appraisal, and that the consumer may choose to have a separate appraisal conducted at the expense of the consumer (Initial Appraisal Disclosure); (2) requiring creditors to obtain a written appraisal meeting certain standards for HPMLs and provide a free copy of the appraisal to consumers (Written Appraisal); and (3) requiring an additional written appraisal for properties resold within the 180 days (at a higher price meeting certain thresholds) and providing free copies of these appraisals to consumers (Additional Written Appraisal).

The information collections are required by statute, are necessary to protect consumers, and promote the safety and soundness of creditors making higher-risk mortgage loans.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 2,400.

Estimated Number of Responses per Respondent: 0.46.

Estimated Total Annual Responses: 1,104.

Estimated Burden Hours per Response: 0.25.

Estimated Total Annual Burden Hours: 276.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on October 8, 2020.

Dated: October 9, 2020.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2020–22770 Filed 10–14–20; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request approval for the collection of research and development data through the 2021 Merit Review Survey. In accordance with the requirement of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by December 14, 2020 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–7556, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Merit Review Survey—2021 Assessment of Applicant and Reviewer Experiences.

OMB Approval Number: 3145–NEW.

Expiration Date of Current Approval: Not applicable.

Type of Request: Intent to establish an information collection.

Abstract: The National Science Foundation (NSF) receives close to 50,000 proposals for funding annually, each of which undergoes a rigorous

merit review process that is designed to ensure all proposals are fairly and thoroughly reviewed. The merit review process comprises three phases:

1. NSF announces funding opportunities on the NSF website and *Grants.gov*. Applicants prepare proposals in response to these opportunities and submit their proposals via FastLane (NSF's web-based system for proposal submission and review) or *Grants.gov*.

2. Proposals are assigned to the appropriate program(s) for review. Each proposal is assigned a Program Officer (PO) who selects external reviewers to evaluate the proposal according to the two NSF merit review criteria, Intellectual Merit and Broader Impacts. The Intellectual Merit criterion encompasses the potential to advance knowledge. The Broader Impacts criterion encompasses the potential to benefit society and contribute to the achievement of specific, desired societal outcomes. Programs may have additional review criteria particular to the goals and objectives of the program. The NSF guidelines for the selection of reviewers are designed to ensure selection of experts who can give program officers the proper information needed to make a recommendation in accordance with the merit review criteria. POs utilize the proposal's reference list, the investigator's suggested reviewers, and personal knowledge of individual reviewers to identify a pool of diverse experts with respect to type of organization represented, demographics, experience, and geographic balance, selecting appropriate reviewers with no apparent potential conflicts. Most proposals are reviewed by three to ten content expert reviewers who provide written feedback on the proposal through FastLane. POs synthesize reviewer comments and issue a recommendation to either decline or award funding based on reviewer feedback, panel discussions, the amount of available funding, and portfolio balances (*i.e.,* the diversity of a portfolio, including factors such as award type, career stage, demographic characteristics, geographic location, institution type, research topic, laboratory funding status, and intellectual risk). The proposal and PO recommendation is then forwarded to the appropriate Division Director or other NSF official for additional review and action to either decline or award.

3. Each proposal recommended for award undergoes an administrative review conducted by NSF's Office of Budget, Finance, and Award Management. If it passes this review, the proposal is awarded.

Through this review process, NSF aims to identify the highest quality proposals to receive funding. The success of this process hinges on the assumptions that applicants will continue to submit to NSF their ideas for cutting-edge research and that experts in their respective fields will continue to provide high-quality reviews of those proposals.

The goal of this data collection is to assess the experiences of applicants and reviewers and their satisfaction with the NSF's merit review process. The data collection for which this OMB approval is requested includes a Web-based survey that will be administered to all applicants and reviewers who participated in the merit review process between fiscal years (FY) 2018 and FY 2020. The specific research objectives are to—

1. Examine applicant and reviewer perceptions of, and satisfaction with, the merit review process, including how it may vary by respondent gender or race.

2. Document the time burden the proposal submission and merit review process places on applicants and reviewers.

3. Examine applicant and reviewer perceptions of the quality of reviews and of proposals, including how it may vary by respondent demographics such as gender or race.

4. Describe the extent to which respondent familiarity with NSF's reviewer orientation pilot is associated with reported use of review strategies to mitigate bias.

5. Describe the extent to which the experience with proposal deadlines has affected applicants and reviewer burden and satisfaction.

6. Examine applicants' and reviewers' experiences receiving financial support as a student.

Data from the survey will be used to improve NSF's implementation of the merit review process.

Use of the information: The primary purpose of collecting this information is program evaluation. The data collected will enable NSF to assess the satisfaction, including perceptions of burden and quality, of applicants and reviewers who participate in the merit review process in order to monitor and improve the program and assess its implementation. Findings will inform continual improvement activities related to the merit review process.

Respondents: All applicants who have submitted proposals and reviewers who have reviewed NSF proposals between FY 2018 and 2020 will be invited to participate in the survey. This is estimated to be approximately 87,000 individuals.

Estimated number of respondents: It is estimated that there will be 26,000 respondents (representing an approximate 30 percent response rate).

Average time per reporting: The online survey is comprised primarily of close-ended questions and is designed to be completed by respondents in under 30 minutes.

Frequency: Eligible applicants and reviewers will be asked to the complete the 2021 Merit Review survey one time in fall 2021.

Estimate burden on the public: The collection occurs once for each respondent. The total estimate for this collection is 8,667 burden hours. The calculation is shown in table 1.

TABLE 1—ESTIMATED BURDEN TO SURVEY MERIT REVIEW APPLICANTS AND REVIEWERS

Category of respondent	Number of respondents	Participation time (minutes)	Burden (hours)
NSF applicants and reviewers	26,000	20	8,667
Totals	26,000	20	8,667

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection

techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 8, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–22755 Filed 10–14–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339; NRC–2020–0201]

Virginia Electric and Power Company; North Anna Power Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Subsequent license renewal application; opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an application for the subsequent license renewal of Renewed Facility Operating License Nos. NPF–4 and NPF–7, which authorize Virigina Electric and Power Company (Dominion or the applicant) to operate North Anna Power Station, Units 1 and 2 (North Anna). The subsequent renewed licenses would authorize the applicant to operate North Anna for an additional 20 years beyond the period specified in each of the current renewed licenses. The current renewed operating licenses for North Anna expire as follows: Unit 1 on April 1, 2038, and Unit 2 on August 21, 2040.

DATES: A request for a hearing or petition for leave to intervene must be filed by December 14, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0201 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0201. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *Public Library:* A copy of the subsequent license renewal application for North Anna can be accessed at the following public library (library access and hours are determined by local policy): Louisa County Library, 881 Davis Hwy., Mineral, VA 23117.
- *NRC's PDR:* The PDR where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *PDR.Resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Drucker, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6223, email: *David.Drucker@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated August 24, 2020 (ADAMS Package Accession No. ML20246G703), Virginia Electric and Power Company (Dominion or the applicant) filed an application pursuant to Section 103 of the Atomic Energy Act of 1954, as amended (the Act), and part 54 of title 10 of the *Code of Federal Regulations* (10 CFR), to renew the operating licenses for North Anna, which authorize each unit to operate at 2,940 megawatts thermal. The North Anna units are pressurized-water reactors designed by Westinghouse Electric Company and are located in Louisa, Virginia. A notice of receipt of the subsequent license renewal application (SLRA) was published in the **Federal Register** (FR) on September 21, 2020 (85 FR 59334).

The NRC staff has determined that Dominion has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, 51.45, and 51.53(c), to enable the staff to undertake a review of the application, and that the application is, therefore, acceptable for docketing. The current Docket Nos. 50–338 and 50–339 for Renewed Facility Operating License Nos. NPF–4 and NPF–7, respectively, will be retained. The determination to accept the SLRA for docketing does not constitute a determination that a subsequent renewed license should be issued, and does not preclude the NRC staff from requesting additional information as the review proceeds.

Before issuance of the requested subsequent renewed licenses, the NRC will have made the findings required by the Act, and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC may issue a subsequent renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to: (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review; and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed licenses will continue to be conducted in accordance with the current licensing basis and that any changes made to the plant's current licensing basis will comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement as a supplement to the Commission's ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' NUREG 1437, dated June 2013. In considering the SLRA, the Commission must find that the applicable requirements of subpart A of 10 CFR part 51 have been satisfied, and that any matters raised under 10 CFR 2.335 have been addressed. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold public scoping meetings. Detailed information regarding the environmental scoping meetings will be the subject of a separate **Federal Register** notice.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's

''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.*

The Public Document Room (PDR) where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *PDR.Resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of hearing will be issued.

As required by 10 CFR 2.309 (d), the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submission (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC's website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time

the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted a request for exemption from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Detailed information about the subsequent license renewal process can be found at *https://www.nrc.gov/reactors/operating/licensing/renewal/subsequent-license-renewal.html* on NRC's website. Copies of the application to renew the operating licenses for North Anna are available at the NRC's PDR, and at NRC's website *https://www.nrc.gov/reactors/operating/licensing/renewal/applications/north-anna-1-2-subsequent.html,* while the application is under review. The application may be accessed in ADAMS through the NRC Library on NRC's website at *https://www.nrc.gov/reading-rm/adams.html* under ADAMS Package Accession No. ML20246G703. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or by email to *pdr.resources@nrc.gov.*

Dated: October 9, 2020.

For the Nuclear Regulatory Commission.

Lauren K. Gibson,

Chief, License Renewal Projects Branch, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–22790 Filed 10–14–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 5, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 172 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–8, CP2021–8.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22838 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C.

3642 and 3632(b)(3), on September 30, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 666 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–259, CP2020–289.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22828 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 28, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 665 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–257, CP2020–287.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22826 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 28, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 119 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–258, CP2020–288.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22827 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 5, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 171 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–7, CP2021–7.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22836 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 7, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 174 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–13, CP2021–13.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22843 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 6, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 671 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–9, CP2021–9.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22839 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal

Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 7, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 673 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–12, CP2021–12.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22842 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 5, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 669 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–5, CP2021–5.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22834 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 5, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 668 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–4, CP2021–4.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22833 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 6, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 672 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–10, CP2021–10.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22840 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 1, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 170 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–1, CP2021–1.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22830 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 30, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 667 to Competitive Product List.* Documents

are available at *www.prc.gov,* Docket Nos. MC2020–260, CP2020–290.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22829 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 6, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 173 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–11, CP2021–11.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22841 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 7, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 120 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–14, CP2021–14.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22844 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 2, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express Contract 83 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–3, CP2021–3.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22832 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 5, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 670 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–6, CP2021–6.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22835 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 1, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service Contract 113 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–2, CP2021–2.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–22831 Filed 10–14–20; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90146; File No. SR–MIAX–2020–32]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Fee Schedule

October 9, 2020.

Pursuant to the provisions of 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 September 30, 2020, Miami International Securities Exchange LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to: (1) Make non-substantive reorganizing changes to certain sections of the Fee Schedule; and (2) extend the waiver period for certain non-transaction fees applicable to Market Makers[3] that trade solely in Proprietary Products[4] until December 31, 2020.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to: (1) Make non-substantive reorganizing changes to certain sections of the Fee Schedule; and (2) extend the waiver period for certain non-transaction fees applicable to Market Makers that trade solely in Proprietary Products until December 31, 2020.

On October 12, 2018, the Exchange received approval from the Commission to list and trade on the Exchange, options on the SPIKES® Index, a new index that measures expected 30-day volatility of the SPDR S&P 500 ETF Trust (commonly known and referred to by its ticker symbol, ''SPY'').[5] The Exchange adopted its initial SPIKES transaction fees on February 15, 2019 and adopted a new section of the Fee Schedule—Section 1)a)xi), SPIKES—for those fees.[6] Options on the SPIKES Index began trading on the Exchange on February 19, 2019.

Fee Schedule Reorganization

The Exchange now proposes to reorganize several sections of the Fee Schedule for purposes of clarity and to avoid potential confusion. First, the Exchange proposes to rename Section 1)a), Exchange Fees, to now be titled ''Multiply-Listed Options Exchange Fees.'' The purpose of this change is to clarify that the fees and rebates listed in this section of the Fee Schedule will apply only to multiply-listed options transactions, and not transactions in the Exchange's Proprietary Products, including SPIKES options.

Next, the Exchange proposes to move Section 1)a)xi), SPIKES, to now be Section 1)b)i). As described above, the Exchange began listing SPIKES options on February 19, 2019. The Exchange plans to continue adding Proprietary Products and will include all fees and rebates for such products in one section of the Fee Schedule in order to clarify that the fees and rebates for multiply-listed options are different than for the Exchange's Proprietary Products. Accordingly, the Exchange proposes to move Section 1)a)xi), SPIKES, to now be Section 1)b)i). In connection with this proposed reorganization, the Exchange also plans to rename Section 1)b), Marketing Fee, to now be titled ''Proprietary Products Exchange Fees.'' Further, the Exchange proposes to move the Marketing Fee section (currently Section 1)b)) to now be Section 1)a)xi). The purpose of this change is to clarify that the Marketing Fee applies to all multiply-listed options transactions on the Exchange and not to the Exchange's Proprietary Products, including SPIKES options. The Exchange does not propose to amend or change any of the actual fee or rebate amounts or applicability in the Fee Schedule.

Extend Fee Waiver for Certain Non-Transaction Fees

On May 31, 2019, the Exchange filed a proposal with the Commission to amend the Fee Schedule to waive certain non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on the SPIKES Index) until September 30, 2019.[7] In particular, the Exchange adopted waivers for Membership Application fees, monthly Market Maker Trading Permit fees, Application Programming Interface (''API'') Testing and Certification fees for Members, and monthly MEI Port fees assessed to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until September 30, 2019.

On October 1, 2019, the Exchange filed a proposal with the Commission to extend the waiver period for the same non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until December 31, 2019.[8] On December 30, 2019, the Exchange filed a proposal with the Commission to extend the waiver period for the same non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until June 30, 2020.[9] On June 30, 2020, the Exchange filed a proposal with the Commission to extend the waiver period for the same non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until September 30, 2020.[10]

The Exchange now proposes to extend the waiver period for the same non-transaction fees applicable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until December 31, 2020. In particular, the Exchange proposes to waive

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[4] The term ''Proprietary Product'' means a class of options that is listed exclusively on the Exchange. *See* Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (SR–MIAX–2018–14) (Order Granting Approval of a Proposed Rule Change by Miami International Securities Exchange, LLC to List and Trade on the Exchange Options on the SPIKES® Index).

[6] *See* Securities Exchange Release No. 85283 (March 11, 2019), 84 FR 9567 (March 15, 2019) (SR–MIAX–2019–11). The Exchange initially filed the proposal on February 15, 2019 (SR–MIAX–2019–04). That filing was withdrawn and replaced with SR–MIAX–2019–11.

[7] *See* Securities Exchange Act Release No. 86109 (June 14, 2019), 84 FR 28860 (June 20, 2019) (SR–MIAX–2019–28).

[8] *See* Securities Exchange Act Release No. 87282 (October 10, 2019), 84 FR 55658 (October 17, 2019) (SR–MIAX–2019–43).

[9] *See* Securities Exchange Act Release No. 87897 (January 6, 2020), 85 FR 1346 (January 10, 2020) (SR–MIAX–2019–53).

[10] *See* Securities Exchange Act Release No. 89289 (July 10, 2020), 85 FR 43279 (July 16, 2020) (SR–MIAX–2020–22).

Membership Application fees, monthly Market Maker Trading Permit fees, Member API Testing and Certification fees, and monthly MEI Port fees assessed to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until December 31, 2020.

Membership Application Fees

The Exchange currently assesses Membership fees for applications of potential Members. The Exchange assesses a one-time Membership Application fee on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX membership is finally denied. The one-time application fee is based upon the applicant's status as either a Market Maker or an Electronic Exchange Member (''EEM'').[11] A Market Maker is assessed a one-time Membership Application fee of $3,000.00.

The Exchange proposes that the waiver for the one-time Membership Application fee of $3,000.00 for Market Makers that trade solely in Proprietary Products (including options on SPIKES) will be extended from September 30, 2020 until December 31, 2020, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for potential Market Makers to submit membership applications, which should result in increasing potential liquidity in Proprietary Products, including options on SPIKES. Even though the Exchange is proposing to extend the waiver of this particular fee for Market Makers who will trade solely in Proprietary Products from September 30, 2020 until December 31, 2020, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after December 31, 2020.

Trading Permit Fees

The Exchange issues Trading Permits that confer the ability to transact on the Exchange. MIAX Trading Permits are issued to Market Makers and EEMs. Members receiving Trading Permits during a particular calendar month are assessed monthly Trading Permit fees as set forth in the Fee Schedule. As it relates to Market Makers, MIAX currently assesses a monthly Trading Permit fee in any month the Market Maker is certified in the membership system, is credentialed to use one or more MIAX Express Interface Ports (''MEI Ports'')[12] in the production environment and is assigned to quote in one or more classes. MIAX assesses its Market Makers the monthly Market Maker Trading Permit fee based on the greatest number of classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurements. A MIAX Market Maker is assessed a monthly Trading Permit Fee according to the following table:

Type of trading permit	Monthly MIAX trading permit fee	Market maker assignments (the lesser of the applicable measurements below) Ω	
		Per class	% of national average daily volume
Market Maker (includes RMM, LMM, PLMM).	$7,000.00	Up to 10 Classes	Up to 20% of Classes by volume
	$12,000.00	Up to 40 Classes	Up to 35% of Classes by volume
	$17,000.00 *	Up to 100 Classes	Up to 50% of Classes by volume
	$22,000.00 *	Over 100 Classes	Over 50% of Classes by volume up to all Classes listed on MIAX

Ω Excludes Proprietary Products.

* For these Monthly MIAX Trading Permit Fee levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $15,500 instead of the fee otherwise applicable to such level.

MIAX proposes that the waiver for the monthly Trading Permit fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) will be extended from September 30, 2020 to December 31, 2020, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for Market Makers to provide liquidity in Proprietary Products on the Exchange, which should result in increasing potential order flow and volume in Proprietary Products, including options on SPIKES. Even though the Exchange is proposing to extend the waiver of this particular fee for Market Makers trading solely in Proprietary Products from September 30, 2020 until December 31, 2020, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness by potential Members seeking a Trading Permit on the Exchange that the Exchange intends to assess such a fee after December 31, 2020.

The Exchange also proposes that Market Makers who trade Proprietary Products (including options on SPIKES) along with multi-listed classes will continue to not have Proprietary Products (including SPIKES) counted toward those Market Makers' class assignment count or percentage of total national average daily volume. This exclusion is noted with the symbol ''Ω'' following the table that shows the monthly Trading Permit Fees currently assessed for Market Makers in Section 3)b) of the Fee Schedule.

API Testing and Certification Fee

The Exchange assesses an API Testing and Certification fee to all Members depending upon the type of Member. An API makes it possible for Members' software to communicate with MIAX software applications, and is subject to Members testing with, and certification by, MIAX. The Exchange offers four types of interfaces: (i) The Financial Information Exchange Port (''FIX Port'')[13], which enables the FIX Port user (typically an EEM or a Market

[11] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[12] Full Service MEI Ports provide Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine. *See* Fee Schedule, note 27.

[13] A FIX Port is an interface with MIAX systems that enables the Port user (typically an Electronic Exchange Member or a Market Maker) to submit simple and complex orders electronically to MIAX. *See* Fee Schedule, note 24.

Maker) to submit simple and complex orders electronically to MIAX; (ii) the MEI Port, which enables Market Makers to submit simple and complex electronic quotes to MIAX; (iii) the Clearing Trade Drop Port (''CTD Port'') [14], which provides real-time trade clearing information to the participants to a trade on MIAX and to the participants' respective clearing firms; and (iv) the FIX Drop Copy Port (''FXD Port'') [15], which provides a copy of real-time trade execution, correction and cancellation information through a FIX Port to any number of FIX Ports designated by an EEM to receive such messages.

API Testing and Certification fees for Market Makers are assessed (i) initially per API for CTD and MEI in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been assigned to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification. API Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. The Exchange currently assesses a Market Maker an API Testing and Certification fee of $2,500.00. The API Testing and Certification fees represent costs incurred by the Exchange as it works with each Member for testing and certifying that the Member's software systems communicate properly with MIAX's interfaces.

MIAX proposes to extend the waiver of the API Testing and Certification fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) from September 30, 2020 until December 31, 2020, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposed change is to continue to provide an incentive for potential Market Makers to develop software applications to trade in Proprietary Products, including options on SPIKES. Even though the Exchange is proposing to extend the waiver of this particular fee for Market Makers who trade solely in Proprietary Products from September 30, 2020 until December 31, 2020, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after December 31, 2020.

MEI Port Fees

MIAX provides four (4) Port types, including (i) the FIX Port, which enables the FIX Port user (typically an EEM or a Market Maker) to submit simple and complex orders electronically to MIAX; (ii) the MEI Port, which enables Market Makers to submit simple and complex electronic quotes to MIAX; (iii) the CTD Port, which provides real-time trade clearing information to the participants to a trade on MIAX and to the participants' respective clearing firms; and (iv) the FXD Port, which provides a copy of real-time trade execution, correction and cancellation information through a FIX Port to any number of FIX Ports designated by an EEM to receive such messages.

MIAX assesses monthly MEI Port Fees to Market Makers in each month the Member has been credentialed to use the MEI Port in the production environment and has been assigned to quote in at least one class. The amount of the monthly MEI Port Fee is based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, and upon the class volume percentages set forth in the above table. The class volume percentage is based on the total national average daily volume in classes listed on MIAX in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly MEI Port Fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume. The Exchange assesses MIAX Market Makers the monthly MEI Port Fee based on the greatest number of classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement. MIAX assesses MEI Port Fees on Market Makers according to the following table:

Monthly MIAX MEI Fees	Market maker assignments (the lesser of the applicable measurements below) Ω	
	Per class	% of national average daily volume
$5,000.00	Up to 5 Classes	Up to 10% of Classes by volume
$10,000.00	Up to 10 Classes	Up to 20% of Classes by volume
$14,000.00	Up to 40 Classes	Up to 35% of Classes by volume
$17,500.00 *	Up to 100 Classes	Up to 50% of Classes by volume
$20,500.00 *	Over 100 Classes	Over 50% of Classes by volume up to all Classes listed on MIAX

Ω Excludes Proprietary Products.

* For these Monthly MIAX MEI Fees levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by OCC in the market maker account type for MIAX-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level.

MIAX proposes to extend the waiver of the monthly MEI Port Fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) from September 30, 2020 until December 31, 2020, which the Exchange proposes to state in the Fee Schedule. The purpose of this proposal is to continue to provide an incentive to

[14] Clearing Trade Drop (''CTD'') provides Exchange members with real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) Trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); (v) Exchange Member Participant Identifier (''MPID'') for each side of the transaction, including Clearing Member MPID; and (vi) strategy specific information for complex transactions. CTD Port Fees will be assessed in any month the Member is credentialed to use the CTD Port in the production environment. *See* Fee Schedule, Section 5)d)iii.

[15] The FIX Drop Copy Port (''FXD'') is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information for simple and complex orders to FIX Drop Copy Port users who subscribe to the service. FIX Drop Copy Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM only. FXD Port Fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment. *See* Fee Schedule, Section 5)d)iv.

Market Makers to connect to MIAX through the MEI Port such that they will be able to trade in MIAX Proprietary Products. Even though the Exchange is proposing to extend the waiver of this particular fee for Market Makers trading solely in Proprietary Products until December 31, 2020, the overall structure of the fee is outlined in the Fee Schedule so that there is general awareness that the Exchange intends to assess such a fee after December 31, 2020.

The Exchange notes that for the purposes of this proposed change, other Market Makers who trade MIAX Proprietary Products (including options on SPIKES) along with multi-listed classes will continue to not have Proprietary Products (including SPIKES) counted toward those Market Makers' class assignment count or percentage of total national average daily volume. This exclusion is noted by the symbol ''Ω'' following the table that shows the monthly MEI Port Fees currently assessed for Market Makers in Section 5)d)ii) of the Fee Schedule.

The proposed extension of the fee waivers are targeted at market participants, particularly market makers, who are not currently members of MIAX, who may be interested in being a Market Maker in Proprietary Products on the Exchange. The Exchange estimates that there are fewer than ten (10) such market participants that could benefit from the extension of these fee waivers. The proposed extension of the fee waivers does not apply differently to different sizes of market participants, however the fee waivers do only apply to Market Makers (and not EEMs).

Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing. Accordingly, the Exchange believes it is reasonable and not unfairly discriminatory to continue to offer the fee waivers to Market Makers because the Exchange is seeking additional liquidity providers for Proprietary Products, in order to enhance liquidity and spreads in Proprietary Products, which is traditionally provided by Market Makers, as opposed to EEMs.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [16] in general, and furthers the objectives of Section 6(b)(4) of the Act [17] in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed changes to reorganize certain sections of the Fee Schedule promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposed changes make clarifying, non-substantive edits to the Fee Schedule. The Exchange believes that these proposed changes will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule and that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion.

The Exchange believes that the proposal to extend the fee waiver period for certain non-transaction fees for Market Makers in Proprietary Products is an equitable allocation of reasonable fees because the proposal continues to waive non-transaction fees for a limited period of time in order to enable the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants in MIAX's Proprietary Products, including options on SPIKES. The Exchange believe the proposed extension of the fee waivers is fair and equitable and not unreasonably discriminatory because it applies to all market participants not currently registered as Market Makers at the Exchange. Any market participant may choose to satisfy the additional requirements and obligations of being a Market Maker and trade solely in Proprietary Products in order to qualify for the fee waivers.

The Exchange believes that the proposed extension of the fee waivers is equitable and not unfairly discriminatory for Market Makers as compared to EEMs because Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, Market Makers have added market making and regulatory requirements, which normally do not apply to other market participants. For example, Market Makers have obligations to maintain continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and to not make bids or offers or enter into transactions that are inconsistent with a course of dealing.

The Exchange believes it is reasonable and equitable to continue to waive the one-time Membership Application Fee, monthly Trading Permit Fee, API Testing and Certification Fee, and monthly MEI Port Fee for Market Makers that trade solely in Proprietary Products (including options on SPIKES) until December 31, 2020, since the waiver of such fees provides incentives to interested market participants to trade in Proprietary Products. This should result in increasing potential order flow and liquidity in MIAX Proprietary Products, including options on SPIKES.

The Exchange believes it is reasonable and equitable to continue to waive the API Testing and Certification fee assessable to Market Makers that trade solely in Proprietary Products (including options on SPIKES) until December 31, 2020, since the waiver of such fees provides incentives to interested Members to develop and test their APIs sooner. Determining system operability with the Exchange's system will in turn provide MIAX with potential order flow and liquidity providers in Proprietary Products.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory that Market Makers who trade in Proprietary Products along with multi-listed classes will continue to not have Proprietary Products counted toward those Market Makers' class assignment count or percentage of total national average daily volume for monthly Trading Permit Fees and monthly MEI Port Fees in order to incentivize existing Market Makers who currently trade in multi-listed classes to also trade in Proprietary Products,

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4) and (5).

without incurring certain additional fees.

The Exchange believes that the proposed extension of the fee waivers constitutes an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The proposed extension of the fee waivers means that all prospective market makers that wish to become Market Maker Members of the Exchange and quote solely in Proprietary Products may do so and have the above-mentioned fees waived until December 31, 2020. The proposed extension of the fee waivers will continue to not apply to potential EEMs because the Exchange is seeking to enhance the quality of its markets in Proprietary Products through introducing more competition among Market Makers in Proprietary Products. In order to increase the competition, the Exchange believes that it must continue to waive entry type fees for such Market Makers. EEMs do not provide the benefit of enhanced liquidity which is provided by Market Makers, therefore the Exchange believes it is reasonable and not unfairly discriminatory to continue to only offer the proposed fee waivers to Market Makers (and not EEMs). Further, the Exchange believes it is reasonable and not unfairly discriminatory to continue to exclude Proprietary Products from an existing Market Maker's permit fees and port fees, in order to incentive such Market Makers to quote in Proprietary Products. The amount of a Market Maker's permit and port fee is determined by the number of classes quoted and volume of the Market Maker. By excluding Proprietary Products from such fees, the Exchange is able to incentivize Market Makers to quote in Proprietary Products. EEMs do not pay permit and port fees based on the classes traded or volume, so the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to only offer the exclusion to Market Makers (and not EEMs).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes that the proposal to reorganize certain sections of the Fee Schedule does not impose any burden on intra-market competition that is not necessary or appropriate because this proposal is not competitive in nature, but rather is designed to remedy minor non-substantive issues and provide added clarity to the Fee Schedule in order to avoid potential confusion on the part of market participants.

The Exchange believes that the proposal to extend certain of the non-transaction fee waivers until December 31, 2020 for Market Makers in Proprietary Products would increase intra-market competition by incentivizing new potential Market Makers to quote in Proprietary Products, which will enhance the quality of quoting and increase the volume of contracts in Proprietary Products traded on MIAX. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity for the Exchange's Proprietary Products. Enhanced market quality and increased transaction volume in Proprietary Products that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes for each separate type of market participant (new Market Makers and existing Market Makers) will be assessed equally to all such market participants. While different fees are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances as discussed above. For example, Market Makers have quoting obligations that other market participants (such as EEMs) do not have.

Inter-Market Competition

The Exchange does not believe the proposal to reorganize certain sections of the Fee Schedule will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's Fee Schedule.

The Exchange does not believe that the proposed rule change to extend the fee waiver for certain non-transaction fees will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed extension of the fee waivers apply only to the Exchange's Proprietary Products (including options on SPIKES), which are traded exclusively on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[18] and Rule 19b–4(f)(2) [19] 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 shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2020–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2020–32. 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

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 240.19b–4(f)(2).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2020–32, and should be submitted on or before November 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22869 Filed 10–14–20; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34049; File No. 812–15159]

Snowflake, Inc.

October 9, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under Section 3(b)(2) of the Investment Company Act of 1940 (''Act'').

Applicant: Snowflake, Inc. (''Snowflake'').

Summary of Application: Applicant seeks an order under Section 3(b)(2) of the Act declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. Applicant states that it is primarily engaged in the business of operating a cloud-based data platform.

Filing Dates: The application was filed on September 17, 2020 and amended on October 7, 2020.

Hearing or Notification of Hearing: An order granting the requested declaration will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretary-Office@sec.gov* and serving Applicant with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on November 3, 2020 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicant: 450 Concar Drive, San Mateo, California 94402.

FOR FURTHER INFORMATION CONTACT: Rochelle Kauffman Plesset, Senior Counsel, or David J. Marcinkus, Branch Chief, at (202) 551–6825, (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicant's Representations

1. Applicant is a Delaware corporation that, directly and through its wholly-owned subsidiaries,[1] provides a cloud-based data platform (''Platform'') that enables customers to consolidate data to drive business insights, build data-driven applications and share data.

2. Applicant states that its business operations necessitate the Applicant to generate and maintain significant amounts of liquid capital. Applicant states that the cloud computing industry is a capital-intensive industry that requires it to have readily available capital for ongoing operations and expenditures. Applicant also states that it needs to maintain substantial liquid capital to fund research and development activities; address fluctuations in results of its operations; and pursue potential strategic transactions, including acquisition of businesses, new technologies, services and other assets and strategic investments that complement its business.

3. Applicant states that it seeks to preserve its capital and maintain liquidity, pending the use of such capital to support its business operations, by investing in cash items, government securities, as well as in short-term investment grade and liquid fixed income and money market instruments that earn competitive market returns and provide a low level of credit risk (''Capital Preservation Investments''). Applicant states that it does not invest in securities for short-term speculative purposes.

Applicant's Legal Analysis

1. Applicant seeks an order under Section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities and therefore is not an investment company as defined in the Act.

2. Section 3(a)(l)(A) of the Act defines the term ''investment company'' to include an issuer that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities. Section 3(a)(l)(C) of the Act further defines an investment company as an issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40% of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines ''investment securities'' to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which (a) are not investment companies and (b) are not relying on the exclusions from the definition of investment company in Section 3(c)(1) or Section 3(c)(7) of the Act.

3. Applicant states that it does not hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities. Applicant states, however, that it maintains a significant amount of intangible assets, such as internally-generated intellectual property, that may not appear on its balance sheet. In addition, Applicant states that it

[1] Applicant states that while its business operations are primarily conducted through the parent level entity, Snowflake also maintains wholly-owned subsidiaries that complement and advance its overall business model.

recently engaged in an initial public offering (''IPO'') but that proceeds from that offering has been deployed only on a limited basis. Applicant states that it intends to invest a significant portion of the IPO proceeds in Capital Preservation Investments. Applicant states that it also may make a limited investment in private companies consistent with its corporate strategy. Such investments are considered to be investment securities for purposes of Section 3(a)(1)(C) of the Act. Accordingly, Applicant states that while it currently does not meet the definition of investment company in Section 3(a)(1)(C) of the Act, it will likely meet that definition following its deployment of the proceeds from its IPO and will continue to do so over the long term.

4. Section 3(b)(2) of the Act provides that, notwithstanding Section 3(a)(l)(C) of the Act, the Commission may issue an order declaring an issuer to be primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities directly, through majority-owned subsidiaries, or controlled companies conducting similar types of businesses. Applicant requests an order under Section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities, and therefore is not an investment company as defined in the Act.

5. In determining whether an issuer is ''primarily engaged'' in a non-investment company business under Section 3(b)(2) of the Act, the Commission considers the following factors: (a) The company's historical development, (b) its public representations of policy, (c) the activities of its officers and directors, (d) the nature of its present assets, and (e) the sources of its present income.[2]

6. Applicant submits that it satisfies the criteria for issuance of an order under Section 3(b)(2) of the Act because Applicant is primarily engaged in the business of operating its Platform and is not in the business of investing, reinvesting, owning, holding, or trading in securities.

a. *Historical Development.* Applicant states that it was incorporated in 2012 and first offered its Platform in 2014, with data warehousing as its core use. Applicant states that customer have also used the Platform for additional purposes, including data engineering, data lakes, data science, data applications and data exchange.

b. *Public Representations of Policy.* Applicant states that it has consistently represented publicly that it is engaged in the business of operating its Platform. Applicant represents that it has never held itself out, and does not now hold itself out, as an investment company within the meaning of the Act or as engaging in the business of investing, reinvesting, owning, holding, or trading in securities. Applicant's offering documents emphasize its operating results and do not emphasize either its investment income or the possibility of significant appreciation from its cash management investment strategies as a material factor in its business or future growth.

c. *Activities of Officers and Directors.* Applicant represents that its board of directors and executive officers devote substantially all of their time to overseeing Applicant's business of providing its platform to customers. Applicant's cash management activities are managed internally by its Chief Financial Officer and externally by four investment managers, whose activities are supervised by the Chief Financial Officer. Applicant states that its Chief Financial Officer spends less than 1% of his time monitoring Applicant's cash balances and managing short-term investment securities in accordance with Applicant's investment policy. Further, Applicant states that no executive officer, other than the Chief Financial Officer, spends time monitoring the cash balances and managing short-term investment securities.

Applicant states that as of July 31, 2020, it had approximately 2,037 employees. Fewer than five employees spend time on matters related to the management of Applicant's investment securities.

d. *Nature of Assets.* Applicant states that as of July 31, 2020 Applicant's investment securities constituted approximately 20% of its total assets (excluding Government securities and cash items) on an unconsolidated basis.[3] Furthermore, 100% of its investment securities consisted of Capital Preservation Investments. Applicant anticipates that once proceeds from the IPO are deployed, approximately 89% of its total assets (excluding Government securities and cash) will be in investment securities, substantially all of which will be in Capital Preservation Investments. In addition, Applicant states that it may also invest in private companies as part of its corporate strategy. However, Applicant states that it does not plan to invest more than 10% of its total unconsolidated assets (excluding Government securities and cash items) in investment securities that are not Capital Preservation Investments, including investments made as part of its corporate development strategy. Applicant states that it expects to continue investing in Capital Preservation Investments, as well as Government securities and cash items, to fund its current and future operations.

e. *Sources of Income and Revenue.* Applicant represents that since its inception it has had net operating losses. It does, however, derive income from its investment securities. Applicant states that a review of its current sources of revenues provides a more accurate picture of its operating company status, particularly given the upward trend in recognizing substantially increased revenues based on the growth in its customers usage of the Platform. Applicant states that, for the fiscal year ended January 31, 2020, Applicant earned approximately $252.2 million of product revenues, compared to $95.7 million as of January 31, 2019. In contrast, Applicant earned $10.8 million in net investment income in the fiscal year ending January 31, 2020 compared to $ 8.4 million in net investment income in the prior fiscal year. All such income was derived from the Capital Preservation Investments, Government securities and Cash Items. Applicant states that if net investment income were compared to its total revenues it would account for approximately 4% of total revenues in the fiscal year ended January 31, 2020 and approximately 9% of total revenues for the prior fiscal year.

7. Applicant asserts that its historical development, its public representations of policy, the activities of its officers and directors, the nature of its assets and its sources of revenue, as discussed in the application, demonstrate that it is engaged primarily in a business other than that of investing, reinvesting, owning, holding, or trading securities. Applicant thus asserts that it satisfies the criteria for issuing an order under Section 3(b)(2) of the Act.

Applicant's Conditions

Applicant agrees that any order granted pursuant to the application will be subject to the following conditions:

1. Applicant will continue to allocate and use its accumulated cash and investment securities for bona fide business purposes; and

2. Applicant will refrain from investing or trading in securities for short-term speculative purposes.

[2] *Tonopah Mining Company of Nevada,* 26 SEC 426, 427 (1947).

[3] Applicant states that none of its subsidiaries holds investment securities.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22824 Filed 10–14–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90153; File No. SR–Phlx–2020–46]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Related to the Market-Wide Circuit Breaker in Rule 3101

October 9, 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 October 7, 2020, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Rule 3101.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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

Rule 3101 provides a methodology for determining when to halt trading in all stocks due to extraordinary market volatility (*i.e.,* market-wide circuit breakers). The market-wide circuit breaker (''MWCB'') mechanism under Rule 3101 was approved by the Commission to operate on a pilot basis,[3] the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[4] including any extensions to the pilot period for the LULD Plan.[5] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[6] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 3101 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[7] The Exchange subsequently filed to extend the pilot for an additional year to the close of business on October 18, 2020.[8]

The Exchange now proposes to amend Rule 3101 to extend the pilot to the close of business on October 18, 2021. This filing does not propose any substantive or additional changes to Rule 3101.

The market-wide circuit breaker under Rule 3101 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 (''MWCB Rules''), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity.[9] Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 3101, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading for the remainder of the trading day.

Since the MWCB pilot was last extended in October 2019, the MWCB mechanism has proven itself to be an effective tool for protecting markets through turbulent times. In the Spring of 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, the previously-convened MWCB Taskforce (''Taskforce'') reviewed the March 2020 halts and considered whether any immediate changes to the MWCB mechanism should be made. The Taskforce, consisting of representatives from equities exchanges, futures exchanges, FINRA, broker-dealers, and other market participants, had been assembled in early 2020 to consider more generally potential changes to the MWCB mechanism. The Taskforce held ten meetings in the Spring and Summer of 2020 that were attended by Commission staff to consider, among other things: (1) Whether to retain the

[3] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-Phlx-2011–129).

[4] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[5] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–Phlx–2011–129) (Approval Order); and 68816 (February 1, 2013), 78 FR 9760 (February 11, 2013) (SR–Phlx–2013–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date).

[6] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[7] *See* Securities Exchange Act Release No. 85579 (April 9, 2019), 84 FR 15258 (April 15, 2019) (SR–Phlx–2019–12).

[8] *See* Securities Exchange Act Release No. 87206 (October 3, 2019), 84 FR 54234 (October 9, 2019) (SR–Phlx–2019–40).

[9] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''MWCB Approval Order'').

S&P 500 Index as the standard for measuring market declines; (2) whether halts that occur shortly after the 9:30 a.m. market open cause more harm than good; and (3) what additional testing of the MWCB mechanism should be done.

After considering data and anecdotal reports of market participants' experiences during the March 2020 MWCB events, the Taskforce did not recommend immediate changes be made to the use of the S&P 500 Index as the reference price against which market declines are measured, or to the current MWCB mechanism which permits halts even shortly after the 9:30 a.m. market open. The Taskforce recommended creating a process for a backup reference price in the event that the S&P 500 Index becomes unavailable, and enhancing functional MWCB testing. The Taskforce also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%.

On September 17, 2020, the Director of the Division of Trading and Markets requested that the equities exchanges and FINRA prepare a more complete study of the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

In addition to the work of the Taskforce, the equities exchanges also moved forward in 2019 and 2020 with a plan to normalize their Day 2 opening procedures after a Level 3 MWCB halt, such that all exchanges would reopen on Day 2 with a standard opening auction. The Exchange and its affiliated exchanges filed rule changes to that effect in March 2020,[10] and successfully tested the implementation of those changes on September 12, 2020.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, 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. The market-wide circuit breaker mechanism under Rule 3101 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional year would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange and the other SROs study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 3101 should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange and the other SROs study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)[13] of the Act and Rule 19b-4(f)(6)[14] thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. Extending the pilot for an additional year will allow the uninterrupted operation of the existing pilot while the Exchange, FINRA, and the other exchanges conduct a study of the MWCB mechanism in consultation with market participants and determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the

[10] *See* Securities Exchange Act Release Nos. 88360 (March 11, 2020), 85 FR 15240 (March 17, 2020) (SR–NASDAQ–2020–003); 88428 (March 19, 2020), 85 FR 16965 (March 25, 2020) (SR–BX–2020–004); 88431 (March 19, 2020), 85 FR 16968 (March 25, 2020) (SR–Phlx–2020–11).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[16] *Id.*

[17] 17 CFR 240.19b–4(f)(6)(iii).

proposed rule change to be operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2020–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR-Phlx-2020–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549–1090, 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-Phlx-2020–46 and should be submitted on or before November 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

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[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90147; File No. SR–CboeEDGX–2020–047]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Related to the Market-Wide Circuit Breaker in Rule 11.16

October 9, 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 October 6, 2020, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposal to extend the pilot related to the market-wide circuit breaker in Rule 11.16. 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/options/regulation/rule_filings/edgx/*), 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

EDGX Rules 11.16(a) through (d), (f) and (g) describe the methodology for determining when to halt trading in all stocks due to extraordinary market volatility, *i.e.,* market-wide circuit breakers. The market-wide circuit breaker (''MWCB'') mechanism was approved by the Commission to operate on a pilot basis, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[5] including any extensions to the pilot period for the LULD Plan. In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[6] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 11.16 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[6] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

October 18, 2019.[7] The Exchange subsequently amended Rule 11.18 to extend the pilot's effectiveness for an additional year to the close of business on October 18, 2020.[8] The Exchange now proposes to amend Rule 11.16 to extend the pilot to the close of business on October 18, 2021. This filing does not propose any substantive or additional changes to Rule 11.16.

The market-wide circuit breaker under Rule 11.16 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 (''MWCB Rules''), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity.[9] Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 11.16, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading for the remainder of the trading day.

Since the MWCB pilot was last extended in October 2019, the MWCB mechanism has proven itself to be an effective tool for protecting markets through turbulent times. In the Spring of 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, the previously-convened MWCB Taskforce (''Taskforce'') reviewed the March 2020 halts and considered whether any immediate changes to the MWCB mechanism should be made. The Taskforce, consisting of representatives from equities exchanges, futures exchanges, FINRA, broker-dealers, and other market participants, had been assembled in early 2020 to consider more generally potential changes to the MWCB mechanism. The Taskforce held ten meetings in the Spring and Summer of 2020 that were attended by Commission staff to consider, among other things: (1) Whether to retain the S&P 500 Index as the standard for measuring market declines; (2) whether halts that occur shortly after the 9:30 a.m. market open cause more harm than good; and (3) what additional testing of the MWCB mechanism should be done.

After considering data and anecdotal reports of market participants' experiences during the March 2020 MWCB events, the Taskforce did not recommend immediate changes be made to the use of the S&P 500 Index as the reference price against which market declines are measured, or to the current MWCB mechanism which permits halts even shortly after the 9:30 a.m. market open. The Taskforce recommended creating a process for a backup reference price in the event that the S&P 500 Index becomes unavailable, and enhancing functional MWCB testing. The Taskforce also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%.

On September 17, 2020, the Director of the Division of Trading and Markets requested that the equities exchanges and FINRA prepare a more complete study of the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

In addition to the work of the Taskforce, the equities exchanges also moved forward in 2019 and 2020 with a plan to normalize their Day 2 opening procedures after a Level 3 MWCB halt, such that all exchanges would reopen on Day 2 with a standard opening process. The Exchange and its Affiliate SROs[10] filed rule changes to that effect in March 2020,[11] and successfully tested the implementation of those changes on September 12, 2020.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, 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. The market-wide circuit breaker mechanism under Rule 11.16 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional year would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange and the other SROs study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a

[7] *See* Securities Exchange Act Release No. 85667 (April 16, 2019), 84 FR 16736 (April 22, 2019) (SR–CboeEDGX–2019–023).

[8] *See* Securities Exchange Act Release No. 87339 (October 17, 2019), 84 FR 56882 (October 23, 2019) (SR–CboeEDGX–2019–061).

[9] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''MWCB Approval Order'').

[10] The ''Affiliate SROs'' are the Exchange's affiliated equities exchanges, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., and Cboe EDGA Exchange, Inc.

[11] *See* Securities Exchange Act Release Nos. 88417 (March 18, 2020), 85 FR 16702 (March 24, 2020) (SR–CboeBZX–2020–025); 88416 (March 18, 2020), 85 FR 16699 (March 24, 2020) (SR–CboeBYX–2020–009); 88420 (March 18, 2020), 85 FR 16696 (March 24, 2020) (SR–CboeEDGX–2020–012); 88419 (March 18, 2020), 85 FR 16716 (March 24, 2020) (SR–CboeEDGA–2020–008).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 11.16 should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange and the other SROs study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) [14] of the Act and Rule 19b–4(f)(6) [15] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. Extending the pilot for an additional year will allow the uninterrupted operation of the existing pilot while the Exchange, FINRA, and the other exchanges conduct a study of the MWCB mechanism in consultation with market participants and determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2020–047 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–CboeEDGX–2020–047. 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 and on its internet website. 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–CboeEDGX–2020–047 and should be submitted on or before November 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22870 Filed 10–14–20; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[17] *Id.*

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90120; File No. SR–BX–2020–028]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate the Fee for BX's TradeInfo Interface in Options 7

October 9, 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 September 30, 2020, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate the fee for BX's TradeInfo interface in Options 7 in connection with decommissioning this functionality, and to credit any TradeInfo fees paid by Participants for the month of September 2020.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the fee for BX's TradeInfo interface in Options 7 in connection with decommissioning this functionality, and to credit any TradeInfo fees paid by Participants for the month of September 2020.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on October 1, 2020.

TradeInfo is a user interface which permits a Participant to: (i) Search all orders submitted in a particular security or all orders of a particular type, regardless of their status (open, canceled, executed, etc.); (ii) cancellation of open orders at the order, port or firm mnemonic level; (iii) a view of orders and executions; and (iv) download of orders and executions for recordkeeping purposes.[3] The Exchange notes that this interface is not utilized by BX Participants at this time [4] and has therefore separately filed to decommission TradeInfo effective September 14, 2020 to coincide with the BX technology migration to enhanced Nasdaq, Inc. functionality.[5] As noted in that filing, information that is currently available within TradeInfo can be obtained from FIX,[6] FIX Drop [7] and the Clearing Trade Interface,[8] which are available to all Participants.[9]

In connection with retiring TradeInfo on September 14, 2020, the Exchange proposes to eliminate the associated TradeInfo BX Interface Fee of $95 per user, per month set forth in Options 7, Section 3(ii), to be effective on October 1, 2020. The Exchange also proposes to make a similar change in Options 7, Section 7(c)(2), which governs fee disputes, by deleting the reference to the TradeInfo fee therein.

The Exchange notes that TradeInfo fees are assessed in full month increments and are not prorated.[10] Consequently, by decommissioning TradeInfo on September 14th, a Participant subscriber would still be charged the $95 per user fee for all of September on the October bill.[11] As noted above, there are five Participants currently billed for TradeInfo, but no Participant is actually using this interface at this time.[12] Accordingly, the Exchange proposes to issue a credit in the same amount the Participant paid in fees for TradeInfo for the month of September 2020. To effect this change, the Exchange proposes to add the following language in Options 7, Section 3(ii): ''Any BX Participant that paid the TradeInfo BX Interface Fee of $95 per user, per month in September 2020 will get an equivalent credit for that month.''

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[14] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair

[3] *See* Options 3, Section 23(b)(2).

[4] There are five Participants currently billed for TradeInfo, but no Participant logged into TradeInfo in 2020, including these five Participants.

[5] *See* Securities Exchange Act Release No. 89819 (September 10, 2020), 85 FR 57893 (September 16, 2020) (SR–BX–2020–027). The Exchange has also issued an Options Trader Alert to provide notice of TradeInfo's decommission. *See* Options Trader Alert #2020–23.

[6] ''Financial Information eXchange'' or ''FIX'' is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders and responses to and from the Exchange. Features include the following: (1) Execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications. *See* Options 3, Section 7(d)(1)(A).

[7] FIX DROP is a real-time order and execution update message that is sent to a Participant after an order has been received/modified or an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) Executions; (ii) cancellations; (iii) modifications to an existing order and (iv) busts or post-trade corrections. *See* Options 3, Section 23(b)(3).

[8] The Clearing Trade Interface or ''CTI'' is a real-time clearing trade update message that is sent to a Participant after an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or ''CMTA'' or The Options Clearing Corporation or ''OCC'' number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; and (vi) capacity. *See* Options 3, Section 23(b)(1).

[9] *See supra* note 5. Today, all Participants have at least FIX, FIX DROP, or CTI.

[10] *See* Options 7, Section 3.

[11] The Exchange sends a monthly invoice of fees to each Participant the following month. For example, a Participant will be billed in October for subscribing to TradeInfo in September.

[12] *See supra* note 4.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the elimination of the TradeInfo BX Interface Fee and related rule text is reasonable because the Exchange no longer offers this functionality as of September 14, 2020, thus making the fees irrelevant going forward. As there are still a small number of Participants currently subscribed to TradeInfo, the Exchange believes that it is reasonable to issue an equivalent credit to those Participants that are billed for the TradeInfo fee for the month of September 2020.[15] As explained above, because TradeInfo fees are currently assessed in full month increments and are not prorated, Participant subscribers would be charged the $95 per user fee for all of September on their October bill, even though they will not be able to access this service for the full month of September. The Exchange therefore believes that it is reasonable to refund the equivalent amount on the Participant's October bill in the manner proposed above.

The Exchange believes that its proposal to eliminate the TradeInfo fee and related rule text is equitable and not unfairly discriminatory because no BX Participant will be charged the TradeInfo fee going forward under this proposal. As noted above, five Participant subscribers are charged the TradeInfo fee today. To the extent any Participants pay the TradeInfo fee for the month of September 2020, the Exchange is proposing to issue an equivalent credit for that month. Not issuing the proposed credit to Participants that are not currently subscribed to TradeInfo is equitable and not unfairly discriminatory as these Participants would not be charged the TradeInfo fee in the first place. Thus, the Exchange believes that its proposal will not unfairly discriminate among Participants and will be allocated equitably.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee changes eliminate the fee and related rule text that applied to the TradeInfo interface, which the Exchange no longer offers as of September 14, 2020. As noted above, while there are a very small number of Participants currently subscribed to TradeInfo, no Participants are actually utilizing this interface at this time.[16] For those few Participants currently subscribed to (and billed for) TradeInfo for the month September 2020, the Exchange is proposing to issue an equivalent credit for that month. By providing a credit in this manner to Participant subscribers and not providing the credit to non-subscriber Participants (who would not be charged the TradeInfo fee in the first place), the Exchange seeks to ensure that all Participants are treated equitably under this proposal. Furthermore, the Exchange notes that the TradeInfo interface is entirely optional, and Participants are able to obtain the information available on TradeInfo from FIX, FIX Drop and CTI, which are available to all Participants. Accordingly, the Exchange does not believe that its proposal imposes any burden on intra-market competition, or places certain market participants at a relative disadvantage compared to other market participants.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2020–028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2020–028. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2020–028 and should be submitted on or before November 5, 2020.

[15] *See supra* note 4.

[16] *Id.*

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22866 Filed 10–14–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90151; File No. SR–NYSE–2020–83]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7

October 9, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 2, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on April 20, 2021. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on April 20, 2021. The pilot program is currently due to expire on October 20, 2020.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 128 (Clearly Erroneous Executions) that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision to Rule 128 designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions to Rule 128 providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6] Rule 128 is no longer applicable to any securities that trade on the Exchange and has been replaced with Rule 7.10, which is substantively identical to Rule 128.[7]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[8] including any extensions to the pilot period for the LULD Plan.[9] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[10] In light of that change, the Exchange amended Rules 7.10 and 128 to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[11] The Exchange later amended Rule 7.10 to extend the pilot's effectiveness to the close of business on April 20, 2020,[12] and subsequently, to the close of business on October 20, 2020.[13]

The Exchange now proposes to amend Rule 7.10 to extend the pilot program's effectiveness for a further six months until the close of business on April 20, 2021. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[14] In such an event, the remaining sections of Rules 7.10 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10.

The Exchange does not propose any additional changes to Rule 7.10. Extending the effectiveness of Rule 7.10

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSE–2010–47).

[5] *See* Securities Exchange Act Release No. 68804 (Feb. 1, 2013), 78 FR 8677 (Feb. 6, 2013) (SR–NYSE–2013–11).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NYSE–2014–22).

[7] *See* Securities Exchange Act Release Nos. 82945 (March 26, 2019), 83 FR 13553, 13565 (March 29, 2019) (SR–NYSE–2017–36) (Approval Order) and 85962 (May 29, 2019), 84 FR 26188, 26189 n.13 (June 5, 2019) (SR–NYSE–2019–05) (Approval Order).

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[9] *See* Securities Exchange Act Release No. 71821 (March 27, 2014), 79 FR 18592 (April 2, 2014) (SR–NYSE–2014–17).

[10] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[11] *See* Securities Exchange Act Release No. 85523 (April 5, 2019), 84 FR 14706 (April 11, 2019) (SR–NYSE–2019–17).

[12] *See* Securities Exchange Act Release No. 87353 (October 18, 2019), 84 FR 57087 (October 24, 2019) (SR–NYSE–2019–56).

[13] *See* Securities Exchange Act Release No. 88580 (April 7, 2020), 85 FR 20551 (April 13, 2020) (SR–NYSE–2020–24).

[14] *See supra* notes 4—6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

for an additional six months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[15] in general, and Section 6(b)(5) of the Act,[16] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–83 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–83. 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

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–83 and should be submitted on or before November 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22871 Filed 10–14–20; 8:45 am]

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[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90144; File No. SR–NASDAQ–2020–068]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Related to the Market-Wide Circuit Breaker in Rule 4121

October 9, 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 October 7, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Rule 4121.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 4121 provides a methodology for determining when to halt trading in all stocks due to extraordinary market volatility (*i.e.,* market-wide circuit breakers). The market-wide circuit breaker (''MWCB'') mechanism under Rule 4121 was approved by the Commission to operate on a pilot basis,[3] the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[4] including any extensions to the pilot period for the LULD Plan.[5] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[6] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 4121 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[7] The Exchange subsequently filed to extend the pilot for an additional year to the close of business on October 18, 2020.[8]

The Exchange now proposes to amend Rule 4121 to extend the pilot to the close of business on October 18, 2021. This filing does not propose any substantive or additional changes to Rule 4121.

The market-wide circuit breaker under Rule 4121 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 (''MWCB Rules''), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity.[9] Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 4121, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading for the remainder of the trading day.

Since the MWCB pilot was last extended in October 2019, the MWCB mechanism has proven itself to be an effective tool for protecting markets through turbulent times. In the Spring of 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets

[3] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NASDAQ–2011–131).

[4] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[5] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NASDAQ–2011–131) (Approval Order); and 68786 (January 31, 2013), 78 FR 8666 (February 6, 2013) (SR–NASDAQ–2013–021) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date).

[6] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[7] *See* Securities Exchange Act Release No. 85578 (April 9, 2019), 84 FR 15271 (April 15, 2019) (SR–NASDAQ–2019–027).

[8] *See* Securities Exchange Act Release No. 86944 (September 12, 2019), 84 FR 49141 (September 18, 2019) (SR–NASDAQ–2019–072).

[9] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''MWCB Approval Order'').

halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, the previously-convened MWCB Taskforce (''Taskforce'') reviewed the March 2020 halts and considered whether any immediate changes to the MWCB mechanism should be made. The Taskforce, consisting of representatives from equities exchanges, futures exchanges, FINRA, broker-dealers, and other market participants, had been assembled in early 2020 to consider more generally potential changes to the MWCB mechanism. The Taskforce held ten meetings in the Spring and Summer of 2020 that were attended by Commission staff to consider, among other things: (1) Whether to retain the S&P 500 Index as the standard for measuring market declines; (2) whether halts that occur shortly after the 9:30 a.m. market open cause more harm than good; and (3) what additional testing of the MWCB mechanism should be done.

After considering data and anecdotal reports of market participants' experiences during the March 2020 MWCB events, the Taskforce did not recommend immediate changes be made to the use of the S&P 500 Index as the reference price against which market declines are measured, or to the current MWCB mechanism which permits halts even shortly after the 9:30 a.m. market open. The Taskforce recommended creating a process for a backup reference price in the event that the S&P 500 Index becomes unavailable, and enhancing functional MWCB testing. The Taskforce also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%.

On September 17, 2020, the Director of the Division of Trading and Markets requested that the equities exchanges and FINRA prepare a more complete study of the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

In addition to the work of the Taskforce, the equities exchanges also moved forward in 2019 and 2020 with a plan to normalize their Day 2 opening procedures after a Level 3 MWCB halt, such that all exchanges would reopen on Day 2 with a standard opening auction. The Exchange and its affiliated exchanges filed rule changes to that effect in March 2020,[10] and successfully tested the implementation of those changes on September 12, 2020.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, 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. The market-wide circuit breaker mechanism under Rule 4121 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional year would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange and the other SROs study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 4121 should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange and the other SROs study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) [13] of the Act and Rule 19b–4(f)(6) [14] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection

[10] *See* Securities Exchange Act Release Nos. 88360 (March 11, 2020), 85 FR 15240 (March 17, 2020) (SR–NASDAQ–2020–003); 88428 (March 19, 2020), 85 FR 16965 (March 25, 2020) (SR–BX–2020–004); 88431 (March 19, 2020), 85 FR 16968 (March 25, 2020) (SR–Phlx–2020–11).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[16] *Id.*

[17] 17 CFR 240.19b–4(f)(6)(iii).

of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. Extending the pilot for an additional year will allow the uninterrupted operation of the existing pilot while the Exchange, FINRA, and the other exchanges conduct a study of the MWCB mechanism in consultation with market participants and determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2020–068 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2020–068. 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 20549–1090, 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–NASDAQ–2020–068 and should be submitted on or before November 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22867 Filed 10–14–20; 8:45 am]

BILLING CODE 8011–01–P

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90145; File No. SR–BX–2020–029]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Rule 4121

October 9, 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 October 7, 2020, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Rule 4121.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

Rule 4121 provides a methodology for determining when to halt trading in all stocks due to extraordinary market volatility (*i.e.,* market-wide circuit breakers). The market-wide circuit breaker (''MWCB'') mechanism under Rule 4121 was approved by the Commission to operate on a pilot basis,[3] the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[4] including any extensions to the pilot period for the LULD Plan.[5] In April 2019, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BX–2011–068).

[4] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[5] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BX–2011–068) (Approval Order); and 68815 (February 1, 2013), 78 FR 9752 (February 11, 2013) (SR–BX–2013–009) (Notice of Filing and Immediate

Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[6] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 4121 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[7] The Exchange subsequently filed to extend the pilot for an additional year to the close of business on October 18, 2020.[8]

The Exchange now proposes to amend Rule 4121 to extend the pilot to the close of business on October 18, 2021. This filing does not propose any substantive or additional changes to Rule 4121.

The market-wide circuit breaker under Rule 4121 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 (''MWCB Rules''), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity.[9] Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 4121, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading for the remainder of the trading day.

Since the MWCB pilot was last extended in October 2019, the MWCB mechanism has proven itself to be an effective tool for protecting markets through turbulent times. In the Spring of 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, the previously-convened MWCB Taskforce (''Taskforce'') reviewed the March 2020 halts and considered whether any immediate changes to the MWCB mechanism should be made. The Taskforce, consisting of representatives from equities exchanges, futures exchanges, FINRA, broker-dealers, and other market participants, had been assembled in early 2020 to consider more generally potential changes to the MWCB mechanism. The Taskforce held ten meetings in the Spring and Summer of 2020 that were attended by Commission staff to consider, among other things: (1) Whether to retain the S&P 500 Index as the standard for measuring market declines; (2) whether halts that occur shortly after the 9:30 a.m. market open cause more harm than good; and (3) what additional testing of the MWCB mechanism should be done.

After considering data and anecdotal reports of market participants' experiences during the March 2020 MWCB events, the Taskforce did not recommend immediate changes be made to the use of the S&P 500 Index as the reference price against which market declines are measured, or to the current MWCB mechanism which permits halts even shortly after the 9:30 a.m. market open. The Taskforce recommended creating a process for a backup reference price in the event that the S&P 500 Index becomes unavailable, and enhancing functional MWCB testing. The Taskforce also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%.

On September 17, 2020, the Director of the Division of Trading and Markets requested that the equities exchanges and FINRA prepare a more complete study of the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

In addition to the work of the Taskforce, the equities exchanges also moved forward in 2019 and 2020 with a plan to normalize their Day 2 opening procedures after a Level 3 MWCB halt, such that all exchanges would reopen on Day 2 with a standard opening auction. The Exchange and its affiliated exchanges filed rule changes to that effect in March 2020,[10] and successfully tested the implementation of those changes on September 12, 2020.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, 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. The market-wide circuit breaker mechanism under Rule 4121 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional year would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange and the other SROs study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of

Effectiveness of Proposed Rule Change to Delay the Operative Date).

[6] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[7] *See* Securities Exchange Act Release No. 85585 (April 10, 2019), 84 FR 15643 (April 16, 2019) (SR–BX–2019–008).

[8] *See* Securities Exchange Act Release No. 87208 (October 3, 2019), 84 FR 54213 (October 9, 2019) (SR–BX–2019–034).

[9] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''MWCB Approval Order'').

[10] *See* Securities Exchange Act Release Nos. 88360 (March 11, 2020), 85 FR 15240 (March 17, 2020) (SR–NASDAQ–2020–003); 88428 (March 19, 2020), 85 FR 16965 (March 25, 2020) (SR–BX–2020–004); 88431 (March 19, 2020), 85 FR 16968 (March 25, 2020) (SR–Phlx–2020–11).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

the MWCB mechanism with industry participants.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 4121 should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange and the other SROs study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) [13] of the Act and Rule 19b–4(f)(6) [14] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. Extending the pilot for an additional year will allow the uninterrupted operation of the existing pilot while the Exchange, FINRA, and the other exchanges conduct a study of the MWCB mechanism in consultation with market participants and determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2020–029 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2020–029. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2020–029 and should be submitted on or before November 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–22868 Filed 10–14–20; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[16] *Id.*

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16696 and #16697; Virginia Disaster Number VA–00089]

Administrative Declaration of a Disaster for the Commonwealth of Virginia

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of VIRGINIA dated 10/07/2020.

Incident: Tropical Storm Isaias.

Incident Period: 08/03/2020 through 08/05/2020.

DATES: Issued on 10/07/2020.

Physical Loan Application Deadline Date: 12/07/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 07/07/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Cities/Counties: Suffolk City

Contiguous Cities/Counties:

Virginia: Chesapeake City, Isle of Wight, Portsmouth City, Southampton.

North Carolina: Camden, Gates.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	2.375
Homeowners Without Credit Available Elsewhere	1.188
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	3.000
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16696 8 and for economic injury is 16697 0.

The States which received an EIDL Declaration # are Virginia, North Carolina.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,

Administrator.

[FR Doc. 2020–22781 Filed 10–14–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–37]

Petition for Exemption; Summary of Petition Received; California Institute of Technology

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 November 4, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0431 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: Jake Troutman, (202) 683–7788, 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 October 7, 2020.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2020–0431.

Petitioner: California Institute of Technology.

Section(s) of 14 CFR Affected: part 27 Subpart B; §§ 27.25; 21.191(a); 27.337; 27.339; 27.341; 27.865; 61.23(a) and (c); 61.101(e)(4) and (5); 61.113(a); 61.315(a); 91.7(a); 91.109; 91.119(c); 91.121; 91.151; 91.203(a) and (b); 91.405(a); 91.407(a)(1); 91.409(a)(1) and (2).

Description of Relief Sought: California Institute of Technology seeks relief from part 27 Subpart B; §§ 27.25; 21.191(a); 27.337; 27.339; 27.341; 27.865; 61.23(a) and (c); 61.101(e)(4) and (5); 61.113(a); 61.315(a); 91.7(a); 91.10; 91.119(c); 91.121; 91.151; 91.203(a) and (b); 91.405(a); 91.407(a)(1); 91.409(a)(1) and (2) to allow the petitioner to operate the Atlas unmanned aircraft system (UAS), with a 300 pound (lbs.) maximum take-off weight, at the San Bernardino International Airport, California; specifically in the airport's ''Aircraft Rescue and Firefighting (ARFF)

Training Center.'' The requested relief would allow the Atlas UAS to carry a rigidly-secured payload of up to 200 lbs. Operations will be conducted visual line of sight, during the day, and below 400 feet above ground level.

[FR Doc. 2020–22880 Filed 10–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2020–73]

Petition for Exemption; Summary of Petition Received; Avitas, Inc.

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 November 4, 2020.

ADDRESSES: Send comments identified by docket number FAA–2018–0263 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: Jake Troutman, (202) 683–7788, 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 October 7, 2020.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0263.

Petitioner: Avitas, Inc.

Section(s) of 14 CFR Affected: §§ 61.3(a)(1)(i); 61.113(a) and (b); 91.7(a); 91.119(c); 91.405(a); 91.407(a)(1); 91.409(a)(1) and (2); and 91.417(a) and (b).

Description of Relief Sought: Avitas, Inc. (Avitas) seeks relief from 14 CFR 61.3(a)(1)(i); 61.113(a) and (b); 91.7(a); 91.119(c); 91.405(a); 91.407(a)(1); 91.409(a)(1) and (2); and 91.417(a) and (b) to extend and amend Exemption No. 17992A, which permits Avitas to commercially operate unmanned aircraft systems, including, the AeroVironment VAPOR 55 rotorcraft, over private property and beyond visual line of sight for aerial monitoring of oil and gas facilities in a specific rural location. Avitas is requesting an amendment to Exemption No. 17992A in order to operate with part 107 certificated pilots and over moving vehicles while crossing roads and add an additional operating area in the Permian Basin, south of Midland, Texas.

[FR Doc. 2020–22881 Filed 10–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Performance Review Boards

AGENCY: Department of the Treasury.

ACTION: Notice of Appointments to Performance Review Boards (PRBs).

SUMMARY: This notice announces the appointment of members to the Department of the Treasury's Performance Review Boards (PRBs). The purpose of these Boards are to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions in the Department.

Composition of the PRB: The Boards shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The persons listed below may be selected to serve on one or more PRB within Treasury.

Names for Federal Register Publication

Top Officials

- David F. Eisner, Assistant Secretary for Management
- Leonard Olijar, Director for the Bureau of Engraving and Printing
- Patricia Greiner, Deputy Director for Bureau of Engraving and Printing and Chief Administrative Officer
- Charlene William, Deputy Director for Bureau of Engraving and Printing and Chief Operating Officer
- Timothy Gribben, Commissioner for the Bureau of the Fiscal Service
- Stephen L. Manning, Deputy Commissioner (Finance and Administration), Bureau of the Fiscal Service
- Matthew J. Miller, Deputy Commissioner (Accounting and Shared Services), Bureau of the Fiscal Service
- Jeffrey J. Schramek, Deputy Commissioner (Financial Services and Operations), Bureau of the Fiscal Service
- Jeffrey Tribiano, Deputy Commissioner for Operations Support (IRS)
- Sunita Lough, Deputy Commissioner for Services and Enforcement (IRS)
- Mary G. Ryan, Administrator for the Alcohol and Tobacco Tax and Trade Bureau
- Kenneth Blanco, Director, Financial Crimes Enforcement Network
- Jamal El-Hindi, Deputy Director, Financial Crimes Enforcement Network
- Patrick Hernandez, Deputy Director of the U.S. Mint

Departmental Offices

- John M. Farley, Director, Executive Office for Asset Forfeiture
- Michael O. Thomas, Deputy Assistant Secretary for Treasury Operations
- Amy Edwards, Deputy Assistant Secretary for Accounting Policy and Financial Transparency

- Adam Lerrick, Counselor to the Secretary
- Alexandria Gaiser, Executive Secretary
- Carter Burwell, Counselor to the Secretary
- Daniel Kowalski, Counselor to the Secretary
- Donna Ragucci, Director for the Office of Small and Disadvantaged Business Utilization
- Joseph R. Clark, Senior Advisor to the Deputy Secretary and Counselor to the General Counsel
- David Dwyer, Counselor to the Under Secretary for International Affairs
- Dan Debono, Senior Advisor
- Jon McGaughey, Deputy Assistant Secretary for Investment Security
- Brian Reissaus, Director, Investment Security
- Patricia Pollard, Deputy Assistant Secretary for International Money and Financial Policy
- Clarence Severens, Director, Office of Development Results and Accountability
- Andy Baukol, Principal Deputy Assistant Secretary for International Monetary Policy
- Thomas Dans, Counselor to the Under Secretary for International Affairs
- Matthew Haarsager, Deputy Assistant Secretary for International Development Finance and Policy
- Robert Kaproth, Deputy Assistant Secretary for South and East Asia
- Michael Kaplan, Deputy Assistant Secretary for Western Hemisphere and South Asia
- Albert Lee, Director, Market Rooms
- William McDonald, Deputy Assistant Secretary for Technical Assistance Policy
- Lailee Moghtader, Deputy Assistant Secretary for Trade Policy
- Devesh Ashra, Deputy Assistant Secretary for Investment, Energy and Infrastructure
- Anthony Ieronimo, Director, Office of Trade Finance
- Sharon Yang, Deputy Assistant Secretary for International Financial Markets
- Eric Meyer, Deputy Assistant Secretary for Africa, Middle East and MDB Operations
- Jason R. Orlando, Director, Office of Technical Assistance
- Howard Adler, Deputy Assistant Secretary for Financial Stability Oversight Counsel
- Stephen Ledbetter, Director of Policy
- David Lebryk, Fiscal Assistant Secretary
- Gregory Till, Deputy Assistant Secretary for Fiscal Operations and Policy
- Christopher H. Kubeluis, Director for the Office of Fiscal Projections
- Theodore R. Kowalsky, Director for the Office of Grants and Asset Management
- Walter Kim, Director for the Office of Financial Institutions and Policy
- Jonathan Greenstein, Deputy Assistant Secretary, Financial Institution Policy
- Gavin Beske, Deputy Assistant Secretary for Community and Economic Development
- Brian Peretti, Director of International Coordination and Mission Support
- Steven E. Seitz, Director for the Office of Federal Insurance Office
- David B. Lacquement, Deputy Assistant Secretary for Cybersecurity and Critical Infrastructure
- Jodie L. Harris, Director for Community Development and Financial Institutions
- Dennis E. Nolan, Deputy Director for Finance and Operations
- Marcia Sigal, Deputy Director for Policy and Programs
- Brian M. Smith, Deputy Assistant Secretary for Federal Finance
- Gary Grippo, Deputy Assistant Secretary for Government Financial Policy
- Peter Phelan, Deputy Assistant Secretary for Capital Markets
- Jeffrey Stout, Director of Federal Program Finance
- Fred Pietrangeli, Director for the Office of Debt Management
- Michael K. Kranbuhl, Principal Deputy Assistant Secretary for Financial Markets
- Daniel J. Harty, Director, Capital Markets
- Melissa Moye, Director for State and Local Finance
- Andrea Gacki, Director for the Office of Foreign Assets Control
- Bradley T. Smith, Deputy Director for the Office of Foreign Assets Control
- Gregory Gatjanis, Associate Director for the Office of Global Targeting
- Lisa M. Palluconi, Associate Director for the Office of Program Policy and Implementation, Office of Foreign Assets Control
- John H. Battle, Associate Director for Resource Management, Office of Foreign Assets Control
- Billy Bradley, Deputy Director, Treasury Executive Office for Asset Forfeiture
- Lawrence Scheinert, Associate Director for the Office of Compliance and Enforcement
- Todd Conklin, Deputy Associate Director for the Office of Global Targeting
- Paul Ahern, Principal Deputy Assistant Secretary for Terrorist Financing and Financial Crimes
- Scott Rembrandt, Deputy Assistant Secretary for the Office of Strategic Policy, Terrorist Financing and Financial Crimes
- Katherine Amlin, Deputy Assistant Secretary for Analysis and Production
- Thomas J. Wolverton, Deputy Assistant Secretary for Security and Counterintelligence
- Jill L. Jermano, Director for the Office of Transnational Issues
- Michael Neufeld, Principal Deputy Assistant Secretary for the Support and Technology
- Patrick Conlon, Director for the Office of Economics and Finance
- Everette E. Jordan, Deputy Assistant Secretary for Intelligence Community Integration
- Kimberly J. Pinter, Deputy Assistant Secretary for Legislative Affairs (Tax and Budget)
- Michael D. DiRoma, Deputy Assistant Secretary for Legislative Affairs (International Affairs)
- Andrew Eck, Deputy Assistant Secretary for Legislative Affairs (Terrorism and Financial Intelligence)
- Lauren Nunnally, Deputy Assistant Secretary for Legislative Affairs (Appropriations and Management)
- Jonathan M. Blum, Deputy Assistant Secretary for Legislative Affairs (Banking)
- Frederick Vaughan, Principal Deputy Assistant Secretary for Legislative Affairs
- Brian R. Morgenstern, Deputy Assistant Secretary for Public Affairs (Domestic)
- Christopher Soars, Director, Office of Microeconomic Analysis
- Jonathan S. Jaquette, Director for Receipts Forecasting
- Edith Brashares, Director for the Office of Tax Analysis
- Curtis Carlson, Director for Business Revenue
- Adam Cole, Director for Individual Taxation
- Timothy E. Skud, Deputy Assistant Secretary for Tax, Trade and Tariff Policy
- Robert E. Gillette, Director for Economic Modeling and Computer Applications
- Jeffrey Van Hove, Senior Advisor for Tax Policy
- Lafayette G. Harter, Deputy Assistant Secretary for International Affairs
- Ryan Law, Deputy Assistant Secretary for Privacy Transparency and Records
- Robert Mahaffie, Deputy Assistant Secretary for Management and Budget
- Tonya Burton, Director for the Office of Financial Management
- Lenora Stiles, Director, Strategic Planning and Performance Improvement
- Stephen Cotter, Director, Special Entity Accounting

- William Sessions, Departmental Budget Director
- Carole Y. Banks, Deputy Chief Financial Officer
- J. Trevor Norris, Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer
- Lorraine Cole, Director, Office of Minority and Women Inclusion
- Colleen Heller-Stein, Human Resource Officer for Departmental Offices/Deputy Chief Human Capital Officer
- Nancy Ostrowski, Director of DC Pensions
- David Aten, Director, Integrated Talent Management Implementation
- Eric R. Olson, Deputy Assistant Secretary for Management, Information Systems and CIO
- Antony P. Arcadi, Associate Chief Information Officer for Enterprise Infrastructure Operations
- Nicolaos Totten, Associate Chief Information Officer for Enterprise Application Services
- Francis O'Hearn, Associate Chief Information Officer, IT Strategy, Technology Management and CTO
- Christopher Weaver, Director for the Office of Consumer Policy

Bureau of Engraving and Printing

- Judith Diazmyers, Senior Advisor
- Steven Fisher, Associate Director (Chief Financial Officer)
- Richard Roy Clark, Associate Director (Quality)
- Frank Freeman III, Associate Director (Management)
- Justin D. Drahein, Associate Director (Product Design and Development)
- Harinder Singh, Associate Director, (Chief Information Officer)

Financial Crimes Enforcement Network

- Michael Mosier, Deputy Director/ Digital Innovation Office
- Amy L. Taylor, Associate Director, Technology Solutions and Services/ CIO
- Peter Bergstrom, Associate Director, Management/CFO
- Kenneth L. O'Brien, Deputy Associate Director, Chief Technology Officer
- Matthew R. Stiglitz, Associate Director, Global Investigations Division
- Timothy Ott, Associate Director, Liaison Division
- Ana Tirol, Associate Director, Liaison Division

U.S. MINT

- Matthew Holben, Associate Director for Sales and Marketing/Chief Marketing and Sales Officer
- Kristie L. McNally, Associate Director for Financial Management/CFO
- David Croft, Associate Director for Manufacturing
- Robert Kuryzna, Plant Manager, Philadelphia
- B.B. Craig, Associate Director for Environment, Safety and Health
- Randall Johnson, Plant Manager for Denver

Tax and Trade Bureau

- Daniel T. Riordan, Assistant Administrator, Permitting and Taxation
- Cheri Mitchell, Assistant Administrator, Management/CFO
- Nicholas Colucci, Assistant Administrator, Field Operations
- Robert Hughes, Assistant Administrator, Information Resources/CIO
- Elisabeth C. Kann, Assistant Administrator, External Affairs/Chief of Staff

Bureau of Fiscal Service

- Keith Alderson, Director (DMSOC-East)
- Douglas Anderson, Senior Advisor
- Linda C. Chero, Director
- David T. Copenhaver, Assistant Commissioner
- Christina M. Cox, Deputy Assistant Commissioner
- Paul Deuley, Deputy Assistant Commissioner
- Jan P. Draber, Assistant Commissioner
- Peter T. Genova, Deputy Assistant Commissioner
- Joseph Gioeli, Deputy Assistant Commissioner
- Adam H. Goldberg, Executive Director
- Jason T. Hill, Deputy Assistant Commissioner (Shared Services)
- John B. Hill, Director (Financial Innovation and Transformation)
- Wallace H. Ingram, Director (DMSOC-West)
- Ronda L. Kent, Assistant Commissioner
- Theresa Kohler, Assistant Commissioner
- D. Michael Linder, Assistant Commissioner
- Justin Marsico, Executive Director (Data Transparency Commission Staff)
- Kimberly A. McCoy, Senior Advisor
- Corvelli A. McDaniel, Assistant Commissioner
- Alyssa W. Riedl, Director (Compliance and Reporting Group)
- Vona Susan Robison, Executive Director (Kansas City)
- Tamela Saiko, Deputy Assistant Commissioner
- Lori Santamorena, Executive Director (Government Securities Regulations Staff)
- Marisa Schmader, Deputy Assistant Commissioner
- Dara N. Seaman, Assistant Commissioner
- Thomas T. Vannoy, Deputy Assistant Commissioner
- Daniel J. Vavasour, Assistant Commissioner
- Sandra Paylor Sanders, Director (Collections and Deposits Group)

Applicable Date: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Julia J. Markham or Kimberly Jackson, Office of Executive Resources, 1500 Pennsylvania Avenue NW, ATTN: 1722 Eye Street, 9th Floor, Washington, DC 20220, Telephone: 202–622–0774.

Kimberly Jackson,

Human Resources Specialist, Office of Executive Resources.

[FR Doc. 2020–22811 Filed 10–14–20; 8:45 am]

BILLING CODE 4810–25–P

UNITED STATES INSTITUTE OF PEACE

Notice of Meeting

Date/Time: Friday, October 23, 2020 (10:00 a.m.-12:00 p.m.)

Location: Virtual Board Meeting Information: Join by video: *https://usip-org.zoomgov.com/j/1609287446?pwd=VG1NMU1tSXhOVDVuZ1ByeXgwZjFxZz09* Dial-in option: +1–646–828–7666. Meeting ID: 160 928 7446/Password: 379836.

Status: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: October 23, 2020 Board Meeting: Chairman's Report; Vice Chairman's Report; Acting President's Report; Reports/Updates from the Front Lines: *Afghan Peace Process, Red Sea Arena, Strategic Stability and Security,* and *Iraq;* Approval of Minutes; Reports from USIP Building, Program, Audit & Finance, Search, and Security Committees.

Contact: Megan O'Hare, Chief of Staff: *mohare@usip.org*

Dated: October 9, 2020.

Megan O'Hare,

Chief of Staff.

[FR Doc. 2020–22878 Filed 10–14–20; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 85 Thursday,

No. 200 October 15, 2020

Part II

Securities and Exchange Commission

17 CFR Parts 200, 201, 240, et al.

Rescission of Effective-Upon-Filing Procedure for NMS Plan Fee Amendments and Modified Procedures for Proposed NMS Plans and Plan Amendments; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, 240, and 242

[Release No. 34–89618; File No. S7–15–19]

RIN 3235–AM56

Rescission of Effective-Upon-Filing Procedure for NMS Plan Fee Amendments and Modified Procedures for Proposed NMS Plans and Plan Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is amending Regulation NMS under the Securities Exchange Act of 1934 (''Exchange Act'') to rescind a provision that allows a proposed amendment to a national market system plan (''NMS plan'') to become effective upon filing if the proposed amendment establishes or changes a fee or other charge. As a result of rescinding the provision, such a proposed amendment instead will be subject to the procedures under which there must be an opportunity for public comment and Commission approval by order prior to effectiveness. The Commission also is amending its regulations to require that proposed NMS plans and proposed amendments to existing NMS plans be filed with the Commission by email, and is amending its regulations to modify the procedures applicable to the Commission's handling of proposed NMS plans and plan amendments, including fee amendments. Finally, the Commission is adopting amendments to its rules of practice regarding disapproval proceedings and its delegations of authority to the Director of the Division of Trading and Markets (''Division'').

DATES: Effective November 16, 2020.

FOR FURTHER INFORMATION CONTACT: Michael Bradley, Special Counsel, at (202) 551–5594, Andrew Sherman, Special Counsel, at (202) 551–7255, Liliana Burnett, Special Counsel, at (202) 551–2552, Division, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is: (1) Rescinding and reserving paragraph (b)(3)(i) of 17 CFR 242.608 (Rule 608 of Regulation NMS) under the Exchange Act, and thereby eliminating the effective-upon-filing exception for proposed NMS plan amendments to establish or change a fee or other charge collected on behalf of all the plan participants in connection with access to, or use of, any facility contemplated by the plan or amendment (including changes in any provision with respect to distribution of any net proceeds from such fees or other charges to the participants) (''NMS plan fee amendment''); (2) adopting amendments to 17 CFR 242.608(a)(1) (Rule 608(a)(1)) to require that proposed NMS plans and plan amendments be filed with the Commission by email; (3) adopting amendments to 17 CFR 242.608(b)(1) and (2) (Rule 608(b)(1) and (2)) to modify the procedure applicable to Commission action on a proposed NMS plan or plan amendment; (4) adopting modifications in 17 CFR 201.700 and 701 (Commission Rules of Practice 700 and 701); (5) adopting an updated cross-reference in 17 CFR 240.19b–4(g) (Rule 19b–4(g)); (6) amending 17 CFR 200.30–3 (Rule 30–3) to delegate authority to the Division Director to publish notice of the filing of a proposed NMS plan amendment, to notify plan participants that a proposed NMS plan or plan amendment does not comply with 17 CFR 242.608(a) (Rule 608(a)) or plan filing requirements in other sections of Regulation NMS and 17 CFR 240, subpart A, to determine that a proposed NMS plan or plan amendment is unusually lengthy and complex or raises novel regulatory issues and inform the NMS plan participants of such determination, to institute proceedings to determine whether a proposed NMS plan or plan amendment should be disapproved, to provide the NMS plan participants notice of the grounds for disapproval under consideration, to extend for a period not exceeding 240 days from the date of publication of notice of the filing of a proposed NMS plan or plan amendment the period during which the Commission must issue an order approving or disapproving the proposed NMS plan or plan amendment and determine whether such longer period is appropriate and publish the reasons for such determination; (7) amending Rule 30–3 to remove delegated authority from the Division Director to approve a proposed NMS plan amendment and to extend a time period that will no longer exist under Rule 608(b) as amended; and (8) amending Rule 30–3 to relocate within the rule existing delegations of authority to the Division Director to summarily abrogate a proposed NMS plan amendment put into effect upon filing with the Commission and require that such amendment be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608, and to put a proposed plan amendment into effect summarily upon publication of notice and on a temporary basis not to exceed 120 days.

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I. Introduction

On October 1, 2019, the Commission proposed to amend Rule 608 under Regulation NMS to rescind paragraph (b)(3)(i) and thereby eliminate the effective-upon-filing exception for NMS plan fee amendments.[1] Rule 608 under Regulation NMS sets forth requirements for the filing and amendment of NMS plans. Rule 608(a) provides that any two

[1] Securities Exchange Act Release No. 87193, 84 FR 54794 (Oct. 11, 2019) (''Proposing Release'' or ''Proposal'').

or more self-regulatory organizations (''SROs''), acting jointly, may file a new proposed NMS plan or a proposed amendment to an existing NMS plan by submitting to the Secretary of the Commission the text of the plan or amendment along with extensive supporting information.[2] Rule 608(b) addresses the effectiveness of proposed NMS plans and plan amendments, and sets forth a procedure for Commission action in paragraphs (b)(1) and (b)(2). Among other things, this procedure precludes a proposed NMS plan amendment from becoming effective until after an opportunity for public comment and Commission approval by order.

Paragraph (b)(3)(i) of Rule 608, however, has provided for NMS plan fee amendments an exception to the standard procedure since Rule 608 was adopted in 1981 (the ''Fee Exception'').[3] Under the Fee Exception, a NMS plan fee amendment could be put into effect upon filing with the Commission, before comments could be submitted and without Commission approval.[4] Consequently, the Fee Exception allowed the SROs, as NMS plan participants that constitute the NMS plan operating committees and vote to approve plan amendments, to begin charging new or altered NMS plan fees to a wide range of market participants prior to an opportunity for public comment and without Commission action.[5]

After considering the comments received on the Proposal to rescind the Fee Exception,[6] the Commission has determined that the Fee Exception is no longer appropriate for today's national market system and should be rescinded. As a result, NMS plan fee amendments will be subject to the procedure set forth in Rule 608(b)(1) and (2), and there must be an opportunity for public comment and Commission approval by order before the fees can become effective. The Commission also has decided to amend Rule 608(a)(1) to require that proposed new NMS plans and plan amendments be filed with the Commission by email, and to modify the procedure set forth in Rule 608(b)(1) and (2) for the Commission's handling of proposed new NMS plans and proposed amendments to existing NMS plans, including NMS plan fee amendments. As discussed below, the modified procedure sets forth a new process and timeframes for Commission publication of notice and for subsequent Commission action. In addition, the Commission is adopting amendments to Commission rules of practice and delegations of authority.

II. Rule Amendments

A. Rescission of the Fee Exception

The Commission proposed to rescind the Fee Exception based on several factors, many of which were echoed by commenters. As discussed in the Proposal and by commenters, NMS plan fees have a broad effect on a wide range of market participants, and the total revenues derived from NMS plans' fees are substantial.[7] In addition, non-SRO market participants, including investors, broker-dealers, data vendors and others, are required to pay the fees charged by NMS plans to obtain core data, as well as critical market information that is not available from sources other than the core data NMS plans, such as regulatory data required by the National Market System Plan to Address Extraordinary Market Volatility (''LULD'' plan) and administrative messages.[8] Further, the exchange SROs have demutualized in the time since Rule 608 (and the Fee Exception) was adopted in 1981, resulting in less opportunity for SRO members to influence a NMS plan fee amendment before it is filed with the Commission.[9] There also are potential conflicts of interest for exchange SROs in setting NMS plan fees for core data,[10] and for SRO participants in the CAT plan in setting fees that industry members must pay for the costs of the CAT system.[11] Moreover, even if the

[2] As discussed in the Proposal, Section 11A of the Exchange Act directs the Commission to facilitate the creation of a national market system for qualified securities. 15 U.S.C. 78k–1(a). Proposing Release, *supra* note 1, at 54794.

[3] Proposing Release, *supra* note 1, at 54796–97. Paragraph (b)(3)(iii) of Rule 608 provides that the Commission may summarily abrogate an immediately effective amendment within 60 days after filing and require it to be refiled as not immediately effective if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act.

[4] While a NMS plan fee amendment was deemed effective upon filing, the required substance of the fee amendment is the same as what is required for a proposed NMS plan amendment that is not immediately effective. *See* Rule 608(a).

[5] The Fee Exception has been available for NMS plans that charge or intend to charge fees. Currently, these are: (i) The NMS plans that govern the facilities through which registered securities information processors (''SIPs'') collect, consolidate, and distribute real-time market information (also known as ''core data''); and (ii) the plan that governs the consolidated audit trail (''CAT''). The participants in these plans are all SROs. The Proposing Release sets forth additional background concerning the core data plans and the CAT plan, those plans' fee-setting process, Rule 608 of Regulation NMS and the Fee Exception, and pre-Proposal comments and petitions regarding the Fee Exception. *See* Proposing Release, *supra* note 1, at 54795–99.

[6] Comments received on the Proposal are available on the Commission's website, *available at https://www.sec.gov/comments/s7-15-19/s71519.htm.*

[7] Proposing Release, *supra* note 1, at 54798; Letter from Dennis M. Kelleher, President and CEO, and Lev Bagramian, Senior Securities Policy Advisor, Better Markets Inc., to Vanessa Countryman, Secretary, Commission, dated December 10, 2019 (''Better Markets Letter''), at 3; Letter from Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., to Vanessa Countryman, Secretary, Commission, dated December 10, 2019 (''Bloomberg Letter''), at 2; Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, to Vanessa Countryman, Secretary, Commission, dated December 5, 2019 (''CII Letter''), at 2–3; Letter from Dorothy M. Donohue, Deputy General Counsel, Securities Regulation, Investment Company Institute, to Vanessa Countryman, Secretary, Commission, dated December 10, 2019 (''ICI Letter''), at 1–2; Letter from Rich Steiner, Head of Client Advocacy and Market Innovation, RBC Capital Markets, to Vanessa Countryman, Secretary, Commission, dated December 10, 2019 (''RBC Capital Markets Letter''), at 3. As noted in the Proposal, the total revenues generated by fees charged by the core data plans totaled more than $500 million in 2017. Proposing Release, *supra* note 1, at 54798. The total revenues generated by fees charged by the core data plans totaled more than $500 million in 2018 as well. Both the 2017 and 2018 amounts are derived from audited financial statements for the CTA/CQ and Nasdaq/UTP plans, and from summary financial information for the OPRA plan.

[8] Proposing Release, *supra* note 1, at 54798–99; Better Markets Letter at 2–3; Bloomberg Letter at 2–3, 5; Letter from Ray Ross, Chief Technology Officer, Clearpool Group, to Vanessa Countryman, Secretary, Commission, dated December 10, 2019 (''Clearpool Letter''), at 3; Letter from Joanna Mallers, Secretary, FIA Principal Trading Group, to Vanessa Countryman, Secretary, Commission, dated December 10, 2019 (''FIA Principal Traders Letter''), at 1; Letter from Derrick Chan, Head of Equities Trading and Sales, Fidelity Capital Markets, to Vanessa Countryman, Secretary, Commission, dated December 10, 2019 (''Fidelity Letter''), at 2 and n. 3; ICI Letter at 1; Letter from Theodore D. Lazo, Managing Director, Associate General Counsel, SIFMA, to Vanessa Countryman, Secretary, Commission, dated December 6, 2019 (''SIFMA Letter''), at 1–2. Commenters also stated that the core data plans are monopolistic providers of market-wide services and there is no market competition that can be relied upon to set competitive prices. Better Markets Letter at 3; Bloomberg Letter at 2, 5; CII Letter at 2, 3; Clearpool Letter at 3; Fidelity Letter at 3; Letter from Mark D. Epley, Executive Vice President and Managing Director, General Counsel, and Jennifer W. Han, Associate General Counsel, Managed Funds Association, to Vanessa Countryman, Secretary, Commission, dated December 6, 2019 (''MFA Letter''), at 3; RBC Capital Markets Letter at 2.

[9] Proposing Release, *supra* note 1, at 54799; Letter from Tyler Gellasch, Executive Director, Healthy Markets Association, to Vanessa Countryman, Secretary, Commission, dated December 12, 2019 (''Healthy Markets Letter''), at 10.

[10] Proposing Release, *supra* note 1, at 54799–802; Better Markets Letter at 3–4; Bloomberg Letter at 5; CII Letter at 3–4; Clearpool Letter at 3; Fidelity Letter at 3; Healthy Markets Letter at 1, 4–5; RBC Capital Markets Letter at 2.

[11] Proposing Release, *supra* note 1, at 54798; FIA Principal Traders Letter at 1–2; Fidelity Letter at 3. On August 29, 2019, the operating committee for CAT NMS, LLC filed an immediately effective NMS plan amendment that created a new Delaware

Continued

Commission ultimately abrogates a NMS plan fee amendment, the Fee Exception allows the new or altered fee to be effective during the time between its filing and abrogation.[12]

Commenters that supported the Proposal also criticized the Fee Exception, stating that it does not facilitate informed and meaningful public comment,[13] discourages market participants from submitting comments on NMS plan fee amendments,[14] provides too much autonomy to SIP operators,[15] and provides an inadequate opportunity for investors and market participants to prepare for a new or altered NMS plan fee before it is charged.[16] Commenters stated that, instead, NMS plan fee amendments should become effective only after public notice, an opportunity for comment, and Commission approval.[17] They stated that this procedure will: (i) Create a more meaningful comment process; [18] (ii) impose the financial and operational costs of fee changes only after notice, comment, and an affirmative Commission disposition, which will help mitigate the risk of unwarranted fee changes, avoid complications with refunds should an application be withdrawn or subsequently denied, and more appropriately place the cost of delay in imposing a new fee on the filer; [19] (iii) more properly allocate administrative burdens such that agency action is necessary to approve, rather than abrogate, a NMS plan fee amendment; [20] (iv) provide greater assurance that NMS plan fees are fair and reasonable before they go into effect; [21] and (v) provide advanced notice and time to plan for a fee change,[22] which should help facilitate more fair, orderly and efficient markets.[23]

The Commission continues to believe that a NMS plan fee amendment should not become effective—and SRO plan participants should not be able to charge new or altered fees to investors, broker-dealers, and others—until after the public has had an opportunity to comment on the NMS plan fee amendment. By changing the timing of effectiveness, commenters will have an opportunity to provide their views about a NMS plan fee amendment prior to the time they are charged a new or altered NMS plan fee, and the Commission will have an opportunity to consider commenters' views before a NMS plan fee amendment becomes effective. The Commission believes that this is an appropriate adjustment to the comment process for NMS plan fee amendments in light of how broadly NMS plan fees affect market participants.

In response to a request for comment in the Proposal, commenters addressed a potential alternative approach where the Commission could modify Rule 608(b)(3) such that a NMS plan fee amendment is not effective immediately upon filing, but becomes effective automatically some time period (*e.g.,* 60 or 90 days) after filing if the Commission does not abrogate the filing.[24] Several commenters criticized this alternative approach as suffering from the same defects as the effective-upon-filing procedure.[25] Another commenter believed the alternative would be inappropriate because Commission review and approval by order should be required before a NMS plan fee is effective, given the lack of competition for NMS plan fees.[26] One commenter stated that the alternative would be acceptable and would achieve substantially the same goals as the Proposal.[27]

The Commission is not adopting this alternative approach. While the alternative approach included a comment period and Commission abrogation, if necessary, prior to the effectiveness of a NMS plan fee amendment, the Commission has decided to rescind the Fee Exception and to adopt the requirement of Commission approval by order before a NMS plan fee amendment can become effective. The Commission does not believe that any proposed NMS plan fee should be imposed on the public without an affirmative Commission determination that the fee meets the relevant requirements of the Exchange Act and rules thereunder. This is what will occur under the procedure set forth in Rule 608(b)(1) and (2), as amended, which is being modified from the Proposal as discussed below.

B. Modified Procedure for Proposed NMS Plans and Plan Amendments

1. Amendments to Rule 608

In the Proposing Release, the Commission requested comment on whether the existing procedure for notice, comment and Commission

limited liability company, named Consolidated Audit Trail, LLC, for the purposes of conducting activities related to the CAT plan. *See* Securities Exchange Act Release No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019). The CAT plan currently allows the operating committee of Consolidated Audit Trail, LLC to establish funding for Consolidated Audit Trail, LLC, including establishing an allocation of its related costs among SRO participants and SRO members that is consistent with the Exchange Act. *See* Proposing Release, *supra* note 1, at 54796 and n. 17, 54798.

[12] Proposing Release, *supra* note 1, at 54799; Bloomberg Letter at 3; Fidelity Letter at 4; RBC Capital Markets Letter at 4. One commenter stated that this can cause disruption and attendant costs. RBC Capital Markets Letter at 4.

[13] Better Markets Letter at 1–3; Bloomberg Letter at 4, 7; Clearpool Letter at 2; Healthy Markets Letter at 8. Two commenters stated that the effective-upon-filing process has made it difficult for the Commission to evaluate if proposed NMS plan fee amendments comply with the Exchange Act and Commission rules. Better Markets Letter at 2–3; Healthy Markets Letter at 7.

[14] Better Markets Letter at 3; MFA Letter at 2–3; RBC Capital Markets Letter at 3. One commenter stated that market participants are discouraged from commenting on NMS plan fee amendments because, given the Commission's history of abrogating less than one out of ten fee amendments, they have little confidence that their after-the-fact feedback will persuade the Commission to abrogate the fee amendment and assess whether the fees are necessary or appropriate in the public interest. Better Markets Letter at 3. Another commenter stated that market participants are likely to perceive NMS plan fee amendments that are subject to an effective-upon-filing procedure as a *fait accompli,* and be less willing to spend time to submit comments or raise concerns. MFA Letter at 2–3.

[15] Bloomberg Letter at 4; ICI Letter at 2.

[16] Bloomberg Letter at 3; Clearpool Letter at 2; Fidelity Letter at 3–4; Healthy Markets Letter at 10; RBC Capital Markets Letter at 4.

[17] Better Markets Letter at 3; Bloomberg Letter at 1–3, 6; CII Letter at 2–3; Clearpool Letter at 1–2; FIA Principal Traders Letter at 1; Fidelity Letter at 2; Healthy Markets Letter at 7–9; ICI Letter at 2; MFA Letter at 2; RBC Capital Markets Letter at 2–4; SIFMA Letter at 1.

[18] Better Markets Letter at 3; Bloomberg Letter at 2, 5; Clearpool Letter at 2; FIA Principal Traders Letter at 1; Fidelity Letter at 3; Healthy Markets Letter at 8; MFA Letter at 2–3; RBC Capital Markets Letter at 3–4; SIFMA Letter at 1.

[19] RBC Capital Markets Letter at 3–4.

[20] Bloomberg Letter at 3–6.

[21] Bloomberg Letter at 5; CII Letter at 2; ICI Letter at 2; MFA Letter at 1–3; RBC Capital Markets Letter at 3.

[22] Bloomberg Letter at 3; ICI Letter at 2; RBC Capital Markets Letter at 3–4.

[23] RBC Capital Markets Letter at 4. Some commenters made suggestions regarding NMS plan governance and transparency that are outside the scope of this rulemaking. *See* Better Markets Letter at 5–6; Bloomberg Letter at 7–8; Clearpool Letter at 3 n. 6; Fidelity Letter at 4; Healthy Markets Letter at 5–6; ICI Letter at 2–3. In addition, some commenters made suggestions regarding what substantive information should be set forth in NMS plan fee amendments, and guidance that the Commission should provide in that regard. *See* MFA Letter at 3–4; Healthy Markets Letter at 11. The Commission is not adopting amendments to the required substance of proposed NMS plan amendments. As discussed in the Proposal, the rescission of the Fee Exception does not change any requirements regarding the substantive information that must be set forth in NMS plan fee amendments pursuant to paragraph (a) of Rule 608 and the relevant provisions of the Exchange Act. Proposing Release, *supra* note 1, at 54798.

[24] *See* Proposing Release, *supra* note 1, at 54799, 54804–05; *see also* Bloomberg Letter at 4 n. 8; Clearpool Letter at 2–3 n. 5; Healthy Markets Letter at 8–9; MFA Letter at 3; RBC Capital Markets Letter at 4–5; Fidelity Letter at 4; Letter from Joan C. Conley, Senior Vice President and Corporate Secretary, The Nasdaq Stock Market LLC, to Vanessa Countryman, Secretary, Commission, dated December 10, 2019 (''Nasdaq Letter''), at 2, 4–5.

[25] Bloomberg Letter at 4 n. 8; Clearpool Letter at 2–3 n. 5; Healthy Markets Letter at 8–9; MFA Letter at 3; RBC Capital Markets Letter at 4–5.

[26] Fidelity Letter at 4.

[27] Nasdaq Letter at 2, 4–5.

action in Rule 608(b)(1) and (2) would be appropriate for NMS plan fee amendments if the Fee Exception were rescinded.[28] The Commission also asked whether the time periods in Rule 608 for Commission action should be longer or shorter for NMS plan fee amendments, whether any other aspects of the Rule 608 procedure should be modified for NMS plan fee amendments, and what issues or improvements relating to Rule 608 procedures commenters would recommend that the Commission address or undertake to ensure that NMS plan fee amendments are not unduly delayed.[29]

Two commenters recommended that the Commission incorporate into Rule 608 procedures for Commission action on proposed NMS plan amendments that mirror the procedures for individual SRO rule filings under Section 19(b) of the Exchange Act.[30] They stated that, under these Section 19(b) procedures, a SRO rule filing is ''deemed approved'' if the Commission does not act within the specified timeframe for final action.[31] These commenters also stated that it is particularly important to add a deadline for the Commission to publish notice of a proposed NMS plan amendment, and provided examples of proposed NMS plan amendments that were not published until several months after their submission to the Commission or had not yet been published several months after submission.[32] They also criticized the Commission's estimate that the median time for processing a proposed NMS plan amendment is 70.5 days, stating that median times are less affected than mean times by outlier cases when the Commission's processing of amendments has been significantly delayed.[33] These commenters believed that explicit deadlines for Commission action on proposed NMS plan amendments would result in a more transparent and expeditious process.[34]

One commenter opposed incorporating a deemed approved provision into Rule 608.[35] This commenter believed that Commission inaction resulting in a proposed NMS plan amendment being deemed approved would be inconsistent with judicial precedent and public policy, and stated that Section 11A of the Exchange Act does not explicitly authorize the deemed approved provision found in Section 19(b).[36] Similarly, another commenter stated that it would not be appropriate for NMS plan fee amendments to become automatically effective if the Commission does not take specific action, and that Commission approval by order should be required before a NMS plan fee amendment can become effective.[37]

The Commission has decided to adopt a modified procedure for Commission action on all proposed new NMS plans and plan amendments, including NMS plan fee amendments.[38] This procedure is largely patterned on the current statutory requirements in Section 19(b) for Commission review of SRO proposed rule changes, but with modifications that reflect the particular nature of proposed new NMS plans and plan amendments. As discussed in the Proposal, Section 11A(a)(3)(B) of the Exchange Act, which governs Rule 608 and NMS plans, does not mandate any specific procedures for Commission action.[39] It instead broadly authorizes the Commission to require SROs to act jointly with respect to matters relating to the national market system.[40] Pursuant to that authority, the Commission may adopt (and has adopted in the past) procedures in Rule 608 that are appropriate for handling proposed NMS plans and plan amendments,[41] and the Commission may determine what, if any, elements of the Section 19(b) process for SRO rule filings are appropriate to incorporate into the Rule 608 procedures for proposed NMS plans and plan amendments.[42]

The current timeframes in Rule 608(b) for Commission action begin to run on the date of publication of notice of the filing of a national market system plan or an amendment to an effective national market system plan. In other words, after plan participants file a proposed NMS plan or plan amendment with the Commission, the Commission must thereafter publish notice of the filing in the **Federal Register** in order for the current time periods in Rule 608(b) to begin.[43] But, as commenters pointed out, Rule 608(b) currently does not set forth a timeframe for the Commission to publish notice after it has received a filing, and therefore there is no specified date when the time periods that are included in current Rule 608(b) are to begin. In addition, Rule 608(b) currently does not include a requirement for the Commission to issue an order disapproving a proposed NMS plan or plan amendment for which the Commission does not make the finding necessary for approval.

In Section 19(b) of the Exchange Act, Congress enacted a procedure for Commission publication of notice of and action on individual SRO rule

[28] Proposing Release, *supra* note 1, at 54799.

[29] *Id.* at 54799–800.

[30] Letter from Howard Kramer and James Dombach, Murphy & McGonigle, Robert B. Wilcox, Jr. and Chris L. Bollinger, Schiff Hardin LLP, on behalf of the Operating Committees of the CTA Plan, CQ Plan, UTP Plan, and OPRA Plan, and the Plans' Participants and Members, to Vanessa Countryman, Secretary, Commission, dated December 9, 2019 (''Operating Committees Letter''); Nasdaq Letter. The Nasdaq Letter stated that it did not object to the Proposal provided that its recommended modifications are implemented. Nasdaq Letter at 2–4.

[31] Operating Committees Letter at 1, 7; Nasdaq Letter at 1–3 (concurring with the Operating Committees Letter).

[32] Operating Committees Letter at 3–4; Nasdaq Letter at 2–3. The Operating Committees also suggested that the Division be granted delegated authority to publish notice of proposed NMS plan amendments, stating that the Division already has delegated authority to approve or extend the time to approve proposed NMS plan amendments, but not to publish notice when proposed NMS plan amendments are filed. Operating Committees Letter at 4–5.

[33] Operating Committees Letter at 3–4; Nasdaq Letter at 3. *See* Proposing Release, *supra* note 1, at 54799–801. As discussed *infra,* the Commission agrees with these commenters and, for completeness, the Commission is revising its analysis to present estimates of both the average and median times related to NMS plan fee amendments. *See infra* note 117.

[34] Operating Committees Letter at 2–5; Nasdaq Letter at 3.

[35] Healthy Markets Letter at 9.

[36] *Id.*

[37] Fidelity Letter at 4 and n. 6.

[38] As discussed *infra,* proposed plan amendments that are solely administrative, technical or ministerial remain effective-upon-filing pursuant to Rule 608(b)(3)(ii) and (iii), but they are subject to the modified notice publication process.

[39] *See* Proposing Release, *supra* note 1, at 54796–97. Commenters agreed with the Commission's analysis that Congress did not intend Section 19(b) to cover NMS plan fees or to treat NMS plans as analogous to individual SRO rules. Better Markets Letter at 4–5; Bloomberg Letter at 6–7 n. 14.

[40] *See* 15 U.S.C. 78k–1(a)(3)(B).

[41] *See* Proposing Release, *supra* note 1, at 54796; *see also* Securities Exchange Act Release No. 17580 (Feb. 26, 1981), 46 FR 15866 (Mar. 10, 1981) (adopting Rule 11Aa3–2, the predecessor to Rule 608) (''Rule 11Aa3–2 Adopting Release'').

[42] As discussed in the Proposing Release, when the Commission adopted Rule 11Aa3–2 (the predecessor to Rule 608) in 1981, it rejected the argument of some commenters that the procedures for NMS plan amendments under Section 11A should incorporate the same procedures specified in Section 19 for rule changes by individual SROs. *See* Proposing Release, *supra* note 1, at 54797; Rule 11Aa3–2 Adopting Release, *supra* note 41, at 15868 (noting that the legislative history ''indicates that Congress viewed the Commission's authority in Section 11A(a)(3)(B) as distinct from its authority contained in Section 19 or any other provision of the Act.''). Although Congress did not mandate procedures for NMS plan amendments, Rule 11Aa3–2, as adopted in 1981, included all three of the effective-upon-filing exceptions that currently are in Rule 608 and that were similar to the effective-upon-filing exceptions in Section 19 in effect at that time. *See* Proposing Release, *supra* note 1, at 54797; Rule 11Aa3–2 Adopting Release, *supra* note 41.

[43] This effectively means that ''starting the clock'' on the Commission's time to act on a proposed NMS plan or plan amendment does not occur until the Commission publishes notice of the filed plan or amendment.

filings that has proved workable in that context. In the past ten years, the Commission has received and processed thousands of SRO rule filings that were subject to the notice publication (and rejection) procedure in Section 19(b).[44] In addition, Section 19(b) sets forth certain requirements for SRO rule filings that, if applied to proposed NMS plans and plan amendments, would modify the above-noted aspects of the Rule 608(b) procedure. Importantly, and as pointed out by commenters, the Section 19(b) process ensures that the ''clock'' will begin to run on the Commission's time to act on a SRO rule filing and provides for certainty of approval or disapproval of a SRO rule filing within a specified timeframe that is lacking in Rule 608(b). This is because Section 19(b) of the Exchange Act sets forth a deadline for the Commission to publish notice of a SRO rule filing, with a default notice publication date if the Commission fails to meet that deadline,[45] and requires that the Commission issue a disapproval order if it does not make the finding necessary to approve a SRO rule filing.[46] Section 19(b) also authorizes the Commission to institute proceedings on a SRO rule filing, which is a useful intermediate procedural step by which the Commission can highlight issues and seek additional public comment that focuses on those issues. Neither Section 11A of the Exchange Act nor current Rule 608(b) sets out a process to institute proceedings or procedural detail like that set forth in Section 19(b) of the Exchange Act.

The Commission believes that a modified procedure for proposed new NMS plans and plan amendments that incorporates these aspects of Section 19(b) would be workable and beneficial. On average, roughly one proposed new NMS plan is filed with the Commission every five years, and roughly 13 proposed plan amendments are filed with the Commission per year[47]—a small fraction of the number of SRO rule filings that are filed with the Commission. Thus, the Commission expects the volume of proposed NMS plans and plan amendments under Rule 608(b) as amended to be manageable. In addition, ensuring that the ''clock'' begins on the Commission's time to act and requiring that the Commission disapprove, by order, a proposed NMS plan or plan amendment that it cannot approve will result in a more transparent and efficient process for handling proposed NMS plans and plan amendments. It will enable plan participants to more accurately project, at the time of filing, the maximum time by which they will receive affirmative Commission approval or disapproval of a proposed NMS plan or plan amendment. It will also help assure all market participants that the Commission will act within a specified timeframe. As a result, plan participants and other market participants should be better able to prepare for potential new NMS plans or changes in existing plan requirements.

Moreover, adopting a process for instituting proceedings, which could include seeking additional public comment, would facilitate Commission review of a complex proposed NMS plan or plan amendment and consideration of particular issues relevant to the Commission's determination whether to approve to disapprove such proposed plan or amendment. Further, as a result of the Commission's rescission of the Fee Exception,[48] proposed fee amendments will be subject to the procedural modifications that the Commission is incorporating into Rule 608(b)(1) and (2). These modifications are based on Section 19(b).

While commenters suggested applying the Section 19(b) procedures only to proposed plan amendments,[49] the Commission believes that it is appropriate to incorporate into amended Rule 608(b) similar requirements for both proposed new NMS plans and plan amendments. The Commission believes improved transparency and efficiency are important for both proposed new NMS plans and proposed plan amendments. Paragraphs (1) and (2) of current Rule 608(b) set forth the same procedural requirements for proposed NMS plans and plan amendments that are not effective upon filing, and the Commission believes it is also important to enhance the Commission's procedure for handling proposed new NMS plans.

Accordingly, as described in more detail below, the Commission is adopting amendments to Rule 608(b) to incorporate elements of the Section 19(b) process that will enhance the Commission's procedure for handling both proposed NMS plans and plan amendments. In light of differences between SRO rule filings and proposed NMS plans and plan amendments, the Commission is not incorporating every aspect of the Section 19(b) procedure into amended Rule 608(b), and the Commission is adopting certain timeframes for Commission action under amended Rule 608(b) that differ from what is required by Section 19(b).

a. Procedure for Notice Publication Under Rule 608(b)(1) as Amended

A new procedure for Commission publication of notice of the filing of proposed NMS plans and plan amendments is set forth in amendments to paragraph (b)(1) of Rule 608. New paragraphs (b)(1)(i) and (ii) of Rule 608 provide the time periods for the Commission to send notice of the filing of a proposed new NMS plan and a proposed plan amendment, respectively, to the **Federal Register**.

Specifically, under Rule 608(b)(1)(i), the Commission must send the notice of the filing of a proposed NMS plan to the **Federal Register** within 90 days of the business day on which such plan was filed with the Commission pursuant to paragraph (a) of Rule 608. If the Commission fails to send the notice to the **Federal Register** within such 90-day period, then the date of publication shall be deemed to be the last day of such 90-day period. Rule 608(b)(1)(i) therefore specifies a timeframe for the publication of notice of a new NMS plan and a default notice publication date if the Commission fails to act by the deadline. In so doing, Rule 608(b)(1)(i), unlike current Rule 608(b)(1), ensures for all NMS plans filed with the Commission that notice will be published in a specified timeframe.

The timeframe and default publication date differ, however, from what is set forth in Section 19(b) for SRO proposed rule changes. Under Section 19(b), if, after filing a proposed rule change with the Commission, the SRO publishes notice of the proposed rule change, together with the substantive terms of such proposed rule change, on a publicly accessible website, the Commission is required to send the notice to the **Federal Register** within 15 days of the date on which such website publication was made. If the Commission fails to send the notice for publication within such 15-day period, then the date of publication is

[44] *See* 15 U.S.C. 78s(b)(2)(E) and 78s(b)(10)(B). SRO rule filings become subject to the notice publication procedure in Section 19(b) upon filing with the Commission, but the Commission does not publish notice of filings that are rejected under Section 19(b)(10)(B) or withdrawn by the SRO prior to the noticing deadline in Section 19(b)(2)(E).

[45] *See* 15 U.S.C. 78s(b)(2)(E).

[46] *See* 15 U.S.C. 78s(b)(2)(A)(i), (b)(2)(B)(ii), and (b)(2)(C)(ii).

[47] These proposed plan amendments include amendments that are solely administrative, technical or ministerial, which remain effective-upon-filing under Rule 608(b)(3)(ii) and (iii). *See supra* note 38 and *infra* Section II.B.1.a and note 63. The Commission estimates that, on average, roughly eight to nine proposed plan amendments that are not effective-upon-filing, including fee amendments, will be filed each year.

[48] *See supra* Section II.A.

[49] Operating Committees Letter; Nasdaq Letter.

deemed to be the date on which such website publication was made.[50]

In the context of a proposed new NMS plan, while the Commission believes that the concept of a notice publication deadline and default publication date in the event of Commission failure to meet the deadline are beneficial, the Commission does not believe that a 15-day deadline, or the default to a website publication date if that deadline is missed, are workable. In order to send notice of a SRO rule filing to the **Federal Register** within the 15-day deadline mandated by Section 19(b), the Commission generally reproduces the proposed rule change filed by the SRO in a **Federal Register**-compliant format without including observations, questions, and requests for comment, in addition to what the SRO has filed. The publication of notice of a new NMS plan, in contrast, may require more time because new plans present more substance for review and typically raise a greater number of issues than would be the case for a SRO rule filing or a proposed amendment to an existing plan. As a result, the Commission may want to add material to the notice of a proposed new plan that is designed to facilitate informed public comment on the proposal, which is an integral aspect of the Commission's review of a new NMS plan. For example, the Commission added detailed requests for comment to the notice of the proposed NMS plan to implement a tick size pilot program.[51] The Commission anticipates it would need more than 15 days to prepare such additional material before sending notice of a proposed new NMS plan to the **Federal Register**. The Commission believes that 90 days both gives a sufficient amount of time for the Commission to complete such efforts and improves the current Rule 608(b) process for proposed new NMS plans by providing certainty and transparency regarding timeframes for Commission action. In addition, the 90-day timeframe for the Commission to send notice of a new NMS plan to the **Federal Register** will result in faster publication of the notice in the **Federal Register** than the average publication time under the current rule.[52]

A default notice publication date based on the date of plan participants' website posting, as in Section 19(b), would not be appropriate for proposed new NMS plans. Rule 608(a)(8) currently does not require website posting of a new NMS plan until after the plan has been approved and becomes effective. The Commission does not believe it would be appropriate to require website posting of a proposed new NMS plan prior to that time, as it could require the creation of a website for a proposed plan that is not yet and may never become effective, which could confuse market participants as to which NMS plans actually are effective at any given time.[53] The Commission believes, however, that it is important to provide certainty and transparency regarding the date on which the time periods for Commission action subsequent to notice publication will begin to run. Therefore, the Commission has adopted the default notice publication provision in paragraph (b)(1)(i) of amended Rule 608(b), pursuant to which the publication of notice of a new NMS plan is deemed to have occurred on the last day of the 90-day notice period if the Commission fails to send the notice to the **Federal Register** by the end of that period.

Similar to what will occur under Rule 608(b)(1)(i) for proposed new NMS plans, Rule 608(b)(1)(ii) will ensure for all proposed plan amendments filed with the Commission that notice will be published in a specified timeframe and that the time periods for Commission action subsequent to notice publication will be triggered. However, the noticing deadline and default notice publication date in paragraph (b)(1)(ii) differ from paragraph (b)(1)(i) by more closely following the requirements set forth in Section 19(b) for SRO rule filings. Specifically, under Rule 608(b)(1)(ii), the Commission must send the notice of the filing of a proposed NMS plan amendment to the **Federal Register** within 15 days of the business day on which such proposed amendment was posted on a plan website or a website designated by plan participants after being filed with the Commission. If the Commission fails to send the notice to the **Federal Register** within such 15-day period, then the date of publication shall be deemed to be the business day on which the plan participants posted notice of the proposed plan amendment on a plan website or a website designated by plan participants. These notice publication procedures in Rule 608(b)(1)(ii) apply to all proposed plan amendments, including solely administrative, technical, or ministerial plan amendments that remain effective-upon-filing under Rule 608(b)(3)(ii) and (iii).

Unlike for proposed new NMS plans, the noticing deadline for proposed NMS plan amendments in paragraph (b)(1)(ii) is measured from the date of website posting. Paragraph (b)(1)(ii) also defaults the notice publication date to the business day of such website posting if the Commission does not send the notice of the filing of the proposed plan amendment to the **Federal Register** within the deadline in paragraph (b)(1)(ii). Since website posting of proposed plan amendments within two business days of their filing is an existing requirement under Rule 608(a)(ii), these provisions impose no new burdens on plan participants and are not likely to confuse other market participants already familiar with the fact that plan participants post proposed plan amendments on their websites prior to the amendments becoming effective. Moreover, a similar framework exists, and has been workable, in the SRO rule filing context: SROs are required to post rule filings on their websites within two business days after their filing,[54] such website posting is a condition to triggering the 15-day noticing deadline for SRO rule filings,[55] and the notice publication date defaults to the business day of website posting if the Commission does not send notice of the SRO rule filing to the **Federal Register** within the 15-day deadline.[56] This framework was requested by commenters,[57] and would be workable and familiar to plan participants and market participants in the context of proposed plan amendments; the Commission believes that it is appropriate to adopt it in this context.

In addition, unlike in the context of proposed new NMS plans, the Commission believes that a 15-day notice deadline is workable in the context of proposed plan amendments because the process of publishing notice of proposed plan amendments generally need not go beyond reproducing materials provided by the plan

[50] *See* 15 U.S.C. 78s(b)(2)(E).

[51] *See* Securities Exchange Act Release No. 73511 (Nov. 3, 2014), 79 FR 66423 (Nov. 7, 2014).

[52] *See infra* Section IV.B.2, where the Commission estimates that the average and median time it currently takes to publish notice of proposed new NMS plans in the **Federal Register** are 163.8 days and 76.5 days, respectively.

[53] While an existing SRO's proposed rule changes are required to be posted on the SRO's website within two business days of filing and are typically website posted on the same day as filing (*see* Rule 19b–4(l)), there is no such requirement for applications to become a new SRO, such as a Form 1 application to become a registered national securities exchange.

[54] *See* Rule 19b–4(l). Such website posting typically occurs on the same day as filing and SROs must inform the Commission if that does not occur. *Id.* As discussed *infra* in Section II.B.1.d, the Commission is amending Rule 608(a)(8)(ii) to add a similar requirement that plan participants inform the Commission if website posting of a proposed plan amendment does not occur on the same business day as filing.

[55] *See* Section 19(b)(2)(E).

[56] *Id.*

[57] Operating Committees Letter at 6; Nasdaq Letter.

participants, similar to publishing notice of SRO rule filings. As discussed above, the Commission believes that proposed amendments to existing plans typically are more limited in substance than proposed new plans and therefore typically do not require the Commission to add statements to facilitate public comment.[58] A 15-day noticing time period would be substantially shorter than the current average and median timeframes in which the Commission publishes notice of proposed plan amendments.[59] Commenters requested a 15-day time period, and the Commission believes that it will be able to publish notice of proposed plan amendments within the requested 15-day time period. The 15-day noticing time period will provide market participants faster notice, via the **Federal Register**, of a proposed plan amendment that has been filed with the Commission, and will cause the ''clock'' to start on the Commission's time to act more promptly after such filing.

The Commission also is adopting new paragraphs (b)(1)(iii) and (b)(1)(iv) under Rule 608. Paragraph (b)(1)(iii) is generally based on Section 19(b)(10) for Commission review of SRO rule filings, and provides that a proposed NMS plan or plan amendment that does not comply with relevant filing requirements has not been filed with the Commission for purposes of Rule 608(b)(1).[60] Specifically, if the Commission informs the plan participants within seven business days of the business day of receipt by the Commission of a proposed NMS plan or plan amendment that the plan or amendment does not comply with paragraph (a) of Rule 608 or plan filing requirements in other sections of Regulation NMS and 17 CFR 240, subpart A, the plan or amendment is deemed not filed with the Commission.[61] The seven-business-day rejection period is extended to 21 days if the Commission informs the plan participants that the proposed NMS plan or plan amendment is unusually lengthy and is complex or raises novel regulatory issues. If the filing is deemed not made due to such rejection, the time period for the Commission to publish notice does not begin again until a new proposed NMS plan or plan amendment is filed pursuant to paragraph (a) and is not rejected.[62] New paragraph (b)(1)(iv) under Rule 608 mirrors relevant portions of Rule 19b–4(b)(2) and (k), and defines ''business day'' and when a filing has been received by the Commission or website posting has occurred on a given business day for purposes of Rule 608.

b. Procedure for Commission Action Subsequent to Notice Publication Under Rule 608(b)(2) as Amended

A modified procedure for Commission action following publication of notice of the filing of proposed NMS plans and plan amendments that are not immediately effective is set forth in amendments to paragraph (b)(2) of Rule 608.[63] Under new paragraph (b)(2)(i) of Rule 608, within 90 days of the date of notice publication, or within such longer period as to which the plan participants consent, the Commission shall, by order, approve or disapprove the proposed NMS plan or plan amendment, or institute proceedings to determine whether the proposed NMS plan or plan amendment should be disapproved. Such proceedings will be conducted pursuant to 17 CFR 201.700 and 701,[64] and shall include notice of the grounds for disapproval under consideration and opportunity for hearing and shall be concluded within 180 days of notice publication. At the conclusion of such proceedings the Commission shall, by order, approve or disapprove the proposed NMS plan or plan amendment.[65] The time for conclusion of such proceedings may be extended for up to 60 days (thus allowing proceedings to conclude up to 240 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to the longer period. In addition, under new paragraph (b)(2)(ii) of Rule 608, the time for conclusion of proceedings may be extended for an additional period of up to 60 days beyond the 240-day period set forth in paragraph (b)(2)(i) (thus allowing proceedings to conclude up to 300 days total from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to the longer period.[66]

Paragraph (b)(2)(i) adopts certain elements from Section 19(b), namely, requiring that the Commission approve or disapprove a proposed new NMS plan or plan amendment, by order, within a specified timeframe, and enabling the Commission to institute proceedings and to extend the time for the conclusion of those proceedings. These are modifications to the existing Rule 608(b) procedure. By requiring disapproval by order if the Commission cannot make the finding necessary to approve, which is currently not required by Rule 608(b), the amended rule will provide more certainty regarding when final Commission action—whether approval or disapproval—must occur. And by authorizing the institution of proceedings, which currently is not provided for under Rule 608(b), the amended rule gives the Commission a way to seek additional public input that could help the Commission determine whether proposed NMS plans and plan amendments should be approved or disapproved. In addition, the 180-day

[58] The Commission could issue a supplemental request for comment after publishing notice of the proposed plan amendment. In addition, the Commission will have the ability to institute proceedings on a proposed plan amendment under Rule 608(b) as modified, which provides an opportunity for the Commission to seek additional comment. *See* Rule 608(b)(2)(i).

[59] *See infra* Section IV.B.2, where the Commission estimates that the average and median time it takes to publish notice in the **Federal Register** of non-immediately effective proposed NMS plan amendments are 65.5 days and 38 days, respectively.

[60] *See also* 17 CFR 240.0–3(a) (''[t]he date on which papers are actually received by the Commission shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with . . . .'').

[61] Paragraph (a) of Rule 608 sets forth the information that must accompany and be described in all proposed NMS plans or plan amendments filed with the Commission. Paragraph (a)(7) of Rule 608 requires compliance with plan filing requirements contained in any other section of Regulation NMS and 17 CFR 240, subpart A. For example, proposed amendments to transaction reporting plans must comply with Rule 601 of Regulation NMS, in addition to Rule 608(a).

[62] As discussed *supra,* the noticing time period for a proposed NMS plan amendment that is filed with the Commission is measured from the business day of website posting by the plan participants.

[63] Solely administrative, technical, or ministerial plan amendments remain effective-upon-filing under Rule 608(b)(ii) and (iii) and are not subject to Rule 608(b)(2), as amended, unless they are abrogated.

[64] As discussed *infra* in Section II.B.2, the Commission is modifying Rules 700 and 701 to incorporate proposed NMS plans and plan amendments into those rules.

[65] Though in a proceeding to determine whether to disapprove a proposed NMS plan or plan amendment the Commission is required to publish notice of its grounds for disapproval under consideration, the Commission can ultimately either disapprove or approve the proposed NMS plan or plan amendment following conclusion of the proceedings. *See* Securities Exchange Act Release No. 63723 (Jan. 14, 2011), 76 FR 4066, 4067 n. 17 (Jan. 24, 2011).

[66] As discussed *infra* in Section II.B.3, the Division Director will have delegated authority to extend the time for conclusion of such proceedings from 180 days to a period not exceeding 240 days from the date of publication of notice of the filing of a proposed NMS plan or plan amendment, as set forth in paragraph (b)(2)(i) of Rule 608. The Division Director will not have delegated authority to further extend the time for conclusion of such proceedings for an additional 60 days to a period not exceeding 300 days from the date of publication of notice of the filing of a proposed NMS plan or plan amendment, as set forth in paragraph (b)(2)(ii) of Rule 608.

period from the date of notice publication for such proceedings, and the availability of an extension of that period up to 240 days from the date of notice publication, as requested by commenters, are the same as what is set forth in Section 19(b) for SRO rule filings. The Commission believes these time periods would be appropriate for proposed NMS plans and plan amendments based on the Commission's experience with SRO rule filings, where 180 days has generally provided a sufficient amount of time to conclude proceedings and 240 days has been appropriate in more complex cases.

The 90-day time period for initial Commission action, and the availability of the additional extension of the time to conclude proceedings up to 300 days from the date of notice publication, are different from what is set forth in Section 19(b). Commenters suggested that, consistent with the Section 19(b) process for SRO rule filings, initial Commission action with regard to NMS plan amendments occur within 45 days of notice publication with the availability of a 45-day extension (for a total of 90 days).[67] In addition, under Section 19(b), the Commission cannot take longer than 240 days from the date of notice publication to approve or disapprove a SRO rule filing.[68] The Commission, however, anticipates needing more than 45 days following notice publication to act initially, and potentially needing more than 240 days following notice publication to act finally, on proposed new NMS plans and plan amendments because they can be complex and have far-reaching effects on a wide range of market participants, many of which are not SRO members. Whereas a SRO rule filing applies to a single SRO's rules, a proposed new NMS plan or plan amendment involves all SROs that are plan participants and implicates the manner in which they collectively act with regard to the national market system, in which many non-SRO members, such as retail investors, participate.

The Commission believes that providing 90 days after notice publication for initial Commission action (*i.e.,* approval, disapproval, or institution of proceedings) is more appropriate than the Section 19(b) approach as well as other potential timeframes for initial Commission action, such as the pre-existing 120-day timeframe in Rule 608(b). The 90-day timeframe is the same timeframe that applies when the initial 45-day deadline is extended by 45 days under the Section 19(b) approach requested by commenters, and it provides enhanced efficiency and conservation of Commission resources by eliminating the discretionary procedural step of extending a 45-day period to 90 days. The Commission believes that, if it instead were to adopt timeframes identical to those in Section 19(b), it would need to take such a procedural step routinely for proposed NMS plans and plan amendments. Nevertheless, the Commission believes that it typically would be possible to take initial action on proposed NMS plans and plan amendments following notice publication sooner than the 120-day deadline currently set forth in Rule 608(b), and the Commission expects that 90 days from notice publication typically will be an appropriate amount of time for such action. By requiring initial Commission action within 90 days instead of 120 days, the Commission believes that Rule 608(b)(2), as amended, will more effectively balance the Commission's need to allocate sufficient time for it to consider and initially act upon a proposed NMS plan or plan amendment with commenters' request for a backstop for such action of 90 days from notice publication.

The Commission likewise believes that allowing an additional extension to the Commission's final deadline to approve or disapprove, of up to 60 days, for a total of up to 300 days from the date of notice publication, is an appropriate way to balance the Commission's expectation that it will potentially need more time for its final disposition of a proposed NMS plan or plan amendment than the corresponding 240-day timeframe for SRO rule filings in Section 19(b) with commenters' request that Section 19(b)'s 240-day timeframe be incorporated into Rule 608(b). The Commission believes that up to 60 days is a reasonable amount for a potential extension for final Commission action because it will provide the Commission with flexibility when it needs more time to fully consider complex and significant proposed NMS plans and plan amendments. In addition, while the Commission's estimates are lower than 300 days for the average length of time that currently passes from the date of notice publication to Commission approval of a proposed plan or plan amendment,[69] the lack of a specified time period in current Rule 608(b) for publishing notice provided an opportunity for plan participants to address issues in a proposed plan or plan amendment before notice publication and thereby reduced the amount of time subsequent to notice publication that the Commission needed to determine whether to approve a proposed plan or amendment. The new noticing deadlines under amended Rule 608(b)(1) may largely prevent such an opportunity.

Moreover, while 300 days is a longer period from notice publication than the 180-day period currently set forth in Rule 608(b), this difference will be mitigated by the fact that, under the current rules, there is no requirement that notice publication, and hence the start of the 180-day ''clock,'' occur within a specified amount of time after a proposed NMS plan or plan amendment is filed with the Commission, as commenters pointed out.[70] As a result, the time from filing (as distinguished from notice publication) to final Commission action may be unpredictable under the current rule, and might be significantly longer than 180 days, depending on the date on which the Commission publishes notice.[71] This can occur because, in addition to not specifying timeframes for the Commission to publish notice, Rule 608(b) currently does not deem notice to be published in the absence of Commission publication within a specified timeframe. This will change, however, under Rule 608(b) as amended. In conjunction with the new notice publication deadlines and default notice publication provisions in amended Rule 608(b)(1), the outside deadline of up to 300 days from notice publication for Commission approval or

[67] Operating Committees Letter; Nasdaq Letter.

[68] *See* 15 U.S.C. 78s(b)(2)(B).

[69] *See infra* Section IV.B.2, where the Commission estimates that the average and median time it currently takes to approve proposed NMS plan amendments that are not immediately effective are 62.0 days and 44.5 days, respectively, from the date of their publication in the **Federal Register**, and the average and median time it currently takes to approve proposed new NMS plans are 204.8 days and 181 days, respectively, from the date of their publication in the **Federal Register**. Notably, these figures are average and median times that encompass all proposed new NMS plans and plan amendments within a particular period. In determining the Rule 608 timeframes by which Commission action is required, however, the Commission must consider the time it will need to appropriately review the most complex proposals that are likely to generate significant public comment.

[70] *See* Operating Committees Letter at 3–4; Nasdaq Letter at 1–2.

[71] *See infra* Section IV.B.2, where the Commission estimates that the average and median total time it currently takes to approve proposed new NMS plans are 368.5 days and 338 days, respectively, from the date they are filed with the Commission, and the average and median total time it currently takes to approve proposed NMS plan amendments that are not immediately effective are 127.6 days and 86 days, respectively, from the date they are filed with the Commission.

disapproval may result in faster final Commission action as measured from the time of filing than the current process in some cases,[72] and in all cases will provide a more transparent and definite timeframe for final Commission action.

The Commission does not believe that it would be appropriate to add a provision to Rule 608 that would result in a proposed NMS plan or plan amendment being deemed approved in the absence of affirmative Commission action, particularly given that, contrary to SRO proposed rule filings, Congress has not mandated such treatment of proposed NMS plans or plan amendments. The Commission expects to approve or disapprove, by order, all proposed NMS plans and plan amendments within the new timeframes specified in amended Rule 608(b). As discussed above, NMS plans and plan amendments are different from an individual SRO rule filing because they implicate the manner in which SRO plan participants collectively act with regard to matters concerning the entire national market system whereas a SRO rule filing applies to a single SRO's rules. Accordingly, the Commission is not adopting a ''deemed approved'' provision similar to that in Section 19(b).[73]

c. Filing of NMS Plans and Amendments Thereto Under Rule 608(a)(1) as Amended

Rule 608(a)(1) currently states that any two or more self-regulatory organizations, acting jointly, may file a national market system plan or may propose an amendment to an effective national market system plan by submitting the text of the plan or amendment to the Secretary of the Commission, together with a statement of the purpose of such plan or amendment and, to the extent applicable, the documents and information required by paragraphs (a)(4) and (5) of Rule 608. NMS plan participants typically satisfied the Rule 608(a)(1) filing requirement through paper submission to the Secretary of the Commission.

The Commission is amending Rule 608(a)(1) to replace the current requirement that proposed NMS plans and plan amendments be filed with the Secretary of the Commission with a new requirement that they be filed with the Commission by email. Specifically, the amended rule requires plan participants to file by email the text of the proposed NMS plan or plan amendment and the other information required by Rule 608(a) directly to an email address used solely for the purpose of filing plans and plan amendments that is monitored by Division staff responsible for handling NMS plan filings. Only filings made by email will satisfy the amended Rule 608(a) filing requirement; paper filings will no longer be permitted. For purposes of satisfying the filing requirement, all filings must be emailed to the Commission in a format compatible with a commonly used word processing program. The required email address will be provided on the Commission's website at *www.sec.gov.* Requiring filing with the Commission by email will modify the current filing process to promote more efficient filing by plan participants, as well as the receipt and handling of filed materials by Division staff. Email filing particularly will facilitate Division staff's timely preparation of the notice of proposed plan amendments in order to meet the 15-day noticing deadline.

d. Additional Aspects of Amended Rule 608

The Commission is not modifying the finding set forth in Rule 608(b)(2) that the Commission must make to approve a new proposed NMS plan or any proposed NMS plan amendment, including any NMS plan fee amendment. To account for potential Commission disapproval of proposed NMS plans or plan amendments, however, the Commission is modifying Rule 608(b)(2) to provide that the Commission shall disapprove a proposed NMS plan or plan amendment if the Commission does not make the finding that is required for approval, and that such disapproval shall be by Commission order. This language is based on Exchange Act Section 19(b)(2)(C). The Commission also is modifying Rule 608(a)(8)(ii), which addresses website posting of proposed NMS plan amendments, to account for potential Commission rejection or disapproval of such amendments. This modification to Rule 608(a)(8)(ii), along with the previously existing provision relating to the withdrawal of a proposed NMS plan amendment, means that a proposed plan amendment that is withdrawn, rejected or disapproved must be removed from the plan website or designated website.

In addition, the Commission is amending Rule 608(a)(8)(ii) to mirror Rule 19b–4(l) for SRO rule filings in requiring that plan participants inform the Commission of the business day on which they posted to the appropriate website a proposed plan amendment if such website posting does not occur on the same business day as filing.[74] Put another way, unless the Commission is informed otherwise by the plan participants, the website posting is calculated as having occurred on the same business day as filing for purposes of determining when the 15-day noticing time period expires.[75]

Further, the Commission is not removing from Rule 608(b)(2) language that states that the Commission may approve a NMS plan or proposed NMS plan amendment ''with such changes or subject to such conditions as the Commission may deem necessary or appropriate.'' According to one commenter, this language should be removed because it would contravene the Administrative Procedure Act (''APA'')[76] for the Commission to act consistent with this language without first undertaking notice and comment rulemaking.[77] The Commission does not, however, believe that such Commission action pursuant to Rule 608(b)(2) is inconsistent with the APA. First, this provision has been part of Rule 608 since Rule 608 was first proposed in 1979 and adopted in 1981, and was itself adopted pursuant to notice-and-comment rulemaking.[78] Moreover, any amendments initiated by the Commission to an effective NMS plan pursuant to Rule 608 are made through notice and comment rulemaking.[79] And the Commission's approval of a NMS plan amendment initiated by plan participants with changes or conditions as specified in Rule 608(b)(2) is subject to the procedural protections governing the approval process. Among other things, the proposed NMS plan amendment itself—along with any questions or issues that the Commission may choose to raise in the notice of the proposal—is subject to notice and comment.

[72] *Id.*

[73] *See* Section 19(b)(2)(D).

[74] As noted *supra* in Section II.B.1.a, Rule 608(a)(8)(ii) already requires that plan participants ensure that any proposed plan amendments are posted on a plan website or a designated website no later than two business days after their filing with the Commission. Rule 19b–4(l) contains an identical requirement for SRO rule filings.

[75] The Commission also is amending Rule 608(a)(8)(i) and (a)(8)(ii) to replace the term ''website'' with ''website.''

[76] 5 U.S.C. 551 *et seq.*

[77] Nasdaq Letter at 2–4.

[78] *See* Securities Exchange Act Release No. 16410 (Dec. 7, 1979), 44 FR 72606 (Dec. 14, 1979) (proposing Rule 11Aa3–2, the predecessor to Rule 608); Rule 11Aa3–2 Adopting Release, *supra* note 41.

[79] Rule 608(a)(2) continues to provide that the Commission may propose an amendment to any effective NMS plan, and Rule 608(b)(2) continues to provide that promulgation of an amendment to a NMS plan initiated by the Commission shall be by rule.

2. Amendments to Rules of Practice 700 and 701

Commission Rule of Practice 700 currently sets forth procedures for conducting proceedings that are instituted for individual SRO proposed rule changes pursuant to Section 19(b) and Rule 19b–4, and Rule of Practice 701 addresses the issuance of a Commission order after proceedings for individual SRO proposed rule changes have been initiated.[80] The Commission is adopting amendments to these rules to set forth the procedures for conducting proceedings that have been initiated for proposed NMS plans or plan amendments under new paragraph (b)(2)(i) of Rule 608. The procedures that apply to proceedings for individual SRO proposed rule changes under Rules 700 and 701 are not being changed, although the organization of the Rules is changing.[81]

Where Rule 700 explicitly references individual SRO proposed rule changes, the Commission has added references to proposed NMS plans or plan amendments in those paragraphs or added new paragraphs that replicate the existing substantive language to make them applicable to proposed NMS plans or plan amendments. Specifically, the Commission has amended Rule 700(b)(1) to state that, if the Commission initiates proceedings to determine whether a proposed NMS plan or plan amendment (which are collectively defined as a ''NMS plan filing'' for purpose of Rule 700) should be disapproved, it shall provide notice to the NMS plan participants, as well as other interested parties, by publication in the **Federal Register** of the grounds for disapproval under consideration. Similarly, the Commission has amended Rule 700(b)(1)(iii) to state that the Commission shall serve a copy of the grounds for disapproval under consideration to the NMS plan participants by serving notice to the contact person for the NMS plan.

Likewise, the Commission has amended Rule 700(b)(2) to state that the grounds for disapproval under consideration shall include a brief statement of the matters of fact and law on which the Commission has instituted proceedings, including areas in which the Commission may have questions or may need to solicit additional information on the NMS plan filing. The Commission also has amended Rule 700(b)(3) to add a new paragraph (ii) stating that the burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and rules and regulations thereunder is on the plan participants that filed the NMS plan filing. This language does not create any new burden for NMS plan participants, but rather sets forth the existing burden that applies to NMS plan participants under Rule 608(a), which provides that two or more SRO plan participants, acting jointly, may file a NMS plan or propose an amendment to an effective NMS plan. The burden also is substantively the same as that currently set forth in Rule 700(b)(3) for a SRO in the context of a SRO's proposed rule change, which is being relocated without substantive modifications to new paragraph (i) of Rule 700(b)(3) as a result of the amendment to the rule to incorporate NMS plan filings.

The Commission also has amended the following provisions in Rule 700 in order to replicate for NMS plan filing proceedings the procedures applicable to SRO proposed rule change proceedings: (i) Rule 700(c)(1), by referencing NMS plan filings in paragraph (c)(1) and adding new paragraph (ii) regarding the conduct of hearings and opportunity to submit written statements; (ii) Rule 700(c)(3), by adding new paragraph (ii) regarding rebutting any comments received during proceedings; (iii) Rule 700(c)(4), by adding new paragraph (ii) regarding a failure to respond to any comment received; and (iv) Rule 700(d), by referencing NMS plan filings in paragraph (d)(1) regarding the filing of papers with the Commission and paragraph (d)(2) regarding the public availability of materials received, and by adding new paragraph (d)(3)(ii) regarding the record before the Commission.[82]

Where paragraphs of Rule 700 do not explicitly reference individual SRO proposed rule changes (such as paragraph (b)(2), among others), as a result of other amendments being made to Rule 608(b)(2)(i),[83] the language in those paragraphs of Rule 700 applies to NMS plan filings as well as individual SRO proposed rule changes without the need to add explicit references to each type of proposal.[84]

3. Amendments to Delegations of Authority in Rule 30–3

The Commission is revising the delegations of authority to the Division Director in conjunction with the modifications that the Commission is adopting to Rule 608.[85] These revisions are intended to conserve Commission resources and increase the effectiveness and efficiency of the Commission's process for handling proposed NMS plans and plan amendments. Congress has authorized such delegation by Public Law 87–592, 76 Stat. 394, 15 U.S.C. 78d–1(a), which provides that the Commission ''shall have the authority to delegate, by published order or rule, any of its functions to . . . an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business or matter.''

Accordingly, the Commission is amending its rules, by adding new paragraph (a)(85) to Rule 30–3, to delegate authority to the Division Director to perform certain procedural steps up to but not including approval or disapproval. Under this delegation, the Division Director (or, under his or her direction, such persons as might be designated from time to time by the Chairman of the Commission) is authorized to perform the following actions: (1) To publish notice of the filing of a proposed amendment to an effective NMS plan; (2) to notify NMS plan participants that a proposed NMS plan or plan amendment does not comply with paragraph (a) of Rule 608 or plan filing requirements in other sections of Regulation NMS and 17 CFR 240, subpart A, and to determine that a proposed NMS plan or plan amendment is unusually lengthy and complex or raises novel regulatory issues and to inform the NMS plan participants of such determination; (3) to institute proceedings to determine whether a proposed NMS plan or plan amendment should be disapproved; (4) to provide the NMS plan participants notice of the grounds for disapproval under consideration; and (5) to extend for a period not exceeding 240 days from the date of publication of notice of the filing

[80] 17 CFR 201.700 and 701.

[81] Because existing Rule 701 explicitly references individual SRO proposed rule changes, the Commission has amended Rule 701 to add a new paragraph that replicates the language of the existing rule except that the new paragraph applies to proposed NMS plans and plan amendments.

[82] In connection with these amendments, where the Commission added new paragraphs (ii) to incorporate NMS plan filings, the Commission relocated without changes existing text regarding SRO proposed rule changes to new paragraphs (i).

[83] Rule 608(b)(2)(i) states, among other things, that proceedings to determine whether a NMS plan fee amendment should be disapproved will be conducted pursuant to Rules 700 and 701.

[84] The Commission also is amending the title of Rule 700, which currently references the initiation of proceedings for SRO proposed rule changes, so that it also references proposed NMS plans and plan amendments. Relatedly, the Commission is making a conforming amendment to Rule 19b–4(g), which cross-references the current title of Rule 700 in a parenthetical, to add proposed NMS plans and plan amendments to the cross reference.

[85] 17 CFR 200.30–3.

of a proposed NMS plan or plan amendment the period during which the Commission must issue an order approving or disapproving the proposed NMS plan or plan amendment and determine whether such longer period is appropriate and publish the reasons for such determination.[86] In addition, new paragraph (a)(85) retains the delegations of authority to the Division Director: (i) To summarily abrogate, pursuant to Rule 608(b)(3)(iii), a proposed NMS plan amendment put into effect upon filing with the Commission (*i.e.,* a solely administrative, technical or ministerial plan amendment that remains effective-upon-filing under Rule 608(b)(3)) and require that such amendment be refiled in accordance with Rule 608(a)(1) and reviewed in accordance with Rule 608(b)(2); and (ii) pursuant to Rule 608(b)(4), to put a proposed plan amendment into effect summarily upon publication of notice and on a temporary basis not to exceed 120 days.[87] Notwithstanding these delegations, the Division Director may submit any matter he or she believes appropriate to the Commission. Furthermore, any action taken by the Division Director pursuant to delegated authority would be subject to Commission review as provided by Rules 430 and 431 of the Commission's Rules of Practice, 17 CFR 201.430–201.431 and 15 U.S.C. 78d–1(b).

In addition, the Commission is rescinding the existing delegations of authority to the Division Director to approve proposed NMS plan amendments set forth in paragraphs (a)(27) and (29) of Rule 30–3 by deleting and reserving those paragraphs.[88] Further, the Commission is deleting language from paragraph (a)(42) of Rule 30–3 that currently provides delegated authority to the Division Director to extend to 180 days from the date of notice publication the Commission's time to consider a proposed NMS plan or plan amendment, as this 180-day extension has been replaced by the modified timeframes and extensions set forth in Rule 608(b) as amended.[89]

4. Administrative Matters Common to Amendments to Rules of Practice and Delegations of Authority

The Commission finds, in accordance with the APA,[90] that the amendments to Rules of Practice 700 and 701 and to the Commission's delegations of authority in Rule 30–3 relate solely to agency organization, procedures or practices. Accordingly, these rule amendments are not subject to the provisions of the APA requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act,[91] therefore, does not apply. Similarly, because these rules relate to ''agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties,'' analysis of major status under the Small Business Regulatory Enforcement Fairness Act is not required.[92] The rule amendments also do not contain any new collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended (''PRA'').[93] Rather, the amendments to Rules 700 and 701 govern procedures for conducting proceedings that are instituted for a proposed NMS plan or plan amendment, and the amendments to Rule 30–3 govern internal Commission procedures regarding whether Commission staff has the authority to act on behalf of the Commission with respect to proposed NMS plans and plan amendments. The required scope of information that NMS plan participants must file is established in Rule 608(a), other sections of Regulation NMS, and 17 CFR 240, subpart A, and it is not being amended. The rule amendments do not contain any additional collection of information requirements beyond what is already required.

III. Paperwork Reduction Act

The Commission continues to believe that the rescission of the Fee Exception would not impose any new, or revise any existing, collection of information requirement as defined by the PRA.[94] No commenter addressed whether or not the rescission of the Fee Exception would impose any new, or revise any existing, collection of information requirement as defined by the PRA. Further, the Commission believes that the amendments to Rule 608(a)(1) to require email filing for the estimated 13 annual filings is a non-material change to the current PRA estimate for Rule 608. Any future change in the estimated PRA burden will be reflected in the next three-year update. Further, the modified procedures for Commission action on proposed NMS plans and plan amendments under Rule 608(b)(1) and (2) also do not impose any new, or revise any existing, collection of information requirement as defined by the PRA.[95] Accordingly, the Commission is not submitting this amendment to the Office of Management and Budget for review under the PRA.[96]

IV. Economic Analysis

A. Introduction

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[97] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[98] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The discussion below addresses the likely economic effects of the rule, including the likely effects of the rule on efficiency, competition, and capital formation.

As discussed above, the Commission is adopting amendments that rescind the Fee Exception and subjects NMS

[86] These delegations of authority to the Division Director do not include the authority to publish notice of filing of a proposed new NMS plan pursuant to paragraph (b)(1)(i) of Rule 608 or to further extend the time for the conclusion of proceedings up to an additional 60 days—for a period not exceeding 300 days from the date of publication of notice of filing of a proposed NMS plan or plan amendment—as set forth in paragraph (b)(2)(ii) of Rule 608. Any publication of notice of a proposed new NMS plan pursuant to paragraph (b)(1)(i) of Rule 608 and any extension of the time for the conclusion of proceedings pursuant to paragraph (b)(2)(ii) of Rule 608 must be done by the Commission itself and not by staff via delegated authority.

[87] These are not new delegations of authority—they are currently encompassed by paragraph (a)(29) of Rule 30–3. The Commission is retaining these delegations of authority, and in light of the deletion of paragraph (a)(29) as discussed *infra,* the Commission has relocated them to and made them explicit in new paragraph (a)(85).

[88] Paragraph (a)(27) of Rule 30–3 also currently contains a delegation of authority to grant exemptions pursuant to Rule 601 that is now obsolete and being deleted.

[89] Paragraph (a)(42) of Rule 30–3 also currently delegates authority to the Division Director to grant or deny exemptions from Rule 608, and that delegation is being retained.

[90] 5 U.S.C. 553(b)(3)(A).

[91] 5 U.S.C. 601 *et seq.*

[92] 5 U.S.C. 804(3)(C).

[93] 44 U.S.C. 3501 *et seq.*

[94] 44 U.S.C. 3501 *et seq. See also* Proposing Release, *supra* note 1, at 54800.

[95] As stated *supra* in Section II.B.4, the required scope of information that NMS plan participants must file is established in Rule 608(a), other sections of Regulation NMS, and 17 CFR 240, subpart A, and it is not being amended. The amendments to Rule 608(b) do not contain any additional collection of information requirements beyond what is already required.

[96] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[97] 15 U.S.C. 78c(f).

[98] 15 U.S.C. 78w(a)(2).

plan fee amendments to the standard procedure of Rule 608(b)(1) and (2), which requires public notice, an opportunity for public comment, and Commission action by order before a NMS plan fee amendment can become effective.[99] The Commission is also amending Rule 608(a)(1) to require that proposed new NMS plans and plan amendments be filed with the Commission by email, instead of with the Office of the Secretary, typically using a paper-based filing process.[100] Additionally, the amendments modify the procedures and timeframes set forth in Rule 608(b)(1) and (2) for Commission publication of notice and subsequent Commission actions for proposed new NMS plans and proposed amendments to existing NMS plans.

As discussed below, the Commission believes rescinding the Fee Exception will benefit market participants by eliminating a potential disincentive for persons to provide comments on NMS plan fee amendments, which could make additional information available that could help the Commission evaluate whether a NMS plan fee amendment complies with the Exchange Act. Even if rescinding the Fee Exception does not improve the robustness of the comment process, the Commission believes it will help protect market participants from having to pay fees that the Commission may later determine do not comply with the Exchange Act, since fees will not become effective unless approved by the Commission. Additionally, the Commission believes rescinding the Fee Exception will benefit SRO members and subscribers of SIP data by providing them with earlier notice and more time to plan and prepare before they are subject to a new or altered NMS plan fee. However, the Commission also believes that rescinding the Fee Exception will impose costs on SROs if the process delays the implementation of a NMS plan fee increase because SROs will no longer receive the incremental revenue they would have earned if NMS plan fee amendments were immediately effective. Similarly, there may be costs on SRO members and subscribers of SIP data if the process delays the implementation of a NMS plan fee decrease because they would no longer benefit from the incremental cost savings.

Furthermore, the Commission believes that the modifications to the procedures and timeframes for Commission publication of notice and subsequent Commission actions for proposed new NMS plans and plan amendments will increase the transparency and improve the efficiency of the process for handling proposed new NMS plans and proposed amendments to existing NMS plans by decreasing the time it takes for them to be published in the **Federal Register**, as well as the average total time it takes for the Commission to act on them relative to the date they are initially filed.[101] The Commission acknowledges that increasing the maximum timeframe for the Commission to act after publication in the **Federal Register** might have a negative impact on efficiency for some proposed new NMS plans or plan amendments, but does not believe that this effect will be significant.

The Commission is making changes to the economic analysis it made in the Proposing Release.[102] These changes address the Commission's modifications to the procedures and timeframes for Commission publication and action for proposed new NMS plans and proposed amendments to existing NMS plans as well as comments related to the Commission's economic analysis in the Proposing Release.[103]

Wherever possible, the Commission has quantified the likely economic effects of the amendments. However, most of the costs, benefits, and other economic effects discussed are inherently difficult to quantify. Therefore, much of our discussion is qualitative in nature. Our inability to quantify certain costs, benefits, and effects does not imply that such costs, benefits, or effects are less significant.

B. Baseline

The Commission has assessed the likely economic effects of the amendments, including benefits, costs, and effects on efficiency, competition, and capital formation, against a baseline that consists of the existing regulatory process for NMS plan fee amendments in practice, the existing procedure and timeframes for proposed new NMS plans and plan amendments that are filed under Rule 608(b)(1) and (2) and are not immediately effective upon filing, the regulatory procedures and timeframes for SRO rule filings that are not immediately effective under Section 19(b)(2) of the Exchange Act, the structure of the market for core data and aggregated market data products, and the structure of the market for trading services in NMS securities.

1. NMS Plan Fee Amendments

There are currently a total of five NMS plans that either charge fees or could charge fees and have filed NMS plan fee amendments under the Fee Exception. These consist of the CAT Plan along with four NMS plans that govern the collection and dissemination of core data: The CTA Plan, the CQ Plan, the Nasdaq/UTP Plan, and the OPRA Plan.[104]

[99] *See supra* Section II.A and Section II.B.1.

[100] *See supra* Section II.B.1.c.

[101] The Commission estimates that the average total amount of time it takes the Commission to act on a proposed new NMS plan or plan amendment, relative to the time it is initially filed, may decrease. *See infra* note 203 and accompanying text. However, the Commission acknowledges that the total time it takes for the Commission to act on some individual proposed new NMS plans or plan amendments may increase.

[102] *See* Proposing Release, *supra* note 1, at 54800.

[103] *See supra* Section II.B.

[104] *See* Proposing Release, *supra* note 1, at 54795–96. On May 6, 2020, the Commission issued an order directing the SROs to file a new, single NMS plan with a new governance structure that would govern the collection and dissemination of core data for NMS stocks (''New Consolidated Data Plan''). *See* Securities Exchange Act Release No. 88827 (May 6, 2020), 85 FR 28702 (May 13, 2020) (''Governance Order''). This would replace the three existing NMS plans that currently govern the collection and dissemination of core data for NMS stocks: The CTA Plan, the CQ Plan, and the NASDAQ/UTP Plan. The Governance Order states that the CTA Plan, the CQ Plan, and the Nasdaq/UTP Plan will continue to be responsible for the consolidation and dissemination of core data for NMS stocks and that the fees for core data will continue to be governed by the provisions of these plans, until the New Consolidated Data Plan is ready to assume responsibility for the dissemination of core data for NMS stocks and fees of the New Consolidated Data Plan have become effective.

The SROs approve all NMS plan fee amendments.[105] This can create potential conflicts of interest for the SROs, because their duties administering NMS plans that either charge or could charge fees could potentially come into conflict with other products the SROs sell or costs they incur as part of their businesses.[106] The exchange SROs have a potential conflict of interest with respect to the administration of the four NMS plans that set fees for core data because they vote to set SIPs' fees and also own and control the dissemination of all equity and option market data and also individually set the prices of some of the proprietary data products certain market participants may in some circumstances use as substitutes for SIP data.[107] Additionally, the SROs have potential conflicts of interest with respect to allocating costs related to the CAT Plan because both SRO participants and Industry Members are responsible for paying fees related to the CAT Plan; however, the CAT Operating Committee, whose voting participants are all SROs, decides how these fees should be split.[108]

The Commission's notice and comment process is one of the only ways market participants have to express their views on NMS plan fee amendments.[109] However, under the current process, market participants do not have the opportunity to comment before NMS plan fee amendments become effective.[110]

Because NMS plan fee amendments are effective upon filing, fees in connection with a NMS plan can be charged immediately upon filing with the Commission.[111] In some cases, SRO members or subscribers to core data plans may not be given adequate time to plan for a new or altered fee before it is implemented.[112] Some commenters agreed that market participants may not receive adequate notice about NMS plan fee increases before they are charged.[113] Additionally, one commenter argued that NMS plan fee amendments being effective upon filing can lead to unclear rules that need clarification after the fact.[114]

At any time within 60 days of the filing of a NMS plan fee amendment, the Commission may summarily abrogate the amendment and require that the amendment be re-filed pursuant to the standard procedure of Rule 608(b)(1) and (2).[115] However, because NMS plan fee amendments are immediately effective-upon-filing, market participants can be charged a new or altered fee before comments can be submitted and before the Commission can evaluate whether to abrogate a NMS plan fee amendment.[116]

Table 1 shows information on the number of NMS plan fee amendments filed under Rule 608(b)(3)(i) since 2010 for each of the NMS plans that either charge fees or could charge fees.[117] Since 2010, the Commission estimates an average of 3.8 NMS plan fee amendments have been filed each year. The Commission estimates the average and median time it takes the Commission to notice a NMS plan fee amendment on its website are 57.0 days and 25.5 days, respectively, from the time it is filed.[118] The Commission estimates that the average and median time it takes to publish notice of a NMS plan fee amendment in the **Federal Register** are 62.9 days and 31.5 days, respectively.[119] The Commission estimates the average and median time it takes a NMS plan to begin charging new fees pursuant to NMS plan fee

[105] *See* Proposing Release, *supra* note 1, at 54796.

[106] *See* Proposing Release, *supra* note 1, at 54798–99 and *infra* Section IV.B.4. Some commenters agreed with this assessment. *See* Better Markets Letter at 1, 3–4; Bloomberg Letter at 2; CII Letter at 4; Clearpool Letter at 1; FIA Letter at 1–2; Fidelity Letter at 2, 3; Healthy Markets Letter at 1, 5; ICI Letter at 3; RBC Capital Markets Letter at 2.

[107] *See infra* Section IV.B.4. Some commenters agreed that the exchange SROs have a potential conflict of interest with respect to the administration of the four NMS plans that set fees for core data. *See* Better Markets Letter at 1, 3–4; Bloomberg Letter at 2; Clearpool Letter at 1; Fidelity Letter at 3; Healthy Markets Letter at 1.

[108] *See* Proposing Release, *supra* note 1, at 54796. Two commenters agreed that the SROs have potential conflicts of interest with respect to allocating costs related to the CAT Plan. *See* FIA Letter at 1–2; Fidelity Letter at 3. One commenter stated that Industry Members under the CAT Plan have no alternative but to pay the required fees. *See* MFA Letter at 4.

[109] Industry members and other market participants also sit on the Advisory Committees to NMS plans and can express their views during Operating Committee meetings. However, they cannot vote on NMS plan fee amendments. *See* Proposing Release, *supra* note 1, at 54796. Non-SRO members would serve as voting members on the Operating Committee of the New Consolidated Data Plan. *See supra* note 104. One commenter agreed that the comment process is one of the only ways market participants have to express their views on NMS plan fee amendments. *See* Clearpool Letter at 2.

[110] *See* Proposing Release, *supra* note 1, at 54798–99.

[111] SRO participants must post a proposed amendment to a NMS plan on their website no later than two business days after the filing of the proposed amendment with the Commission. *See* Rule 608(a)(8)(ii).

[112] The Commission estimates the average and median time it takes NMS plans to begin charging new fees pursuant to NMS plan fee amendments are 66.3 days and 62.5 days, respectively, after filing with the Commission. *See infra* note 120 and accompanying text. However, a few NMS plan fee amendments give significantly less notice before beginning to charge new fees. *See, e.g.*, Securities Exchange Act Release Nos. 69157 (Mar. 18, 2013), 78 FR 17946 (Mar. 25, 2013) and 69361 (Apr. 10, 2013), 78 FR 22588 (Apr. 16, 2013). Comments submitted in response to NMS plan fee amendments and in connection with the Roundtable on Market Data and Market Access (''Roundtable'') that was hosted by SEC staff in October 2018 stated that in some instances market participants did not receive enough notice regarding NMS plan fee changes. *See, e.g.*, Letter from Peter Moss, Managing Director, Trading, Financial and Risk, Thomson Reuters (May 7, 2013) at 1–2, *available at https://www.sec.gov/comments/s7-24-89/s72489-34.pdf* (''Moss Letter'') (commenting on the need to ''make necessary changes to billing systems and to notify clients of the changes''); Letter from Kimberly Unger, Esq., CEO and Executive Director, The Security Traders Association of New York, Inc., New York, New York (Apr. 10, 2013) at 2, *available at https://www.sec.gov/comments/sr-ctacq-2013-01/ctacq201301-2.pdf* (''Unger Letter''); Letter from Ira D. Hammerman, Senior Managing Director & General Counsel, SIFMA (Mar. 28, 2013) at 6–7, *available at https://www.sec.gov/comments/s7-24-89/s72489-31.pdf* (''Hammerman Letter'') (commenting on the need of ''professionals and their firms, as well as market data vendors, to alter their systems and business plans''); Letter from Marcy Pike, SVP, Enterprise Infrastructure, Krista Ryan, VP, Associate General Counsel, Fidelity Investments (Oct. 26, 2018) at 6, *available at https://www.sec.gov/comments/4-729/4729-4566044-176136.pdf* (''Fidelity Letter II'').

[113] *See* Bloomberg Letter at 3; Clearpool Letter at 2; Fidelity Letter at 4; Healthy Markets Letter at 10; RBC Capital Markets Letter at 4.

[114] *See* Bloomberg Letter at 7.

[115] *See* Proposing Release, *supra* note 1, at 54796.

[116] The input of commenters is an important part of the Commission's review of NMS plan fee amendments, and the Commission generally does not abrogate a NMS plan fee amendment prior to reviewing the comments. *See* Proposing Release, *supra* note 1, at 54798.

[117] In the Proposing Release, the Commission stated that it preliminarily believes that the median value was the most appropriate measure to estimate times related to NMS plan fee amendments because the average was not an informative estimate for these measures since the sample size was small and contained extreme outliers. *See* Proposing Release, *supra* note 1, at 54801, n. 71. Two commenters stated that estimates based on median values may not be fully reflective of the anticipated times to process a NMS plan amendment under the Proposal because the estimate does not account for the cases where the Commission's processing of certain amendments had been significantly delayed. *See* Operating Committees Letter at 4; Nasdaq Letter at 3. The Commission agrees that the median value does not provide information on the times where the Commission's processing of certain NMS plan fee amendments have been significantly delayed. For completeness, the Commission is revising its analysis to present estimates of both the average and median times related to NMS plan fee amendments.

[118] Statistics on the number of days it takes the Commission to notice a NMS plan fee amendment and the number of days it takes the Commission to notice a withdrawn NMS plan fee amendment were determined from NMS plan fee filing amendments to the CAT Plan, the CTA Plan, the CQ Plan, the Nasdaq/UTP Plan, and the OPRA Plan filed under Rule 608(b)(3)(i) between 2014 and 2019. The Commission chose this five-year lookback time-period to calculate these measures because it reflects a current snapshot of the timeframes under which the Commission provides notices of NMS plan fee amendments and withdrawn NMS plan fee amendments. NMS plan amendments are *available at https://www.sec.gov/rules/sro/nms.htm.*

[119] *See supra* note 118.

amendments are 66.3 days and 62.5 days, respectively, after filing with the Commission.[120] Table 1 also contains information on how many of the NMS plan fee amendments were abrogated by the Commission or withdrawn by the NMS plan after receiving comments from market participants. For cases in which the Commission abrogates a NMS plan fee amendment, the Commission estimates the average and median time the NMS plan fee amendment is effective before the Commission abrogates the NMS plan fee amendment are 57.7 days and 57 days, respectively.[121] No NMS plan fee amendments that have been abrogated by the Commission have been refiled under the standard procedure.[122] For cases in which a NMS plan withdraws a NMS plan fee amendment, the Commission estimates the average and median time that the NMS plan fee amendment is effective before the NMS plan withdraws the filing are 47.3 days and 46.5 days, respectively.[123] The Commission estimates the average and median time it takes the Commission to notice the withdrawal of a NMS plan fee amendment are 40.0 days and 34 days, respectively.[124] When a NMS plan refiles a withdrawn NMS plan fee amendment, it is refiled on an immediately effective basis. The Commission estimates the average and median time it takes a NMS plan to refile a withdrawn NMS plan fee amendment are 143.3 days and 175 days, respectively, from the time the initial NMS plan fee amendment was withdrawn.[125]

TABLE 1—INFORMATION ON NMS PLAN FEE AMENDMENTS UNDER RULE 608(b)(3)(i)

Year	Number filed				Number abrogated				Number withdrawn			
	CTA/CQ	NASDAQ/UTP	OPRA	CAT	CTA/CQ	NASDAQ/UTP	OPRA	CAT	CTA/CQ	NASDAQ/UTP	OPRA	CAT
2010	2	0	1	.....	0	0	0	.....	0	0	0	.....
2011	0	2	4	.....	0	0	0	.....	0	0	0	.....
2012	0	0	2	.....	0	0	0	.....	0	0	0	.....
2013	3	3	1	.....	0	0	0	.....	2	2	0	.....
2014	2	1	2	.....	0	0	0	.....	0	0	0	.....
2015	0	0	0	.....	0	0	0	.....	0	0	0	.....
2016	0	0	5	0	0	0	0	0	0	0	0	0
2017	2	1	2	1	0	0	0	1	2	0	0	0
2018	1	2	0	1	1	1	0	0	0	0	0	1
2019	0	0	0	0	0	0	0	0	0	0	0	0
Total	10	9	17	2	1	1	0	1	4	2	0	1

This table shows the number of NMS plan fee amendments filed under Rule 608(b)(3)(i) of Regulation NMS, the number of NMS plan fee amendments that were abrogated by the Commission, and the number of NMS plan fee amendments that were withdrawn by the NMS plan each year from 2010–2019 for the following NMS plans: The CTA and CQ Plans, the NASDAQ/UTP Plan, the OPRA Plan, and the CAT Plan. NMS plan fee amendments to the CTA and CQ Plans are included in one category because fee changes to both NMS plans are included in the same filing. *Source:* This table was compiled from NMS plan rule filings *available at https://www.sec.gov/rules/sro/nms.htm.*

Since 2010, the four NMS plans that govern core data have filed a total of 36 NMS plan fee amendments under Rule 608(b)(3)(i). Two of these filings were abrogated by the Commission and six were withdrawn by the SRO participants.

Since 2017, the CAT Plan has filed two NMS plan fee amendments under Rule 608(b)(3)(i) to establish the allocation of funding for the CAT. One of these fee filings was abrogated by the Commission and one was withdrawn by the SRO participants.

2. Procedures and Timeframes for NMS Plans and NMS Plan Amendments Filed Under Rule 608(b)(1) and (2)

As discussed in detail above, the Commission has modified the procedures and timeframes under Rule 608(b)(1) and (2) for Commission actions on proposed new NMS plans and proposed amendments to existing NMS plans.[126] As a result of this change, the Commission has updated its economic baseline to discuss and provide statistics on the timeframes for Commission actions for proposed new NMS plans and plan amendments that are not immediately effective upon filing and filed under the existing procedures of Rule 608(b)(1) and (2).

SROs, as plan participants, file proposed new NMS plans and proposed amendments to NMS plans, including NMS plan fee amendments, with the Secretary of the Commission, typically using a paper-based filing process.[127] As discussed in detail in the Electronic 19b–4 Adopting Release, the Commission believes that paper-based filing process can be less efficient and more costly than electronic filing.[128] For example, a paper-based filing requires

[120] Statistics on the number of days it takes a NMS plan to begin charging a new fee are based on dates determined from NMS plan fee filing amendments to the CTA Plan, the CQ Plan, the Nasdaq/UTP Plan, and the OPRA Plan filed under Rule 608(b)(3)(i) between 2010 and 2019. NMS plan fee amendments that contained policy changes and did not alter or impose a fee or fee cap were not included in this calculation. These statistics do not include NMS plan fee amendments to the CAT Plan. NMS plan amendments are *available at https://www.sec.gov/rules/sro/nms.htm.*

[121] Statistics on the number of days it takes the Commission to abrogate a NMS plan fee filing were determined from NMS plan fee filing amendments to the CAT Plan, the CTA Plan, the CQ Plan, the Nasdaq/UTP Plan, and the OPRA Plan filed under Rule 608(b)(3)(i) between 2010 and 2019. NMS plan amendments are *available at https://www.sec.gov/rules/sro/nms.htm.*

[122] *See* Proposing Release, *supra* note 1, at 54796.

[123] Statistics on the number of days it takes a NMS plan to withdraw a NMS plan fee amendment were determined from NMS plan fee filing amendments to the CAT Plan, the CTA Plan, the CQ Plan, the Nasdaq/UTP Plan, and the OPRA Plan filed under Rule 608(b)(3)(i) between 2010 and 2019. Note these statistics do not include the Twenty-fourth amendment to the CTA Plan and the Fifteenth amendment to the CQ Plan. *See* Securities Exchange Act Release No. 84194 (Sept. 18, 2018), 83 FR 48356 (Sept. 24, 2018). These amendments withdraw fee changes from the Twenty-second amendment to the CTA Plan and the Thirteenth amendment to the CQ Plan, which was challenged by Bloomberg and stayed by the Commission on July 31, 2018. *See In the Matter of the Application of Bloomberg L.P.,* Securities Exchange Act Release No. 83755 at 3 (July 31, 2018), *available at https://www.sec.gov/litigation/opinions/2018/34-83755.pdf* (''Bloomberg Order''). NMS plan amendments are *available at https://www.sec.gov/rules/sro/nms.htm.*

[124] *See supra* note 118.

[125] Some refiled NMS plan fee amendments were modified but remained substantially similar to the withdrawn fee changes. *See, e.g.,* Securities Exchange Act Release No. 82071 (Nov. 14, 2017), 82 FR 55130 (Nov. 20, 2017). Other refiled NMS plan fee amendments were modified in response to comments. *See, e.g.,* Securities Exchange Act Release No. 70953 (Nov. 27, 2013), 78 FR 72932 (Dec. 4, 2013).

[126] *See supra* Section II.B.1.

[127] *See supra* Section II.B.1.c.

[128] *See* Securities Exchange Act Release No. 50486 (Oct. 4, 2004), 69 FR 60287, 60297 (Oct. 8, 2004) (File No. S7–18–04) (''Electronic 19b–4 Adopting Release'').

filers to devote time and incur costs related to printing, copying, and mailing filed materials.

Rule 608(b)(1) requires the Commission to publish notice of the filing of any NMS plan, or any proposed amendment to any effective NMS plan, and provide interested persons an opportunity to submit written comments.[129] However, it does not specify a timeframe in which the Commission is required to publish notice of the filing.[130] The Commission estimates that the average and median time it takes to publish notice of proposed NMS plan amendments in the **Federal Register** that are filed under Rule 608(b)(1) and are not immediately effective are 65.5 days and 38 days, respectively.[131] The Commission estimates that the average and median time it takes to publish notice of proposed new NMS plans in the **Federal Register** are 163.8 days and 76.5 days, respectively. However, the Commission acknowledges that it can take significantly longer to publish notice of some proposed new NMS plans and plan amendments.[132]

Rule 608(b)(2) specifies a 120 day timeframe from the date of publication of notice in the **Federal Register** for the Commission to approve a proposed new NMS plan or plan amendment.[133] The Commission may extend this timeframe an additional 60 days, up to 180 days from the date of publication, if it finds such a longer review period to be appropriate and publishes its reasons for so finding, or if the sponsors of the proposal consent to a longer review period. The Commission estimates that the average and median time it takes to approve proposed NMS plan amendments that are not immediately effective are 62.0 days and 44.5 days, respectively, from the date of their publication in the **Federal Register**.[134] The average and median time it takes to approve proposed new NMS plans are 204.8 days and 181 days, respectively, from the date of their publication in the **Federal Register**.[135] The Commission estimates that 95 percent of proposed NMS plan amendments and 25 percent of proposed new NMS plans were approved within 120 days of being published in the **Federal Register**. The Commission estimates that the average and median total time it takes to approve proposed NMS plan amendments that are not immediately effective are 127.6 days and 86 days, respectively, from the date they are filed with the Commission. The average and median total time it takes to approve proposed new NMS plans are 368.5 days and 338 days, respectively, from the date they are filed with the Commission.

3. Procedures and Timeframes for SRO Rule Changes Filed Under Section 19(b)(2)

As discussed in detail above, the Commission has modified Rule 608(b) to include procedures for all Commission actions on proposed new NMS plans and proposed amendments to existing NMS plans that are patterned on Section 19(b), with some modifications of the Section 19(b) timeframes that the Commission believes are appropriate in light of differences between SRO rule filings and proposed NMS plans and plan amendments.[136] As a result of this change, the Commission has updated its economic baseline to discuss the procedures and provide statistics on the timeframes for Commission actions for SRO rule changes that are not immediately effective upon filing and are filed under Section 19(b)(2) of the Exchange Act.[137]

Rule 19b–4(b)(1) mandates that SROs electronically file proposed changes to SRO rules with the Commission on Form 19b–4.[138] The Commission believes that electronically filing SRO rule changes is more efficient and less costly than a paper-based filing process.[139]

Section 19(b)(2) mandates specific timeframes for the Commission to notice and approve or disapprove SRO proposed rule changes that are not immediately effective upon filing.[140] If a SRO files a proposed rule change with the Commission and publishes a notice of the filing of the proposed rule change, together with the substantive terms of the proposed rule change, on a publicly accessible website, then Section 19(b)(2) requires the Commission to send notice of the SRO proposed rule change to the **Federal Register** for publication within 15 days of the notice being published on the website.[141] The Commission is required to approve, disapprove, or institute proceeding to determine if the SRO proposed rule change should be disapproved within 45 days of the date of publication in the **Federal Register**.[142] If the Commission institutes proceedings, then it must provide the SRO that filed the proposed rule change notice of the grounds for disapproval under consideration and an opportunity for hearing, which must be concluded not later than 180 days after the date of publication. If the Commission institutes proceedings, then it must issue an order approving or disapproving the proposed rule change no later than 180 days after the date of

[129] Rule 608(b)(1) also states that no NMS plan, or NMS plan amendment, shall become effective unless approved by the Commission. *See* Rule 608(b)(1). An exception currently exists under Rule 608(b)(3) for NMS plan fee amendments and other types of NMS plan amendments that are immediately effective upon filing with the Commission. *See* Proposing Release, *supra* note 1, at 54796.

[130] *See supra* Section II.B.1.

[131] Statistics on the number of days it takes to publish notice of proposed new NMS plans and plan amendments in the **Federal Register** that are not immediately effective and filed under Rule 608(b)(1) are based on proposed new NMS plans and proposed amendments to effective NMS plans filed between 2010 and 2020. NMS plans and NMS plan amendments are *available at https://www.sec.gov/rules/sro/nms.htm.*

[132] *See, e.g.,* Securities Exchange Act Release Nos. 72820 (Aug. 12, 2014), 79 FR 48779 (Aug. 18, 2014) and 77123 (Feb. 11, 2016), 81 FR 8264 (Feb. 18, 2016), which took 301 days and 178, respectively, to be published in the **Federal Register**.

[133] *See* Rule 608(b)(2).

[134] Statistics on the number of days it takes the Commission to approve proposed new NMS plans and plan amendments that are not immediately effective under Rule 608(b)(2) are based on proposed new NMS plans and proposed amendments to effective NMS plans filed between 2010 and 2020. NMS plans and NMS plan amendments are *available at https://www.sec.gov/rules/sro/nms.htm.*

[135] Extensions of time agreed to by plan participants caused average and median times for Commission approval of proposed new NMS plans to be greater than 180 days. *See, e.g.,* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[136] *See supra* Section II.B.1.

[137] Section 19(b)(2) sets forth the procedures and timeframes for Commission action for most SRO rule changes, unless they: (i) Constitute a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO; (ii) establish or changing a due, fee, or other charge imposed by the SRO; or (iii) are concerned solely with the administration of the SRO. Under Section 19(b)(3), these changes are immediately effective upon filing. However, the Commission may suspend one of these SRO rule changes within 60 days of the date the SRO rule change is filed with the Commission, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission does suspend a SRO rule change, then it shall institute proceedings under Section 19(b)(2)(B) to determine whether the proposed SRO rule change should be approved or disapproved. *See* 15 U.S.C. 78s(b)(2) and 15 U.S.C. 78s(b)(3).

[138] *See* 17 CFR 240.19b–4.

[139] *See supra* note 128.

[140] The timeframes discussed in Section 19(b)(2) do not apply to SRO fee changes, which are immediately effective upon filing. *See supra* note 137.

[141] If the Commission fails to send notice of the SRO proposed rule change to the **Federal Register** within 15 days, then the date of publication is deemed to be the date on which the website publication was made.

[142] The Commission may extend its review period another 45 days if it determines that a longer period is appropriate and publishes the reasons for such determination; or if the SRO that filed the proposed rule change consents to the longer period.

publication in the **Federal Register**.[143] If the Commission fails to institute or conclude proceedings within the specified time period, then the SRO proposed rule change shall be deemed to have been approved by the Commission.

Pursuant to Section 19(b)(10)(B), a SRO proposed rule change has not been received by the Commission if the Commission notifies the SRO within seven business days after the date of receipt that such proposed rule change does not comply with the Commission's rules relating to the required form of a proposed rule change.[144]

The Commission estimated average and median timeframes for Commission actions for SRO proposed rule changes that were not immediately effective upon filing and filed under Section 19(b)(2).[145] The average and median time it takes the Commission to send notice of a SRO proposed rule change to the **Federal Register** are 10.6 days and 12 days, respectively.[146] The average and median time it takes the Commission to publish a SRO proposed rule change in the **Federal Register** are 16.5 days and 17 days, respectively. The average and median time it takes the Commission to approve or disapprove a SRO proposed rule change after it was published in the **Federal Register** are 69.7 days and 44 days, respectively.[147] The Commission estimates that 60.8 percent of SRO proposed rule changes were either approved or disapproved by the Commission within a 45 day time period of being published in the **Federal Register**, 27.7 percent were either approved or disapproved within a 45 to 90 day time period, 3.1 percent within a 90 to 180 day time period, and 8.5 percent within a 180 to 240 day time period.[148] If the Commission extends its review for a SRO proposed rule change beyond the initial 45 day period,[149] the average and median time it takes the Commission to approve or disapprove the SRO proposed rule change are 119.5 days and 89 days, respectively, from the time it was published in the **Federal Register**.

4. Market for Core and Aggregated Market Data Products

Under the CTA Plan, the CQ Plan, the Nasdaq/UTP Plan, and the OPRA Plan, core data is collected, consolidated, processed, and disseminated by the SIPs.[150] NMS plan operating committees, which are composed of the SROs, set the fees the SIPs charge for core data.[151] Any revenue earned by the SIPs, after deducting costs, is split among the SROs.[152] The total revenues generated by fees charged by the core data plans totaled more than $500 million in 2018.[153] Fees for core data are paid by a wide range of market participants, including investors, broker-dealers, data vendors, and others.[154] One Roundtable commenter submitted an analysis that showed SIP data fees went up by five percent between 2010 and 2018.[155]

The Commission believes that the SIPs have significant market power in the market for core and aggregated market data products and are monopolistic providers of certain information,[156] which means that for all such products they would have the market power to charge supracompetitive prices.[157] One reason the SIPs have significant market power is that, although some market data products are comparable to SIP data and could be used by some core data subscribers as substitutes for SIP data in certain situations, these products are not perfect substitutes and are not viable substitutes across all use cases.[158] For example, in the equity markets, some market data aggregators buy direct depth of book feeds from the exchanges and aggregate them to produce products similar to the equity market SIPs.[159] However, these products do not provide market information that is critical to some subscribers and only available through the SIPs, such as LULD plan price bands and administrative messages.[160] Additionally, some SROs

[143] The Commission may extend the proceedings another 60 days if it determines that a longer period is appropriate and publishes the reasons for such determination; or if the SRO that filed the proposed rule change consents to the longer period.

[144] The Commission can extend the deadline for the time period it can reject the filing of a SRO proposed rule change to 21 days after the date of receipt if the Commission determines that the proposed rule change is unusually lengthy and is complex or raises novel regulatory issues and the Commission informs the SRO that filed the proposed rule change of such determination not later than seven business days after the date of receipt. *See* 15 U.S.C. 78s(b)(10)(B).

[145] The sample the Commission examined consisted of 1,016 SRO proposed rule changes filed under Section 19(b)(2) of the Exchange Act in which the Commission issued an order either approving or disapproving the proposed rule change between 2015 and 2019. The sample does not include SRO fee changes, which are immediately effective upon filing under Section 19(b)(3). *See supra* note 137.

[146] *See supra* note 141 and accompanying text.

[147] The Commission estimates that 98.2 percent of SRO proposed rule changes were approved by the Commission and 1.8 percent were disapproved. The average and median time it took the Commission to complete its review of a SRO proposed rule change that was approved were 66.8 days and 44 days, respectively, after it was published in the **Federal Register**. The average and median time it took the Commission to complete its review of a SRO proposed rule change that was disapproved were 232.8 days and 239 days, respectively, after it was published in the **Federal Register**.

[148] *See supra* notes 142 and 143 and accompanying text.

[149] *See supra* note 142.

[150] *See* Proposing Release, *supra* note 1, at 54795.

[151] *See* Proposing Release, *supra* note 1, at 54796.

[152] FINRA rebates a portion of the SIP revenue it receives back to its members. *See* FINRA Rule 7610B, *available at https://www.finra.org/rules-guidance/rulebooks/finra-rules/7610b*.

One Roundtable commenter estimated that from 2013 to 2017, through the Nasdaq/UTP plan, the FINRA/Nasdaq TRF gave 83 percent of SIP revenue it received to broker-dealers. *See* Letter from Thomas Wittman, Executive Vice President, Head of Global Trading and Market Services and CEO, Nasdaq Stock Exchange (Oct. 25, 2018) at 19, *available at https://www.sec.gov/comments/4-729/4729-4562784-176135.pdf*.

[153] *See supra* note 7. A number of commenters agreed that revenues generated from core data fees are substantial. *See, e.g.,* Better Markets Letter at 1, 3; Clearpool Letter at 1; Fidelity Letter at 2; MFA Letter at 2; RBC Capital Markets Letter at 3; SIFMA Letter at 1.

[154] A number of commenters agreed that fees for core data are paid by a wide range of market participants. *See, e.g.,* CII Letter at 2; ICI Letter at 1; Bloomberg Letter at 2. Three commenters also stated that broker-dealers and funds ultimately pass these fees on to investors. *See* Better Markets Letter at 3; Bloomberg Letter at 2; CII Letter at 2.

[155] The commenter's analysis examined changes in the fees that some broker-dealers paid for CTA data between 2010 and 2018. The analysis also found that the change in the total amount each broker-dealer spent on CTA data varied based on the type of broker-dealer. They found that the average amount of money spent on CTA data by retail broker-dealers declined by four percent between 2010 and 2017, but the average amount spent by institutional broker-dealers increased by seven percent. *See* Letter from Melissa MacGregor, Managing Director and Associate General Counsel and Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA (Oct. 24, 2018) at 21–28, *available at https://www.sec.gov/comments/4-729/4729-4559181-176197.pdf*.

[156] *See* Proposing Release, *supra* note 1, at 54799. *See also infra* note 160.

[157] Some commenters agreed that the core data plans are monopolistic providers of market-wide services and market competition cannot be relied upon to set competitive prices. *See* Better Markets Letter at 3; Bloomberg Letter at 2, 5; CII Letter at 2–3, 4–5; Clearpool Letter at 3; Fidelity Letter at 3, 4; MFA Letter at 3; RBC Capital Markets Letter at 2. One of these commenters stated that ''exchanges generate revenue from the SIP plans, plus additional (unshared) revenue from their proprietary data fees, they have no incentive whatsoever to cannibalize their own revenue streams by positioning them as more competitively priced alternatives to core data.'' *See* Bloomberg Letter at 2 and n. 4.

[158] Some commenters stated that proprietary data products sold by some SROs do not represent viable, competitively priced alternatives to the core data distributed by the NMS plan processors. *See* Bloomberg Letter at 2, n. 4; Clearpool Letter at 3; CII Letter at 4–5; Healthy Markets Letter at 11.

[159] The feeds produced by market data aggregators offer additional features, such as lower latency, but usually cost more than SIP data. *See* Equity Market Structure Roundtables: Roundtable on Market Data and Market Access October 25, 2018 Transcript, *available at https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102518-transcript.pdf* (''Oct. 25 Tr.''), at 126:20–129:8 (statement of Mr. Skalabrin).

[160] *See* Proposing Release, *supra* note 1, at 54799. Three commenters agreed that certain regulatory information, such as LULD price bands, is only available through the SIPs. *See* Better Markets

Continued

offer top of book data feeds, which may be considered by some to be viable substitutes for SIP data for certain applications.[161] However, in the equity markets, broker-dealers typically rely on the SIP data to fulfill their obligations under Rule 603 of Regulation NMS, *i.e.,* the ''Vendor Display Rule,'' which requires a broker-dealer to show a consolidated display of market data in a context in which a trading or order routing decision can be implemented.[162]

The purchase of SIP data or proprietary market data from all exchanges, either directly or indirectly, is necessary for all market participants executing orders in NMS securities.[163] SROs have significant influence over the prices of most market data products.[164] For example, the exchanges individually set the pricing of the depth of book data that they sell to market data aggregators and broker-dealers that self-aggregate who in turn generate consolidated data. At the same time, SROs collectively, as participants in the national market system plans, decide what fees to set for SIP data.[165] Although market data aggregators might compete with the SIPs by offering products that provide core data for the equity markets, they ultimately derive their data from the exchanges' direct proprietary data feeds, whose prices are set by the exchanges, a subset of SROs.[166]

5. Current Structure of the Market for Trading Services in NMS Securities

The Commission described the structure of the market for trading in NMS securities, as of that time, in the Notice and the CAT Plan Approval Order.[167] While the Commission's analysis of the state of competition in the Notice is fundamentally unchanged, the market for trading services in options and equities currently consists of 24 national securities exchanges, all of which are participants to NMS plans, as well as off-exchange trading venues including broker-dealer internalizers and 34 NMS Stock ATSs,[168] which are not participants in NMS plans.[169] The 24 exchanges are currently controlled by eight separate entities; four of which each operate a single exchange.[170]

Broker-dealer internalizers and ATSs subscribe to SIP data as well as other proprietary data products offered by the exchanges, but also compete with them for order flow in NMS securities.[171] Additionally, FINRA rebates a portion of the SIP revenue it receives back to broker-dealer internalizers and ATSs based on the trade volume they report.[172] The CAT NMS Plan Approval Order discusses how the CAT funding model and the allocation of fees between SRO participants and Industry Members could affect competition in the market for trading services in options and equities.[173]

C. Economic Effects

In the Proposing Release the Commission stated that, overall, it believed the rescission of the Fee Exception would not have significant economic effects for the following reasons: (1) On average, there are very few proposed NMS plan fee changes each year, which the Commission expects to continue to be the case; (2) the existing filing procedure already allows for Commission abrogation of NMS plan fee amendments that do not comply with the Exchange Act, therefore the impact of the proposed amendments on the fees paid by market participants would have largely been restricted to the two to six month Commission review period, because a fee change that is effective under the current procedure would not be effective under the proposed amendments unless it was approved by the Commission; (3) the SIPs have significant market power in the market for core and aggregated market data products and are monopolistic providers of certain information, so the proposed amendments would have had a minimal effect on the SIPs' pricing models; and (4) the proposed amendments were a procedural change and would not have affected the contents of the SIP data or comparable products.[174]

Several commenters suggested the proposed amendments could have additional economic effects beyond the ones the Commission discussed in the Proposing Release.[175] The Commission has modified its analysis of the economic effects of the adopted amendments to address these comments as well as to address Commission modifications to the procedures and timeframes for Commission publication of notice and subsequent Commission actions for proposed new NMS plans and plan amendments that are not immediately effective upon filing.[176]

Letter at 3; Bloomberg Letter at 5; ICI Letter at 1. One commenter stated that broker-dealers need access to core data to meet their regulatory obligations including but not limited to receipt of LULD plan price bands and information relating to regulatory halts and market-wide circuit breakers. *See* Fidelity Letter at 2 and n. 3.

[161] *See* Proposing Release, *supra* note 1, at 54802.

[162] *See* Proposing Release, *supra* note 1, at 54799. Two commenters agreed that broker-dealers typically use core data to meet their regulatory obligations under the Vendor Display Rule. *See* Bloomberg Letter at 3; Fidelity Letter at 2. Some commenters stated that broker-dealers need access to core data to meet their regulatory obligations. *See* Better Markets Letter at 2–3; Bloomberg Letter at 2–3, 5; Clearpool Letter at 1, 3; FIA Principal Traders Letter at 1; Fidelity Letter at 2 and n. 3; ICI Letter at 1, 2; SIFMA Letter at 1–2.

[163] For example, Rule 611(a) of Regulation NMS requires trading centers to establish policies and procedures to prevent trade-throughs. In order to prevent trade-throughs, executing broker-dealers need to be able to view the protected quotes on all exchanges. They can fulfill this requirement by using SIP data, proprietary data feeds offered by the SROs, or a combination of both.

[164] Two commenters agreed that SROs have significant influence over the prices of market data. *See* CII Letter at 2, 3, 4–5; Clearpool Letter at 3.

[165] Currently, the Commission can abrogate NMS plan fee amendments for core data. *See* Rule 608(b)(3)(iii); *see also* Proposing Release, *supra* note 1, at 54796. The Commission can also suspend SRO fee changes filed under Section 19(b)(3). *See* 15 U.S.C. 78s(b)(3); *see also supra* note 137.

[166] Pursuant to Section 19(b) of the Exchange Act and Rule 19b–4 thereunder, SROs must file with the Commission proposed rules, in which they set prices for their direct feed data. Those prices can vary depending on the type of end user.

[167] *See* Securities Exchange Act Release No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016) (File No. 4–698) (''Notice''), Section IV.G.1.a; *and* Securities Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT Plan Approval Order''), Section V.G.1.

[168] As of July 13, 2020, 34 NMS Stock ATSs are operating pursuant to an initial Form ATS–N. A list of NMS Stock ATSs, including access to initial Form ATS–N filings that are effective, can be found at *https://www.sec.gov/divisions/marketreg/form-ats-n-filings.htm.*

[169] Members from some ATSs or broker-dealer internalizers may serve on the Advisory Committees of some NMS plans, but they would not be able to vote on NMS plan amendments. *See supra* note 109. Non-SRO members would serve as voting members on the Operating Committee of the New Consolidated Data Plan. *See supra* note 104.

[170] Cboe Global Markets, Inc., controls Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGA Exchange, Inc.; Miami International Holdings, Inc. controls Miami International Securities Exchange LLC, MIAX Emerald, LLC, and MIAX PEARL, LLC; Nasdaq, Inc. controls Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX, LLC, and The Nasdaq Stock Market LLC; Intercontinental Exchange, Inc. controls New York Stock Exchange, LLC, NYSE Arca, Inc., NYSE American LLC, NYSE Chicago, Inc., and NYSE National, Inc. The three entities that control a single-exchange are IEX Group, Inc., which controls Investors' Exchange LLC; BOX Holdings Group LLC, which controls BOX Exchange LLC; LTSE Group, Inc., which controls Long-Term Stock Exchange, Inc.; and MEMX Holdings LLC, which controls MEMX, LLC.

[171] *See supra* Section IV.B.4. One commenter agreed that for-profit SROs set the price for core data that broker-dealers have a regulatory obligation to purchase and SROs also compete directly with their broker-dealer customers for order flow. *See* Fidelity Letter at 3.

[172] *See supra* note 152.

[173] *See* CAT Plan Approval Order, *supra* note 167, at 84882–84. One commenter agreed that SROs compete with broker-dealers and are also charged with allocating costs between SROs and Industry Members for the CAT, in which broker-dealers are required to participate by regulation. *See* Fidelity Letter at 3.

[174] *See* Proposing Release, *supra* note 1, at 54803.

[175] *See, e.g.,* Better Markets Letter at 3; Bloomberg Letter at 2, 6; CII Letter at 2–3.

[176] *See supra* Section II.B.

While the Commission continues to believe the proposed amendments would not have significant economic effects for the reasons discussed above, the Commission believes that the economic benefits from the adopted amendments will be more significant than those discussed in the Proposing Release.[177] After considering input from commenters,[178] the Commission now believes that the benefits of rescinding the Fee Exception will no longer be restricted to the Commission review period, during which a fee change is effective under the current procedure, but will not be effective under the adopted amendments. Instead, the Commission believes that the benefits will be greater because the Commission believes that rescinding the Fee Exception will eliminate a potential disincentive for persons to provide comments on NMS plan fee amendments, which could make additional information available that could help the Commission evaluate if NMS plan fee amendments comply with the Exchange Act. Additionally, the Commission believes that the modifications to Rule 608(b) will increase the transparency and improve the efficiency of the process for handling new NMS plans and proposed amendments to existing NMS plans (including fee amendments).

Below, the Commission analyzes the economic effects of the amendments, including the benefits, costs, and effects on efficiency, competition, and capital formation in more detail.

1. Benefits

The Commission believes that rescinding the Fee Exception will provide a number of benefits, including, among other things: Eliminating a potential disincentive for persons to provide comments on NMS plan fee amendments, which could make additional information available that could help the Commission evaluate whether a NMS plan fee amendment complies with the Exchange Act; helping protect market participants from having to pay fees that the Commission may later determine do not comply with the Exchange Act; and providing SRO members and subscribers of SIP data with earlier notice and more time to plan and prepare before they are subject to a new or altered NMS plan fee. Additionally, the Commission believes the modifications to Rule 608(b) will increase the transparency and improve the efficiency of the process for handling proposed new NMS plans and plan amendments.

a. Rescission of the Fee Exception

In response to commenters, the Commission has updated its analysis and now believes that rescinding the Fee Exception will benefit market participants by eliminating a potential disincentive for persons to provide comments on NMS plan fee amendments. To the extent there is additional public comment, this could, in turn, enhance regulatory efficiency if it provides additional information that assists the Commission in evaluating whether some NMS plan fee amendments comply with the Exchange Act.

As discussed above, some commenters stated that the Fee Exception discourages market participants from commenting on NMS plan fee amendments.[179] Some commenters stated this lack of public comment has made it difficult for the Commission to evaluate if NMS plan fee amendments comply with the Exchange Act and Commission Rules.[180] The Commission acknowledges it is possible that the Fee Exception may discourage market participants from commenting on NMS plan fee amendments.

Two commenters stated that allowing an opportunity, before NMS plan fee amendments could become effective, for public comment and Commission approval by order would encourage market participants to comment on NMS plan fee amendments.[181] One commenter stated that this would provide the Commission with more information at an earlier point in the agency decision-making process.[182] Several commenters stated that the amendments would assist in the Commission's assessment of whether a NMS plan fee amendment meets the requirements of the Exchange Act before they go into effect.[183] The Commission believes, to the extent that rescinding the Fee Exception encourages more market participants to comment, it may provide the Commission with more information at an earlier stage in its decision-making process about the impact of a NMS plan fee amendment on market participants before the fee goes into effect. This additional information could help the Commission evaluate if a NMS plan fee amendment complies with the Exchange Act, which could enhance regulatory efficiency.

If rescinding the Fee Exception helps the Commission evaluate whether NMS plan fee amendments comply with the Exchange Act, then it might affect the fees charged by NMS plans. One commenter stated that the Proposal is unlikely to have a significant immediate effect on the cost of core data, since the Proposal does not decrease, or otherwise amend, any particular fee currently in existence.[184] This commenter also stated that over time the Proposal should result in simpler, clearer, and more reasonably priced fees.[185] The Commission agrees with this commenter and believes that rescinding the Fee Exception may not have a significant immediate impact on the price of core data or other fees charged by NMS plans, but over a longer time period rescinding the Fee Exception could have a limited effect on the fees charged by NMS plans if it helps the Commission evaluate whether NMS plan fee amendments comply with the Exchange Act. However, the Commission is unable to estimate the long-term effects rescinding the Fee Exception will have on fees charged by NMS plans, because it would depend on the nature of future NMS plan fee amendments.

Even if rescinding the Fee Exception does not encourage more market participants to comment on NMS plan fee amendments, the Commission believes it will still help protect market participants from having to pay fees that the Commission may later determine do not comply with the Exchange Act.[186] Currently, NMS Plans could begin charging market participants fees immediately upon filing that the Commission may later determine do not comply with the Exchange Act and decide to abrogate.[187] The new process is designed to help ensure that changes to NMS plan fees and charges could not be immediately imposed and market participants would not have to pay fees (even temporarily) that the Commission may later determine do not comply with the Exchange Act.

To the extent NMS plans currently refund fees that are subsequently

[177] *See* Proposing Release, *supra* note 1, at 54803.

[178] *See infra* note 183.

[179] *See supra* note 14.

[180] *See supra* note 13.

[181] *See* Better Markets Letter at 3; MFA Letter at 3.

[182] *See* Bloomberg Letter at 5.

[183] *See* Better Markets Letter at 3; Bloomberg Letter at 2, 6; CII Letter at 2–3; Clearpool Letter at 3; Fidelity Letter at 3; ICI Letter at 2; MFA Letter at 1, 3; RBC Capital Markets Letter at 2–3, 4; SIFMA Letter at 1.

[184] *See* Bloomberg Letter at 8.

[185] *See* Bloomberg Letter at 5.

[186] Several commenters agreed that rescinding the Fee Exception will help protect market participants from NMS plan fee amendments that are ultimately found to not meet the requirements of the Exchange Act. *See* Bloomberg Letter at 3; CII Letter at 2, 3; FIA Letter at 2; MFA Letter at 1, 2; RBC Capital Markets Letter at 1; SIFMA Letter at 1–2.

[187] *See supra* Section IV.B.1.

abrogated or withdrawn,[188] the benefit of the additional protection rescinding the Fee Exception offers to market participants from having to pay fees that the Commission may later determine do not comply with the Exchange Act may be limited, because market participants would already receive refunds. One commenter stated that, under the current process, there could be complications associated with refunding NMS plan fees that are abrogated.[189] This commenter also pointed out that rescinding the Fee Exception will help market participants avoid complications with refunds should a NMS plan fee amendment be withdrawn or subsequently be denied, because NMS plan fee amendments will only be imposed on market participants after notice, comment, and an affirmative determination by the Commission that the fee change conforms to the requirements of the Exchange Act.[190] To the extent NMS plans currently refund fees that are subsequently abrogated or withdrawn, rescinding the Fee Exception may provide a benefit to market participants by helping them avoid complications associated with refunds for NMS plan fee amendments that would have been abrogated.

Additionally, the Commission believes that rescinding the Fee Exception will benefit market participants because they will no longer incur costs from having to challenge NMS plan fee changes that the Commission would later abrogate. Two commenters stated the immediate effectiveness of NMS plan fee amendments can create significant costs for market participants to challenge fee changes, even if the changes are later suspended or abrogated.[191] One of these commenters stated that it invested significant resources challenging a NMS plan fee amendment in order to prepare and lodge a stay application with the Commission, and prepare its business and customers in the event the Commission decided not to take immediate action before the new fees took effect.[192] The Commission acknowledges that NMS plan fee amendments being immediately effective upon filing can create costs for market participants to challenge fee changes. Under the new process, NMS plan fee amendments would not become effective unless they are approved by the Commission. Therefore, market participants will not need to incur the costs of challenging NMS plan fee amendments that the Commission may later determine do not comply with the Exchange Act.

The Commission believes that rescinding the Fee Exception will provide SRO members and subscribers of SIP data with earlier notice and more time to plan and prepare before they are subject to a new or altered NMS plan fee.[193] Because NMS plan fee amendments will not become effective until after they are subject to public comment and approved by the Commission, SRO members and subscribers to SIP data will receive earlier notice regarding NMS plan fee amendments before they go into effect. In cases where SRO members and subscribers to SIP data may not previously have received adequate notice, they will now have more time to plan and prepare before they are subject to a new or altered NMS plan fee. For example, under the amendments, third party vendors of SIP data will learn about potential fee changes to a type of SIP fee (*e.g.,* non-displayed fees) earlier, which might give them more time to make adjustments (*e.g.,* changes to fee schedules, billing systems, categorization of customers) and notify their clients before they are subject to the fee changes. Additionally, the Commission believes the notice and comment period for NMS plan fee filings before they become effective will benefit market participants by providing them an opportunity to comment and seek clarifications on NMS plan fee amendments before they become effective, which will help them to plan and prepare before they are subject to a new or altered NMS plan fee.[194]

The Commission believes that SRO members and subscribers of SIP data might benefit from the delay caused by the notice and comment process pursuant to Rule 608 if a NMS plan fee amendment increased a NMS plan fee, because they would not have to pay the increased fee until the Commission approved the fee change and it became effective.[195] Similarly, SROs might benefit by earning incremental revenue if the process delays a NMS plan fee decrease.

b. Modified Procedures for Proposed New NMS Plans and Plan Amendments

Two commenters stated that applying the timeframes and procedures of Section 19(b)(2) to NMS plan amendments would increase transparency and provide for more efficient review of NMS plan amendments.[196] As discussed above,[197] the Commission is adopting amendments to the Rule 608(b) procedure for handling proposed NMS plans and plan amendments that are patterned on Section 19(b), but with some modifications of the Section 19(b) timeframes that the Commission believes are appropriate in light of differences between SRO rule filings and proposed NMS plans and plan amendments.[198] Additionally, the Commission is requiring that proposed new NMS plans and plan amendments be filed with the Commission by email, instead of with the Office of the Secretary, typically using a paper-based filing process.[199]

The Commission believes that the modifications to the procedures and timeframes for Commission actions to the notice and consideration process for proposed new NMS plans and plan amendments under Rule 608(b), along with the requirement that they be filed with the Commission by email, will increase the transparency and improve the efficiency of the notice and consideration process for proposed new NMS plans and plan amendments. Two commenters believe that the current

[188] The Commission is not aware of the occurrence of any refunds.

[189] *See* RBC Capital Markets Letter at 3–4.

[190] *See* RBC Capital Markets Letter at 3.

[191] *See* Bloomberg Letter at 6–7; RBC Capital Markets Letter at 4.

[192] *See* Bloomberg Letter at 6.

[193] *See supra* Section IV.B.1. Several commenters agreed that rescinding the Fee Exception would provide market participants with advance notice and more time to plan for a fee change. *See* Bloomberg Letter at 3, 5; ICI Letter at 2; RBC Capital Markets Letter at 4.

[194] Several commenters agreed that commenting on NMS plan fee amendments before they become effective would bring greater transparency to the fee proposal process and help market participants seek clarification with respect to NMS plan fee amendments before they become effective. *See* CII Letter at 2; MFA Letter at 2. One way NMS plans could issue clarification on NMS plan fee amendments is by responding to comments on the proposed fee amendment, which would be included in the comment file. Additionally, rescinding the Fee Exception provides NMS plans the opportunity to amend their NMS plan fee amendments in response to issues raised by commenters before they become effective.

[195] A delay in a NMS plan fee increase would also impose a corresponding cost on SROs, while a delay in a NMS plan fee decrease would impose a cost on SRO members and subscribers of SIP data. *See infra* Section IV.C.2.a (discussing incremental revenue and costs of delayed NMS plan fees).

[196] *See* Operating Committees Letter at 3–5; Nasdaq Letter at 1, 3. As discussed in detail above, these two commenters stated that the standard filing procedure for NMS plan amendments can delay transparency and public input into proposed NMS plan amendments because it does not mandate a timeframe in which the Commission must notice a proposed NMS plan amendment. *See supra* note 32 and accompanying text and *infra* note 200 and accompanying text.

[197] *See supra* Section II.B.1.

[198] As described in detail above, commenters advocated for the application of the Section 19(b) process to proposed plan fee amendments. However, the Commission is extending the modified procedures to all proposed plan amendments and proposed new NMS plans. *See id.*

[199] *See supra* Section II.B.1.c.

lack of specified timeframes for noticing proposed new NMS plans and plan amendments have delayed the consideration of some proposed new NMS plans and plan amendments.[200] The Commission believes that the new timeframes for the Commission to send notice to the **Federal Register**, along with the requirement that they be filed with the Commission by email, will alleviate these commenters' concerns and improve the efficiency of the process for handling proposed new NMS plans and plan amendments by increasing the speed with which they are sent to and published in the **Federal Register**.[201] This will also provide more certainty to NMS plan participants and market participants regarding the timeframes for noticing proposed new NMS plans and plan amendments.

The Commission also believes that faster publication in the **Federal Register** will improve efficiency by decreasing, on average, the total time it takes for the Commission to act on a proposed new NMS plan or plan amendment from the time it is initially filed.[202] The Commission estimates, under the amended rule, the average total time it will take to act on proposed NMS plan amendments and proposed new NMS plans will be 78.5 days and 343.9 days, respectively, from the date they are filed with the Commission.[203] This is shorter than the Commission's estimate of the average total time it takes under the current procedures to act on proposed NMS plan amendments and proposed new NMS plans, which are 127.6 days and 368.5 days, respectively.[204]

The Commission believes that adopted Rule 608(b)(1)(ii), requiring the Commission to provide notice of any non-compliant filing of a proposed new NMS plan or plan amendment to plan participants within seven business days of receiving the filing, will also improve the efficiency of the process by reducing the time it takes for NMS plan participants to identify and correct any deficiencies and refile the proposed new NMS plan or plan amendment.

The Commission believes that increasing the maximum timeframe the Commission has to act on a proposed new NMS plan or plan amendment from 180 to 300 days from the date of publication in the **Federal Register** may improve the Commission's evaluation of certain proposed new NMS plans or plan amendments that are particularly complex.[205] This longer timeframe may improve the Commission's evaluation of such proposed new NMS plans or plan amendments by giving the Commission the option to take more time, if it is

[200] Two commenters stated that the current lack of specified timeframe in which the Commission is required to publish notice of the filing of proposed amendments to NMS plans can result in what one commenter called ''unwarranted delays'' and delay transparency and public input into proposed NMS plan amendments. *See* Nasdaq Letter at 1; Operating Committees Letter at 2–3. These commenters also gave examples of proposed NMS plan amendments in which there was a significant delay in publishing notice of the proposed amendments in the **Federal Register**. *See supra* note 32 and accompanying text. One of these commenters also stated that this has led to uncertainty and inefficiency in NMS plan operations, and hampered the ability of the SROs to manage the plans. *See* Nasdaq Letter at 2.

[201] The Commission estimates that, under modified Rule 608(b), the average time it will take the Commission to send notice of a NMS plan amendment to the **Federal Register** will be 10.6 days, which is less than the 15 day requirement under modified Rule 608(b)(1). The Commission based this estimate on the average time it historically takes the Commission to send notice of SRO proposed rule changes filed under Section 19(b)(2) to the **Federal Register,** because the required timeframes are the same, 15 days. *See supra* note 146 and accompanying text. The Commission estimates that, under modified Rule 608(b), the average time it will take to publish notice of a NMS plan amendment in the **Federal Register** will be 16.5 days. The Commission reached this estimate by adding the expected average time (10.6 days) required to send notice of a NMS plan amendment to the **Federal Register** under modified Rule 608(b) and the average time (5.9 days) required for the **Federal Register** to publish the notice (10.6 days + 5.9 days = 16. 5 days). This estimate is shorter than both the Commission's estimate of the average time of 62.9 days required under the current procedures to publish notice of NMS plan fee amendments in the **Federal Register**, and the average time of 65.5 days required to publish notice of proposed NMS plan amendments that are not immediately effective upon filing in the **Federal Register**. *See supra* notes 119 and 131 and accompanying text.

The Commission estimates that, under modified Rule 608(b), the average time it will take the Commission to send notice of a proposed new NMS plan to the **Federal Register** will be 90 days, the maximum timeframe the Commission has under modified Rule 608(b) to send notice of a proposed new NMS plan to the **Federal Register**. The Commission chose the maximum time allowed because it believes the publication of notice of a new NMS plan may involve significant input from the Commission and it was a conservative approach that represents the upper bound of the amount of time this would take. *See supra* Section II.B.1.a. The Commission estimates that, under modified Rule 608(b), the average time it will take to publish a proposed new NMS plan in the **Federal Register** will be 95.9 days. The Commission reached this estimate by adding the expected average time (90 days) required to send notice of a proposed new NMS plan to the **Federal Register** under modified Rule 608(b) and the average time (5.9 days) required for the **Federal Register** to publish the notice, (90 days + 5.9 days = 95.9 days). This estimate is shorter than the Commission's estimate of the average time of 163.8 days required under the current procedures to publish notice of proposed new NMS plans. *See supra* note 131 and accompanying text.

[202] The Commission acknowledges that the increasing the maximum timeframe for the Commission to act on a proposed new NMS plan or plan amendment from the date of publication in the **Federal Register** could increase the total time it takes for the Commission to act on some individual proposed new NMS plan or plan amendment from the time it is initially filed. This is discussed *infra,* in Section IV.C.2.b.

[203] The Commission estimates that, under modified Rule 608(b), the average total time it will take the Commission to act on a proposed NMS plan amendment from the date it is filed with the Commission will be 78.5 days. The Commission reached this estimate by adding the expected average time (16.5 days) required to publish notice of a proposed NMS plan amendment in the **Federal Register** and the expected average time (62.0 days) it will take the Commission, under modified Rule 608(b), to act on a proposed NMS plan amendment from the time it is published in the **Federal Register**, (16.5 days + 62.0 days = 78.5 days). *See supra* note 201 for a discussion of the Commission's estimate of the average time it will take to publish notice of a proposed NMS plan amendment. The Commission estimates that, under the modified Rule 608(b), the average time it will take to act on a proposed NMS plan amendment from the time it is published in the **Federal Register** will be 62.0 days, which is equal to the average time it has historically taken under the current procedures. *See supra* note 134 and accompanying text.

The Commission estimates that, under modified Rule 608(b), the average total time it will take the Commission to act on a proposed new NMS plan from the date it is filed with the Commission will be 343.9 days. The Commission reached this estimate by adding the expected average time (95.9 days) required to publish notice of a proposed new NMS plan in the **Federal Register** and the expected average time (248 days) it will take the Commission, under modified Rule 608(b), to act on a proposed new NMS plan from the time it is published in the **Federal Register**, (95.9 days + 248 days = 343.9 days). *See supra* note 201 for a discussion of the Commission's estimate of the average time it will take to publish notice of a proposed new NMS plan.

The Commission determined its estimate of the average time it will take, under modified Rule 608(b), for the Commission to act on a proposed new NMS plans from the time it is published in the **Federal Register** by using historical data on the time it took the Commission to approve proposed new NMS plans filed between 2010 and 2020 from the time they were published in the **Federal Register**. For the historical NMS plan approvals, the original approval time was kept if a NMS plan took less than 180 days to approve, which is the maximum timeframe the Commission currently has to approve a NMS plan or plan amendment after it is published in the **Federal Register**. *See supra* Section IV.B.2. If a NMS plan took 180 days or longer to approve, the Commission assumed that it would have a value of 300 days, which is the maximum timeframe the Commission has under the adopted amendments to act on a NMS plan or plan amendment from the time it is published in the **Federal Register**. *See supra* Section II.B.1.b. The average of these modified values is the Commission's estimate of the average time it will take the Commission, under modified Rule 608(b), to act on a proposed new NMS plan from the time it is published in the **Federal Register**, 248 days. The Commission chose this estimation method because it believes it is a conservative approach that represents an upper bound on the average time and accounts for the longer Commission timeframe to approve proposed new NMS plans under the modified procedures and timeframes for Rule 608(b).

[204] *See supra* Section IV.B.2 (for details on these estimates).

[205] Under the current process, the Commission has 120 days to approve a proposed new NMS plan or plan amendment from the date of publication in the **Federal Register**. However, the Commission has the option to extend its timeframe an additional 60 days, which gives the Commission a maximum timeframe of 180 days to approve a proposed new NMS plan or plan amendment from the date of publication in the **Federal Register**. *See supra* Section II.B.1 and IV.B.2.

needed, to review comments and better determine if a proposed new NMS plan or plan amendment is consistent with the Exchange Act.

The Commission believes that the new process for the Commission to institute proceedings, if needed, for proposed new NMS plans and plan amendments under adopted Rule 608(b)(2)(i) will improve the transparency and efficiency of the consideration process by enabling the Commission to inform the NMS plan and market participants about issues that provide potential grounds for disapproval of a proposed new NMS plan or plan amendment.[206] Publication of this information will improve transparency and efficiency by allowing the public a chance to address identified issues and provide the Commission with additional information.

The Commission believes that the requirement that proposed new NMS plans and plan amendments be filed with the Commission by email will benefit SROs by improving the efficiency of the filing process and reducing the costs they incur in connection with such filings. Currently, proposed new NMS plans and proposed amendments to NMS plans are filed with the Secretary of the Commission, typically using a paper-based filing process.[207] The new filing requirement should eliminate many of the costs associated with paper filing, including printing, copying, mailing, and delivery costs. It should also conserve Commission resources, as Commission staff will no longer manually process the receipt and distribution of proposed new NMS plans and plan amendments.

2. Costs

The Commission believes that rescinding the Fee Exception will impose costs on SROs if the process delays the implementation of a NMS plan fee increase, and will impose costs on SRO members and subscribers of SIP data if the process delays the implementation of a NMS plan fee decrease, because these parties would no longer receive the incremental revenue or costs savings they would have earned if NMS plan fee amendments were immediately effective. The Commission acknowledges that increasing the maximum timeframe for the Commission to act after publication in the **Federal Register** might have a negative impact on efficiency in some cases, but does not believe that this effect will be significant.[208] The Commission does not believe the amendments will impose implementation costs on SROs or other market participants.

a. Rescission of the Fee Exception

The Commission believes that rescinding the Fee Exception might impose costs on SROs because the new rule may delay implementation of NMS plan fee amendments.[209] For example, a delay in the approval of a NMS plan amendment increasing SIP fees may delay its implementation, which would eliminate incremental revenue that, under the baseline, would have been able to be generated earlier because fees were immediately effective upon the filing of the amendment. The loss of this incremental revenue, in turn, could reduce the revenues the SROs are able to collect from the SIP, as well as the SIP revenue that FINRA rebates back to its members.[210] However, the Commission believes the costs of rescinding the Fee Exception should not be significant because, on average, there are only 3.8 NMS plan fee changes in a year,[211] and because the Commission estimates that the average delay caused by the amendments to the implementation of NMS plan fee amendments will only be 127.1 days.[212] In addition, any lost revenue or delay in recovering costs by the SROs should represent a corresponding benefit to SRO members and subscribers of SIP data.[213] On the other hand, a delay in the effectiveness of a NMS plan fee amendment decreasing a NMS plan fee would reverse these costs and benefits.

b. Modified Procedures for Proposed New NMS Plans and Plan Amendments

As noted above, the Commission believes that the adopted amendments will, on average, decrease the total time it takes for the Commission to act on a proposed new NMS plan or plan amendment from the time it is filed.[214]

[206] *See supra* Section II.B.1.

[207] *See supra* Section II.B.1.c and Section IV.B.2.

[208] *See infra* Section IV.C.2.b (for a detailed discussion).

[209] Rescinding the Fee Exception will delay the implementation of NMS plan fee amendments that currently would have been implemented without a phase-in period. It might also delay the implementation of NMS plan fee amendments that currently would have been implemented with a phase-in period that is shorter than the amendment's specified time-frames for the review of NMS plan amendments. It would not delay the implementation of NMS plan fee amendments that currently would have been implemented with a phase-in period that is longer than the amendment's specified time-frames for the review of NMS plan amendments.

[210] *See supra* note 152; *see also supra* Section IV.B.4. In the case of the CAT plan, rescinding the Fee Exception could also delay the SROs from recovering money for costs they might have already incurred. *See supra* note 108 and accompanying text.

[211] *See supra* Section IV.B.1 (for details on the average number of NMS plan fee amendments).

[212] The Commission reached this estimate by adding the expected average time (16.5 days), under modified Rule 608(b), required to publish a NMS plan fee amendment in the **Federal Register** and the Commission's estimate of the average time (110.6 days) it will take the Commission, under modified Rule 608(b), to approve or disapprove a NMS plan fee amendment from the time it is published in the **Federal Register**, (16.5 days + 110.6 days = 127.1 days). *See supra* note 201 for a discussion of the Commission's estimate of the average time it will take to publish notice of a proposed NMS plan amendment in the **Federal Register**.

Because NMS plan fee amendments are immediately effective upon filing, there is no historical data on the time it takes the Commission to approve a NMS plan fee amendment. Given that the modified Rule 608(b) procedures for all Commission actions on proposed new NMS plans and plan amendments are largely patterned on Section 19(b), the Commission based its estimate of the average time it will take the Commission to approve or disapprove a NMS plan fee amendment on historical data on Commission actions during the Section 19(b) process for SRO proposed rule changes filed under Section 19(b)(2), modified to account for the modified timeframes under Rule 608(b) for proposed new NMS plans and plan amendments. The Commission estimated the percentage of time SRO proposed rule changes filed under Section 19(b)(2) were approved or disapproved: (1) Without instituting proceedings (88.4 percent), (2) when proceedings were instituted but not extended (3.1 percent), and (3) when proceedings were instituted and extended (8.5 percent). *See supra* note 148 and accompanying text. These percentages were multiplied, respectively, by the maximum amount of time the Commission could take to approve NMS plan amendments under the modified 608(b) procedures when it: (1) Does not institute proceedings (90 days), (2) institutes but does not extend proceedings (180 days), and (3) institutes and extends proceedings to the maximum allowable time (300 days). *See supra* Section II.B.1.b. The Commission chose these time estimates because they are a conservative estimate of how long it would take the Commission to approve a NMS plan fee amendment under each of these scenarios. The Commission's estimate for the average time it will take the Commission to approve or disapprove a NMS plan fee amendment is 110.6 days = 88.4 percent * 90 days + 3.1 percent * 180 days + 8.5 percent * 300 days. If the Commission instituted proceedings and extended the review period to the 300 day time limit, the Commission estimates it would take an average of 316.5 days for the Commission to act upon a NMS plan fee amendment from the time it is initially filed with the Commission, which is 16.5 days to publish notice of the filing in the **Federal Register** plus the 300 days it would take the Commission to act on the NMS plan fee amendment from the date it is published in the **Federal Register**. *See supra* Section II.B.1.

These estimated time periods do not include the time period between when the Commission takes action and the NMS plan begins charging the fee. It is possible that the average time period between Commission approval and when the NMS plan begins charging fees (which time period may be specified by the NMS plan) could be similar to the Commission's estimate of the current average time period it takes a NMS plan to begin charging fees, *i.e.,* 66.3 days. The time period specified by the NMS plan could also be shorter, since market participants will have received earlier notice and more time to prepare for the potential fee change due to the Rule 608 process. *See supra* note 112.

[213] *See supra* note 195 and accompanying text.

[214] *See supra* Section IV.C.1.b.

The Commission acknowledges, however, that for some proposed new NMS plans and plan amendments, the increase in the maximum timeframe for the Commission to act from the date of publication in the **Federal Register** from 180 days to 300 days could cause delays compared to the baseline for this part of the process, thereby decreasing efficiency.[215] To the extent that, as a result, there is an increase in the total time it takes to approve a proposed new NMS plan or plan amendment from the time it is initially filed, this may impose indirect costs on market participants.[216] The Commission, however, does not believe any such increase in total time will be significant. Specifically, with regard to proposed new NMS plans, the Commission believes the increase in total time will not be significant because, under the current process, the average total time it has taken the Commission to act on proposed new NMS plans from the time they are filed is close to the maximum total time the Commission can take to act under the modified procedures of Rule 608(b).[217] With regard to proposed new NMS plan amendments, the Commission believes any increase in the total time for the Commission to act from the time of filing will not be significant because the time it takes to publish notice of the proposed amendment in the **Federal Register** is expected to decrease and because currently 95 percent of proposed NMS plan amendments are approved within 120 days of publication of in the **Federal Register**.[218] To the extent that any indirect costs do occur as a result of an overall increase in time, the Commission is unable to estimate their effects because they would depend on the nature of future proposed new NMS plans and plan amendments.

The Commission acknowledges that the new timeframes for the Commission to send notice of proposed new NMS plans and plan amendments to the **Federal Register** may increase the time that it takes for the Commission to approve or disapprove certain proposed new NMS plans or plan amendments after they are published in the **Federal Register**. The new noticing deadlines under amended Rule 608(b)(1) may not allow sufficient time for the Commission and plan participants to resolve issues before notice publication.[219] Instead, the Commission and plan participants will need to resolve such issues during the Commission consideration process, which may increase the time it takes the Commission to approve or disapprove certain proposed new NMS plans or plan amendments from the time they are published in the **Federal Register**. However, because the new noticing deadlines would also result in proposed new NMS plans or plan amendments being published in the **Federal Register** more quickly, the Commission does not believe the total amount of time it takes the Commission to act on these proposed new NMS plans or plan amendments is likely to increase and impose indirect costs on market participants.[220]

The rescission of the Fee Exception is a procedural amendment and impacts the timing of effectiveness of NMS plan fee amendments; it does not affect substance of the supporting information that is required to be included in all proposed NMS plan fee amendments.[221] Additionally, the new procedures for Commission action on proposed NMS plans and plan amendments under Rule 608(b)(1) and (2) do not change the substance of the information that must be included in all proposed new NMS plans and plan amendments. Therefore, the Commission believes that the amendments will not impose additional implementation costs on the administration of NMS plans or on market participants.[222]

3. Impact on Efficiency, Competition, and Capital Formation

a. Efficiency

The Commission believes that rescinding the Fee Exception will result in a number of improvements in efficiency, including, among other things: Regulatory efficiency and the efficiency with which SRO members and subscribers to SIP data adjust to fee changes to NMS plans. However, the Commission also believes that rescinding the Fee Exception will decrease the efficiency of the implementation of NMS plan fee changes. Additionally, the Commission believes the modifications to the procedures and timeframes for notice and Commission actions for proposed new NMS plans and plan amendments, along with the requirement that they be filed with the Commission by email, will improve the efficiency of the notice and consideration process for proposed new NMS plans and plan amendments.

The Commission believes that rescinding the Fee Exception will enhance regulatory efficiency. The Commission believes that rescinding the Fee Exception will eliminate a potential disincentive for persons to provide comments on NMS plan fee

[215] *See supra* Sections II.B.1 (for details on the modified timeframes) and Section IV.B.2 (for details on the current timeframes). The Commission estimates that the average time it takes for the Commission to act on proposed new NMS plans from the date of their publication in the **Federal Register** will increase from an average of 204.8 days under the current process to an average of 248 days under the modified procedures. *See supra* note 203 (for details on the Commission's estimate for proposed new NMS plans under the modified procedures) and *supra* note 135 and accompanying text (for the average time for proposed new NMS plans under the current procedures).

The Commission estimates that average time it takes for the Commission to act on proposed NMS plan amendments from the date of their publication in the **Federal Register** will remain the same, 62 days. *See supra* note 203 (for details on the Commission's estimate for proposed NMS plan amendments under the modified procedures) and *supra* note 134 and accompanying (for the average time for proposed NMS plan amendments under the current procedures).

[216] For example, if the amendments delayed the approval of a NMS plan that would improve liquidity, market participants may experience indirect costs in the form of higher transaction costs until the amendments are approved.

[217] The modified procedures of Rule 608(b) place limits on both the time the Commission can take to notice the filing and the time it can take to act on a proposed new NMS plan or plan amendment. Previously there was no limit on the total time for Commission consideration because there was no limit on the time for the Commission to notice a proposed new NMS plan or plan amendment.

The Commission estimates that under the current procedures it has taken an average total time of 368.5 days for the Commission to approve a proposed new NMS plan from the time it is initially filed. *See supra* Section IV.B.2 (for a discussion of this estimate). Under the modified procedures, the limit on the total time for the Commission to act from the time of filing will be 390 days (90 days to notice the proposed new NMS plan to the **Federal Register** + 300 for the Commission to act after it is published in the **Federal Register**) plus the time it takes the **Federal Register** to publish the notice, which the Commission estimates will take an average of 5.9 days. *See supra* Section II.B.1 (discussing the new time limits for Rule 608(b)) and *supra* note 201 (discussing the estimate of the time for the **Federal Register** to publish notice).

[218] *See supra* Section IV.B.2 (for a discussion of current proposed NMS plan amendment approval times). The Commission estimates that the time it will take to publish notice of a proposed NMS plan amendment in the **Federal Register** will decrease from an average of 65.5 days under the current process to an average of 16.5 days under the modified procedures. *See supra* note 201 (for details on the Commission's estimate for proposed NMS plan amendments under the modified procedures) and *supra* note 131 and accompanying text (for the average time for proposed NMS plan amendments under the current procedures).

[219] *See supra* note 69 and accompanying text (discussing plan participants addressing issues in a proposed plan or plan amendment before notice publication reducing Commission approval time subsequent to notice publication).

[220] The Commission estimates that the average total amount of time it takes the Commission to act on a proposed new NMS plan or plan amendment may decrease. *See supra* note 203 and accompanying text. *See also supra* note 216 and accompanying text (discussing these potential indirect costs).

[221] *See* Proposing Release, *supra* note 1, at 54796.

[222] One commenter agreed that rescinding the Fee Exception would not materially add to the administrative burden of filers. *See* RBC Capital Markets Letter at 4.

amendments.[223] This may enhance regulatory efficiency if it provides the Commission with more information at an earlier stage in its decision making process.

The Commission believes that rescinding the Fee Exception will improve the efficiency of handling NMS plan fee amendments that would otherwise have been abrogated.[224] Under the amendments, the Commission will not need to abrogate NMS plan fee amendments because, absent approval by the Commission, such fee changes will never take effect. Additionally, to the extent NMS plans currently issue refunds for NMS plan fee amendments that are abrogated by the Commission,[225] rescinding the Fee Exception may also improve efficiency if it helps market participants avoid complications associated with refunding NMS plan fees that are abrogated.[226]

The Commission believes that rescinding the Fee Exception might improve the efficiency with which SRO members and subscribers to SIP data adjust to fee changes to NMS plans. The notice of NMS plan fee amendments before they are approved by the Commission and become effective might give market participants more time to plan and prepare before they are subject to a new or altered NMS plan fee.[227]

On the other hand, the Commission believes the amendments might have a negative impact on the efficiency of the implementation of NMS plan fee changes, because they will delay when NMS plans could begin charging new fees. If plan participants seek to change existing NMS plan fees, possibly due to changes in technology or market conditions or other demonstrable increases in NMS plan costs, then the amendments might reduce efficiency because any NMS plan fee amendments will take longer to become effective under the amendments than when they were immediately effective-upon-filing.[228]

The Commission believes that the modified timeframes and procedures for the Commission to send notice of proposed new NMS plans and plan amendments to the **Federal Register** will, overall, improve the efficiency of the process for handling such plans and amendments by decreasing the time it takes for them to be published in the **Federal Register**,[229] as well as the average total time it takes for the Commission to act on them relative to the date they are initially filed.[230] The Commission further believes that the requirement that proposed new NMS plans and plan amendments be filed with the Commission by email will improve the efficiency of the filing process for both plan participants and the Commission.[231]

b. Competition

In the Proposing Release, the Commission stated that it believed the rescission of the Fee Exception would not have a significant impact on competition in either the market for core and aggregated market data products or in the market for trading services in NMS securities because the Commission believed the rescission of the Fee Exception would not have a significant effect on the fees charged for core data.[232] However, in response to commenters, the Commission has revised its analysis of the effect of rescinding the Fee Exception on the fees charged for core data.[233] As a result of the revisions, the Commission has also made revisions in its analysis on the effects rescinding the Fee Exception will have on competition in the market for core and aggregated market data products and the market for trading services in NMS securities. Overall, the Commission continues to believe the rescission of the Fee Exception will not have a significant impact on competition in either the market for core and aggregated market data products or in the market for trading services in NMS securities.

As discussed above,[234] the Commission believes that rescinding the Fee Exception will not have a significant immediate impact on the price of core data. However, the Commission acknowledges that over a longer time period it could have a limited effect on the fees charged for core data if it leads to a more robust comment process for NMS plan fee amendments that provides additional information that helps the Commission evaluate whether NMS plan fee amendments comply with the Exchange Act. Any effect of this change on the fees charged for core data could affect competition in the market for core and aggregated market data products over the longer term. Similarly, any effect over the longer term on the fees charged for core data (and thus on SRO revenues or core data costs) could affect competition in the market for trading services in NMS securities. However, the Commission is unable to estimate these longer-term effects, because they would depend on the nature of future NMS plan fee amendments. In addition, because the SIPs have significant market power and are monopolistic providers of certain information, the Commission believes that any such effects on competition in the market for core and aggregated market data products would be limited.

The Commission believes that the rescinding the Fee Exception will not have a significant impact on competition in the market for core and aggregated market data products for the following reasons: (1) The Commission believes that the SIPs have significant market power in the market for core and aggregated market data products and are monopolistic providers of certain information;[235] (2) rescinding the Fee Exception will not affect the contents of SIP data or comparable products; (3) on average, there are very few (only 3.8) proposed NMS plan fee amendments in a year; and (4) the Commission currently has the ability to abrogate NMS plan fee amendments.[236] Although the Commission believes rescinding the Fee Exception will not have a significant effect on the market power of the SIPs, the Commission believes it might have minor effects on the SIPs'

[223] *See supra* Section IV.C.1.a (discussing removal of a disincentive to comment).

[224] The amendments might also improve the efficiency of implementing some NMS plan fee amendments that would otherwise have been withdrawn and later refiled. Currently, these fee changes are refiled on an immediately effective basis. The Commission estimates that the average and median time it takes a NMS plan to refile these fee changes are 143.3 days and 175 days, respectively. *See supra* note 125 and accompanying text. If these fee changes are ultimately approved more quickly under the amendments, it might increase the efficiency of their implementation. *See supra* Section IV.B.1.

[225] The Commission is not aware of the occurrence of any refunds.

[226] *See supra* note 190 and accompanying text (discussing complications with refunds).

[227] *See supra* note 193 and accompanying text (discussing additional time to prepare).

[228] *See supra* Section IV.C.2.a (discussing costs of delaying NMS plan fee changes).

[229] *See supra* Section IV.C.1.b (for a detailed explanation of this improvement) and note 201 and accompanying text (for an estimate of time to publish in the **Federal Register**).

[230] *See supra* note 203 and accompanying text (for an estimate of total time for Commission action). As noted above, the Commission acknowledges that increasing the maximum timeframe for the Commission to act after publication in the **Federal Register** might have a negative impact on efficiency for some proposed new NMS plans or plan amendments, but does not believe that this effect will be significant. *See supra* Section IV.C.2.b (for a detailed explanation).

[231] *See supra* Section IV.C.1.b (discussing benefits of email filing).

[232] *See* Proposing Release, *supra* note 1, at 54804.

[233] *See supra* Section IV.C.1.a.

[234] *See id.*

[235] *See supra* Section IV.B.3.

[236] The Commission's ability to abrogate NMS plan fee amendments within 60 days of their filing means that the SIPs are already limited in their ability to potentially charge fees that do not comply with the Exchange Act. *See supra* Section IV.B.1 and IV.C.1.a.

ability to compete. On the margin, the SIPs' competitive positions might be negatively affected by rescinding the Fee Exception because it will allow the SIPs' competitors, such as market data aggregators and SRO top of book feeds, to be able to adjust their fees and prices more quickly than the SIPs.[237] For example, vendors and SROs would be able to adjust the prices for their data products more quickly than the SIPs in response to any cost shock. However, because the SIPs have significant market power in the market for core and aggregated market data products and are monopolistic providers of certain information,[238] the Commission believes that these competitive effects will not be significant.

The Commission believes that, in the short-term, rescinding the Fee Exception will not have a significant impact on competition in the market for trading services in NMS securities for two reasons.[239] First, the Commission believes that it will not have a significant impact on the future fees the CAT plan will collect from Industry Members or the allocation of costs among Participants and Industry Members because the Commission already has the ability to abrogate NMS plan fee amendments.[240] Second, as discussed above, the Commission believes that, over the short-term, rescinding the Fee Exception will not have a significant impact on the cost of core data.[241] Therefore, the Commission believes that, in the short-term, rescinding the Fee Exception will not have a significant impact on revenues SROs receive or the costs broker-dealer internalizers and ATSs pay for core data.

The Commission does not believe the modifications to the timeframes and procedures for the Commission to notice and act on proposed new NMS plans and plan amendments that currently are not immediately effective upon filing will have a significant effect on competition.[242] The Commission acknowledges that these modifications may have limited effects on competition if they significantly reduce or extend the time it takes to act on certain proposed new NMS plans and plan amendments. However, the Commission is unable to estimate these effects because they would depend on the nature of future proposed new NMS plans and plan amendments. Additionally, the Commission believes that, even if the modifications to the timeframes and procedures for the Commission to notice and act on proposed new NMS plans and plan amendments does produce effects on competition, the effects would be limited because the Commission estimates that the average reduction in the total time it will take to act on proposed new NMS plans and plan amendments, relative to the time they are filed, will be less than 50 days.[243]

c. Capital Formation

The Commission believes that rescinding the Fee Exception will not have a significant impact on capital formation. The Commission believes that, in the short-term, rescinding the Fee Exception will not have a significant impact on capital formation because, for the reasons discussed above, any effect in the short term on NMS plan fees or on the average SIP costs are likely to be insignificant.[244] Moreover, any longer-term effects would also likely not be significant as the Commission does not expect these changes to have a significant effect on the overall costs that investors pay or investor participation in the market. Additionally, the Commission believes that the changes to the timeframes and procedures for the Commission to notice and act on proposed new NMS plans and plan amendments that are not immediately effective upon filing will not have a significant effect on capital formation because the Commission estimates that the average reduction in the total time it will take to act on proposed new NMS plans and plan amendments, relative to the time they are filed, will be less than 50 days.[245]

D. Reasonable Alternative

The Commission considered a reasonable alternative where the Commission would amend Rule 608(b)(3)(i) of Regulation NMS to provide that NMS plan fee amendments would not become effective immediately upon filing, but would instead become effective automatically without the Commission having to approve the NMS plan fee amendment at the end of the 60 day period, during which the Commission could potentially abrogate the NMS plan fee amendment. If the Commission did abrogate the NMS plan fee amendment, then the NMS plan fee amendment would still need to be re-filed pursuant to the standard procedure of paragraphs (b)(1) and (2).

This alternative would provide a comment period for NMS plan fee amendments before they go into effect. Therefore, similar to the adopted amendments, market participants would benefit from being able to comment on NMS plan fee amendments *before* they could become effective. However, because this alternative does not require Commission approval before a NMS plan fee amendment could become effective, one commenter stated that, compared to the Proposal, this alternative would discourage market participants from submitting comments because the fee change would be viewed as a *fait accompli*.[246] The Commission acknowledges that market participants may be less likely to comment on NMS plan fee amendments under this alternative compared to the adopted amendments.[247] To the extent this occurs, the comment process for NMS plan fee amendments would not be as robust under this alternative compared to the adopted amendments and the Commission would be less likely to receive additional information from the comment process that would help it evaluate whether a NMS plan fee amendment complies with the Exchange Act compared to the adopted amendments.

Compared to the adopted amendments, the time until a NMS plan fee amendment becomes effective could be slightly shorter.[248] Therefore, NMS plans could implement fee changes more efficiently and the costs to the SROs from the delay in implementing NMS plan fee increases could be lower than under the adopted amendments.[249] However, SRO members and subscribers to SIP data would have less time to plan and prepare before they are subject to a new or altered NMS plan fee than under the adopted amendments.[250]

Under this alternative, the Commission could not extend the 60-

[237] *See* Proposing Release, *supra* note 1, at 54804 (for a details on why market data aggregators and SRO top of book feeds could adjust their prices quicker).

[238] *See supra* Section IV.B.3.

[239] *See supra* Section IV.B.4.

[240] *See supra* Section IV.B.1.

[241] *See supra* Section IV.C.1.a.

[242] *See supra* Section II.B.1.

[243] *See supra* note 203 and accompanying text. *See also supra* Section II.B.1.

[244] *See supra* Section IV.C.1.a and Section IV.C.3.b.

[245] *See supra* note 203 and accompanying text. *See also supra* Section II.B.1.

[246] *See* MFA Letter at 3.

[247] *See supra* Section IV.B.1 and Section IV.C.1.a.

[248] Under this alternative, NMS plan fee amendments would become effective 60 days after filing unless the Commission decided to abrogate the fee filing. Under the amendments, the Commission estimates that the average time it would take for NMS plan fee amendments to be approved by the Commission and become effective will be 127.1 days from the time of filing. *See supra* note 212 and accompanying text.

[249] Similarly, the costs to SRO members and subscribers from the delay in implementing NMS plan fee decreases could be lower under this alternative than under the adopted amendments. *See supra* Section IV.C.2.a *and* Section IV.C.3.a.

[250] *See supra* Section IV.C.1.a.

day abrogation period.[251] Without extensions, this alternative would provide market participants with more certainty about when the NMS plan fee amendments would become effective. If a NMS plan fee amendment is complicated, the Commission may be unable to complete its review during the 60-day abrogation period.[252] If the Commission is unable to determine if a NMS plan fee amendment is fair, reasonable, and complies with the Exchange Act by the end of the 60-day abrogation period, then the Commission may have to abrogate the NMS plan fee amendment, which would then require the NMS plan fee amendment to be refiled under the standard procedure. This could cause these fee filings to take longer to be approved from the date of initial filing than under the adopted amendments.[253]

Under this alternative, the timeframes and procedures for proposed new NMS plans and plan amendments that are not immediately effective upon filing would not change.[254] Therefore, the process for handling proposed new NMS plans and plan amendments would not experience the gains in efficiency and transparency under this alternative that it would when compared to the adopting amendments.[255]

V. Regulatory Flexibility Certification

The Regulatory Flexibility Act (''RFA'')[256] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)[257] of the Administrative Procedure Act,[258] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.''[259] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment which, if adopted, would not have a significant economic impact on a substantial number of small entities.[260]

The adopted amendments to Rule 608 would apply to national securities exchanges registered with the Commission under Section 6 of the Exchange Act and national securities associations registered with the Commission under Section 15A of the Exchange Act.[261] None of the exchanges registered under Section 6 that would be subject to the amendments are ''small entities'' for purposes of the Regulatory Flexibility Act.[262] There is only one national securities association, and the Commission has previously stated that it is not a small entity as defined by 13 CFR 121.201.[263]

The Commission received no comments regarding its initial Regulatory Flexibility Analysis.[264] For the foregoing reasons, the Commission certifies that the adopted amendments to Rule 608 would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act.

VI. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated these rules as not a major rule, as defined by 5 U.S.C. 804(2).

VII. Statutory Authority

Pursuant to the Exchange Act, and particularly Section 2, 3, 6, 9, 10, 11A, 15, 15A, 17 and 23(a) thereof, 15 U.S.C. 78b, 78c, 78f, 78*l,* 78j, 78k–1, 78*o,* 78*o*–3 and 78w(a), the Commission is amending Sections 200.30–3, 201.700, 201.701, 240.19b–4 and 242.608 of chapter II of title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects

17 CFR Part 200

Organization, Conduct and ethics, Information and requests.

17 CFR Part 201

Rules of practice.

17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

For the reasons stated in the preamble, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for part 200, subpart A continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77o, 77s, 77z–3, 77sss, 78d, 78d–1, 78d–2, 78o–4, 78w, 78*ll*(d), 78mm, 80a–37, 80b–11, 7202, and 7211 *et seq.,* unless otherwise noted.

* * * * *

Section 200.30–3 is also issued under 15 U.S.C. 78b, 78d, 78f, 78k–1, 78q, 78s, and 78eee.

* * * * *

■ 2. Amend § 200.30–3 by:

[251] The Commission could also consider an alternative where it had the option to extend the 60-day abrogation period to allow the Commission more time to consider the filing and comments. The filing would not become effective automatically until the expiration of this longer time period. However, this alternative would still not require the Commission to approve NMS plan fee amendments before they became effective, which could still discourage market participants from submitting comments. This means the comment process would still not be as robust compared to the adopted amendments and the improvements to the Commission's evaluation of NMS plan fee amendments would not be as great compared to the adopted amendments. *See supra* Section IV.C.1.a.

[252] Two commenters agreed that this alternative may not provide sufficient time for the Commission to ensure a NMS plan fee amendment is consistent with the Exchange Act before it is automatically approved. They stated that there could be situations where a NMS plan fee amendment is complicated and the Commission may be unable to complete its review during the 60-day abrogation period. *See* Clearpool Letter at 3; Healthy Markets Letter at 9.

[253] *See* Proposing Release, *supra* note 1, at 54796.

[254] *See supra* Section II.B.1.

[255] *See supra* Section IV.C.1.b and IV.C.3.a.

[256] 5 U.S.C. 601 *et seq.*

[257] 5 U.S.C. 603(a).

[258] 5 U.S.C. 551 *et seq.*

[259] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10.

[260] *See* 5 U.S.C. 605(b).

[261] *See supra* note 5 (stating that the participants in the NMS plans are all SROs).

[262] *See* 17 CFR 240.0–10(e). Paragraph (e) of Rule 0–10 states that the term ''small business,'' when referring to an exchange, means any exchange that has been exempted from the reporting requirements of Rule 601 of Regulation NMS, 17 CFR 242.601, and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0–10. Under this standard, none of the exchanges subject to the amendments to Rule 608 is a ''small entity'' for the purposes of the RFA. *See also* Securities Exchange Act Release Nos. 82873 (Mar. 14, 2018), 83 FR 13008, 13074 (Mar. 26, 2018) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks); 55341 (May 8, 2001), 72 FR 9412, 9419 (May 16, 2007) (File No. S7–06–07) (Proposed Rule Changes of Self-Regulatory Organizations Proposing Release).

[263] *See, e.g.,* Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556, 32605 n. 416 (June 8, 2010) (''FINRA is not a small entity as defined by 13 CFR 121.201.'').

[264] *See* Proposing Release, *supra* note 1, at 54805–06.

■ a. Removing and reserving paragraphs (a)(27) and (29);
■ b. Revising paragraph (a)(42); and
■ c. Adding paragraph (a)(85).

The revision and addition read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Trading and Markets.

* * * * *

(a) * * *

(42) Under 17 CFR 242.608(e), to grant or deny exemptions from 17 CFR 242.608.

* * * * *

(85) Pursuant to Rule 608(b)(1)(ii) (17 CFR 242.608(b)(1)(ii)), to publish notice of the filing of a proposed amendment to an effective national market system plan; pursuant to Rule 608(b)(1)(iii) (17 CFR 242.608(b)(1)(iii)), to notify plan participants that the filing of a national market system plan or a proposed amendment to an effective national market system plan does not comply with paragraph (a) of Rule 608 (17 CFR 242.608) or plan filing requirements in other sections of Regulation NMS and 17 CFR 240, subpart A, and to determine that such plan or amendment is unusually lengthy and complex or raises novel regulatory issues and to inform the plan participants of such determination; pursuant to Rule 608(b)(2)(i) (17 CFR 242.608(b)(2)(i)), to institute proceedings to determine whether such plan or amendment should be disapproved, to provide the plan participants notice of the grounds for disapproval under consideration, and to extend for a period not exceeding 240 days from the date of publication of notice of the filing of such plan or amendment the period during which the Commission must issue an order approving or disapproving such plan or amendment and to determine whether such longer period is appropriate and publish the reasons for such determination; pursuant to Rule 608(b)(3)(iii) (17 CFR 242.608(b)(3)(iii)), to summarily abrogate a proposed amendment put into effect upon filing with the Commission and require that such amendment be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608; and pursuant to Rule 608(b)(4) (17 CFR 242.608(b)(4), to put a proposed amendment into effect summarily upon publication of notice and on a temporary basis not to exceed 120 days.

* * * * *

PART 201—RULES OF PRACTICE

■ 3. The authority citation for part 201, subpart D, continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 77sss, 77ttt, 78(c)(b), 78d–1, 78d–2, 78l, 78m, 78n, 78o(d), 78o–3, 78o–10(b)(6), 78s, 78u–2, 78u–3, 78v, 78w, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, 80b–12, 7202, 7215, and 7217.

■ 4. Amend § 201.700 by revising the section heading and paragraphs (b), (c)(1), (3), and (4), and (d) to read as follows:

§ 201.700 Initiation of proceedings for SRO proposed rule changes and for proposed NMS plans and plan amendments.

* * * * *

(b) *Institution of proceedings; notice and opportunity to submit written views*—(1) *Generally.* If the Commission determines to initiate proceedings to determine whether a self-regulatory organization's proposed rule change or whether a proposed national market system (''NMS'') plan or a proposed amendment to an effective NMS plan (proposed NMS plan or NMS plan amendment hereinafter collectively referred to as ''NMS plan filing'') should be disapproved, it shall provide notice thereof to the self-regulatory organization that filed the proposed rule change or to the NMS plan participants, as well as all interested parties and the public, by publication in the **Federal Register** of the grounds for disapproval under consideration.

(i) *Prior to notice.* If the Commission determines to institute proceedings prior to initial publication by the Commission of the notice of the self-regulatory organization's proposed rule change or the notice of the NMS plan filing in the **Federal Register**, then the Commission shall publish notice of the proposed rule change or the NMS plan filing simultaneously with a brief summary of the grounds for disapproval under consideration.

(ii) *Subsequent to notice.* If the Commission determines to institute proceedings subsequent to initial publication by the Commission of the notice of the self-regulatory organization's proposed rule change or the notice of the NMS plan filing in the **Federal Register**, then the Commission shall publish separately in the **Federal Register** a brief summary of the grounds for disapproval under consideration.

(iii) *Service of an order instituting proceedings.* In addition to publication in the **Federal Register** of the grounds for disapproval under consideration, the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the grounds for disapproval under consideration to the self-regulatory organization that filed the proposed rule change by serving notice to the person listed as the contact person on the cover page of the Form 19b–4 filing and shall serve a copy of the grounds for disapproval under consideration to the NMS plan participants by serving notice to the contact person for the NMS plan. Notice shall be made by delivering a copy of the order to such contact person either by any method specified in § 201.141(a) or by electronic means including email.

(2) *Notice of the grounds for disapproval under consideration.* The grounds for disapproval under consideration shall include a brief statement of the matters of fact and law on which the Commission instituted the proceedings, including the areas in which the Commission may have questions or may need to solicit additional information on the proposed rule change or NMS plan filing. The Commission may consider during the course of the proceedings additional matters of fact and law beyond what was set forth in its notice of the grounds for disapproval under consideration.

(3) *Demonstration of consistency with the Exchange Act.* (i) The burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization is on the self-regulatory organization that proposed the rule change. As reflected in the General Instructions to Form 19b–4, the Form is designed to elicit information necessary for the public to provide meaningful comment on the proposed rule change and for the Commission to determine whether the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the self-regulatory organization. The self-regulatory organization must provide all information elicited by the Form, including the exhibits, and must present the information in a clear and comprehensible manner. In particular, the self-regulatory organization must explain why the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the self-regulatory organization. A mere assertion that the proposed rule change is consistent with those requirements, or that another self-regulatory organization has a similar rule in place, is not sufficient. Instead, the description of the proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. Any

failure of the self-regulatory organization to provide the information elicited by Form 19b–4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization.

(ii) The burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to NMS plans is on the plan participants that filed the NMS plan filing. In particular, these plan participants must explain why the NMS plan filing is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to NMS plans. A mere assertion that the NMS plan filing is consistent with those requirements is not sufficient. Instead, the description of the NMS plan filing, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to NMS plans.

(c) *Conduct of hearings*—(1) *Initial comment period in writing.* Unless otherwise specified by the Commission in its notice of grounds for disapproval under consideration, all interested persons will be given an opportunity to submit written data, views, and arguments concerning the proposed rule change or NMS plan filing under consideration and whether the Commission should approve or disapprove the proposed rule change or NMS plan filing.

(i) The self-regulatory organization that submitted the proposed rule change may file a written statement in support of its proposed rule change demonstrating, in specific detail, how such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the self-regulatory organization, including a response to each of the grounds for disapproval under consideration. Such statement may include specific representations or undertakings by the self-regulatory organization. The Commission will specify in the summary of the grounds for disapproval under consideration the length of the initial comment period.

(ii) The NMS plan participants may file a written statement in support of a NMS plan filing demonstrating, in specific detail, how such NMS plan filing is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to NMS plans, including a response to each of the grounds for disapproval under consideration. Such statement may include specific representations or undertakings by the plan participants. The Commission will specify in the summary of the grounds for disapproval under consideration the length of the initial comment period.

* * * * *

(3) *Rebuttal.* (i) At the end of the initial comment period, the self-regulatory organization that filed the proposed rule change will be given an opportunity to respond to any comments received. The self-regulatory organization may voluntarily file, or the Commission may request a self-regulatory organization to file, a response to a comment received regarding any aspect of the proposed rule change under consideration to assist the Commission in determining whether the proposed rule change should be disapproved. The Commission will specify in the summary of the grounds for disapproval under consideration the length of the rebuttal period.

(ii) At the end of the initial comment period, the NMS plan participants will be given an opportunity to respond to any comments received. The plan participants may voluntarily file, or the Commission may request the plan participants to file, a response to a comment received regarding any aspect of such NMS plan filing under consideration to assist the Commission in determining whether such NMS plan filing should be disapproved. The Commission will specify in the summary of the grounds for disapproval under consideration the length of the rebuttal period.

(4) *Non-response.* (i) Any failure by the self-regulatory organization to provide a complete response, within the applicable time period specified, to a comment letter received or to the Commission's grounds for disapproval under consideration may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization.

(ii) Any failure by the NMS plan participants to provide a complete response, within the applicable time period specified, to a comment letter received or to the Commission's grounds for disapproval under consideration may result in the Commission not having a sufficient basis to make an affirmative finding that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to NMS plans.

(d) *Record before the Commission*—(1) *Filing of papers with the Commission.* Filing of papers with the Commission shall be made by filing them with the Secretary, including through electronic means. In its notice setting forth the grounds for disapproval under consideration for a proposed rule change or a NMS plan filing, the Commission shall inform interested parties of the methods by which they may submit written comments and arguments for or against Commission approval.

(2) *Public availability of materials received.* During the conduct of the proceedings, the Commission generally will make available publicly all written comments it receives without change. In its notice setting forth the grounds for disapproval under consideration for a proposed rule change or a NMS plan filing, the Commission shall inform interested parties of the methods by which they may view all written communications relating to the proposed rule change or a NMS plan filing 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.

(3) *Record before the Commission.* The Commission shall determine each matter on the basis of the record.

(i) The record shall consist of the proposed rule change filed on Form 19b–4 by the self-regulatory organization, including all attachments and exhibits thereto, and all written materials received from any interested parties on the proposed rule change, including the self-regulatory organization that filed the proposed rule change, through the means identified by the Commission as provided in paragraph (d)(1) of this section, as well as any written materials that reflect communications between the Commission and any interested parties.

(ii) The record shall consist of the NMS plan filing filed by the plan participants, including all attachments and exhibits thereto, and all written materials received from any interested

parties on such NMS plan filing, including the plan participants, through the means identified by the Commission as provided in paragraph (d)(1) of this section, as well as any written materials that reflect communications between the Commission and any interested parties.

* * * * *

■ 5. Section 201.701 is revised to read as follows:

§ 201.701 Issuance of order.

(a) At any time following conclusion of the rebuttal period specified in 17 CFR 201.700(c)(3)(i), the Commission may issue an order approving or disapproving the self-regulatory organization's proposed rule change together with a written statement of the reasons therefor.

(b) At any time following conclusion of the rebuttal period specified in 17 CFR 201.700(c)(3)(ii), the Commission may issue an order approving or disapproving the proposed national market system plan or proposed amendment to an effective national market system plan together with a written statement of the reasons therefor.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 6. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Section 240.19b–4 is also issued under 12 U.S.C. 5465(e).

* * * * *

■ 7. Amend § 240.19b–4 by revising paragraph (g) to read as follows:

§ 240.19b–4 Filings with respect to proposed rule changes by self-regulatory organizations.

* * * * *

(g) Proceedings to determine whether a proposed rule change should be disapproved will be conducted pursuant to 17 CFR 201.700 and 201.701 (Initiation of Proceedings for SRO Proposed Rule Changes and for Proposed NMS Plans and Plan Amendments).

* * * * *

PART 242—REGULATIONS M, SHO, ATS, AC, NMS AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 8. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l,* 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

■ 5. Amend § 242.608 by:
■ a. Revising paragraphs (a)(1) and (8);
■ b. Adding paragraphs (b)(1)(i) through (iv);
■ c. Revising paragraph (b)(2); and
■ d. Removing and reserving paragraph (b)(3)(i).

The revisions and additions read as follows:

§ 242.608 Filing and amendment of national market system plans.

(a) * * *

(1) Any two or more self-regulatory organizations, acting jointly, may file a national market system plan or may propose an amendment to an effective national market system plan (''proposed amendment'') by submitting the text of the plan or amendment to the Commission by email, together with a statement of the purpose of such plan or amendment and, to the extent applicable, the documents and information required by paragraphs (a)(4) and (5) of this section.

* * * * *

(8)(i) A participant in an effective national market system plan shall ensure that a current and complete version of the plan is posted on a plan website or on a website designated by plan participants within two business days after notification by the Commission of effectiveness of the plan. Each participant in an effective national market system plan shall ensure that such website is updated to reflect amendments to such plan within two business days after the plan participants have been notified by the Commission of its approval of a proposed amendment pursuant to paragraph (b) of this section. If the amendment is not effective for a certain period, the plan participants shall clearly indicate the effective date in the relevant text of the plan. Each plan participant also shall provide a link on its own website to the website with the current version of the plan.

(ii) The plan participants shall ensure that any proposed amendments filed pursuant to paragraph (a) of this section are posted on a plan website or a designated website no later than two business days after the filing of the proposed amendments with the Commission. If the plan participants do not post a proposed amendment on a plan website or a designated website on the same business day that they file such proposed amendment with the Commission, then the plan participants shall inform the Commission of the business day on which they posted such proposed amendment on a plan website or a designated website. The plan participants shall maintain any proposed amendment to the plan on a plan website or a designated website until the Commission approves the plan amendment and the plan participants update the website to reflect such amendment or the plan participants withdraw the proposed amendment or the plan participants are notified pursuant to paragraph (b)(1)(iii) of this section that the proposed amendment is not filed in compliance with requirements or the Commission disapproves the proposed amendment. If the plan participants withdraw a proposed amendment or are notified pursuant to paragraph (b)(1)(iii) of this section that a proposed amendment is not filed in compliance with requirements or the Commission disapproves a proposed amendment, the plan participants shall remove such amendment from the plan website or designated website within two business days of withdrawal, notification of non-compliant filing or disapproval. Each plan participant shall provide a link to the website with the current version of the plan.

* * * * *

(b) * * *

(1) * * *

(i) *Publication of national market system plans.* The Commission shall send the notice of the filing of a national market system plan to the **Federal Register** for publication thereof under this paragraph (b)(1) within 90 days of the business day on which such plan was filed with the Commission pursuant to paragraph (a) of this section. If the Commission fails to send the notice to the **Federal Register** for publication thereof within such 90-day period, then the date of publication shall be deemed to be the last day of such 90-day period.

(ii) *Publication of proposed amendments.* The Commission shall send the notice of the filing of a proposed amendment to the **Federal Register** for publication thereof under this paragraph (b)(1) within 15 days of the business day on which such

proposed amendment was posted on a plan website or a website designated by plan participants pursuant to paragraph (a) of this section after being filed with the Commission pursuant to paragraph (a) of this section. If the Commission fails to send the notice to the **Federal Register** for publication thereof within such 15-day period, then the date of publication shall be deemed to be the business day on which such website posting was made.

(iii) A national market system plan or proposed amendment has not been filed with the Commission for purposes of this paragraph (b)(1) if, not later than 7 business days after the business day of receipt by the Commission, the Commission notifies the plan participants that the filing of the national market system plan or proposed amendment does not comply with paragraph (a) of this section or plan filing requirements in other sections of Regulation NMS and part 240, subpart A of this chapter, except that if the Commission determines that the plan or amendment is unusually lengthy and is complex or raises novel regulatory issues, the Commission shall inform the plan participants of such determination not later than 7 business days after the business day of receipt by the Commission and, for purposes of this paragraph (b)(1), the filing of such plan or amendment has not been made with the Commission if, not later than 21 days after the business day of receipt by the Commission, the Commission notifies the plan participants that the filing of such plan or amendment does not comply with paragraph (a) of this section or plan filing requirements in other sections of Regulation NMS and part 240, subpart A of this chapter.

(iv) For purposes of this section, a ''business day'' is any day other than a Saturday, Sunday, Federal holiday, a day that the Office of Personnel Management has announced that Federal agencies in the Washington, DC area are closed to the public, a day on which the Commission is subject to a Federal government shutdown or a day on which the Commission's Washington, DC office is otherwise not open for regular business; provided further, a filing received by the Commission or a website posting made at or before 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, on a business day, shall be deemed received or made on that business day, and a filing received by the Commission or a website posting made after 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, shall be deemed received or made on the next business day.

(2) The Commission shall approve a national market system plan or proposed amendment to an effective national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. The Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding. Approval or disapproval of a national market system plan, or an amendment to an effective national market system plan (other than an amendment initiated by the Commission), shall be by order. Promulgation of an amendment to an effective national market system plan initiated by the Commission shall be by rule.

(i) Within 90 days of the date of publication of notice of the filing of a national market system plan or proposed amendment, or within such longer period as to which the plan participants consent, the Commission shall, by order, approve or disapprove the plan or amendment, or institute proceedings to determine whether the plan or amendment should be disapproved. Proceedings to determine whether the plan or amendment should be disapproved will be conducted pursuant to 17 CFR 201.700 and 201.701. Such proceedings shall include notice of the grounds for disapproval under consideration and opportunity for hearing and shall be concluded within 180 days of the date of publication of notice of the plan or amendment. At the conclusion of such proceedings the Commission shall, by order, approve or disapprove the plan or amendment. The time for conclusion of such proceedings may be extended for up to 60 days (up to 240 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to the longer period.

(ii) The time for conclusion of proceedings to determine whether a national market system plan or proposed amendment should be disapproved may be extended for an additional period up to 60 days beyond the period set forth in paragraph (b)(2)(i) of this section (up to 300 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to the longer period.

* * * * *

By the Commission.

Dated: August 19, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

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Part III

Department of Agriculture

7 CFR Part 2

Revision of Delegations of Authority; Final Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

RIN 0503–AA66

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department of Agriculture (USDA) to reflect changes and additions to the delegations required by the Agriculture Improvement Act of 2018 and for other purposes, as summarized below.

DATES: *Effective* October 15, 2020.

FOR FURTHER INFORMATION CONTACT: Melissa McClellan, Office of the General Counsel, (202) 720–5565, *melissa.mcclellan@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule makes several changes to the United States Department of Agriculture's (USDA) delegations of authority in 7 CFR part 2 by adding new delegations and modifying existing delegations.

Overview of Changes

A. Under Secretary for Rural Development and Principal Deputy Chief Financial Officer

Section 12407 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334) amended Section 231 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6941) to direct the Secretary to establish the position of Under Secretary for Rural Development (RD) as a permanent Presidentially appointed, Senate-confirmed position. The Secretary implemented this provision on August 12, 2019 by establishing the position of Under Secretary for RD and transferring the delegations of authority at 7 CFR 2.17, previously delegated to the Assistant to the Secretary for Rural Development, to the Under Secretary for RD, and realigning the agencies and entities of the RD mission area to report to the Under Secretary for RD. *See* SM 1076–031 available at *https://www.ocio.usda.gov/document/secretarys-memorandum-1076-031.* The Secretary also reestablished the position of Deputy Under Secretary for RD and delegated to this position the authority to perform all the duties delegated to the Under Secretary for RD during the absence or unavailability of the Under Secretary. This rule accordingly updates the references to the former position of Assistant to the Secretary for Rural Development throughout part 2 to read ''Under Secretary for Rural Development,'' and adds a new section of delegations by the Under Secretary for RD to the Deputy Under Secretary for RD at 2.45.

In the same Secretary's Memorandum, the Secretary established a new position, Principal Deputy Chief Financial Officer. This rule revises the delegations of authority at 2.500 to reflect that the authorities previously delegated to the Deputy Chief Financial Officer have been transferred to the Principal Deputy Chief Financial Officer.

B. Agriculture Improvement Act of 2018

The Secretary previously delegated authorities under the Agriculture Improvement Act of 2018 (''the Act'') in Secretary's Memorandum 1076–030 (July 1, 2019), available at *https://www.ocio.usda.gov/document/secretarys-memorandum-1076-030.* This rule codifies those delegations and makes other changes to existing delegations required by the Act, as follows. Note that delegations of authority made by SM 1076–030 to conduct or prepare a one-time study, report, economic analysis, or similar activity remain in effect until such study, report, economic analysis, or similar activity is completed and are not reflected in this rulemaking.

Section 1203 of Title I of the Act amends section 1207(c) of the Agricultural Act of 2014 (7 U.S.C. 9037) to rename the Economic Adjustment Assistance to Users of Upland Cotton as ''Economic Adjustment Assistance for Textile Mills,'' and revises Section 1207(c) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8737) to remove a redundant authority. This Rule revises the delegations of authority for the Under Secretary for Marketing and Regulatory Programs (MRP) at 2.22 and the Administrator for the Agricultural Marketing Service (AMS) at 2.79 to reflect that the Secretary transferred responsibility for administering this program from the Farm Service Agency (FSA) Deputy Administrator, Commodity Operations to the AMS Warehouse and Commodity Management Division as part of a Departmental reorganization in November 2017.

Section 1204 of the Act extends the authority for the Special Competitive Provisions for Extra Long Staple Cotton program at Section 1208 of the Agricultural Act of 2014 (7 U.S.C. 9038) through 2024 and revises the loan rate triggering payment. This rule revises the delegations of authority for the Under Secretary MRP and the Administrator for AMS to reflect that the Secretary transferred responsibility for administering payments under subsections (c) and (d) of this authority from FSA to the AMS Warehouse and Commodity Management Division as part of a Departmental reorganization in November 2017. FSA continues to perform responsibilities under 7 U.S.C. 9038 under its general delegation of authority to administer programs of the Commodity Credit Corporation at 2.42(a)(45), through the Under Secretary for Farm Production and Conservation (FPAC) at 2.16(a)(1)(xxv).

Section 1601 amends section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) concerning the noninsured crop assistance program (NAP). FSA continues to administer NAP under its general delegation of authority to administer programs of the Commodity Credit Corporation. This rule revises the delegations of authority to the Administrator of the Risk Management Agency (RMA) at 2.44, through the Under Secretary of FPAC, to include the authority to coordinate with the Administrator of FSA on the type and format of data collected under NAP to ensure that the data is available and useful in developing policies and plans offered under the Federal Crop Insurance Act.

Section 2301 of Title II of the Act made a number of amendments to chapter 4 of subtitle D of title XII of the Food Security Act of 1985 which resulted in changes to the existing statutory citations for conservation authorities delegated to the Chief of the Natural Resources Conservation Service (NRCS) at 2.43, through the Under Secretary for FPAC. This rule revises the delegations of authority for NRCS and FPAC to reflect the updated citations. In addition, this rule adds new delegations of authority for FPAC and NRCS for the feral swine eradication and control program authorized under section 2408 of the Act.

This rule revises the delegations of authority to the Under Secretary for Trade and Foreign Agricultural Affairs (TFAA) at 2.26 and the Administrator of the Foreign Agricultural Service (FAS) at 2.601 to include delegations for the following new authorities under Title III of the Act: Section 3307 (International Agricultural Education and Fellowship Program); section 3308 (International Food Security Technical Assistance); and section 3312 (Foreign Trade Missions).

The rule also revises the delegations of authority to the Director of the Office

of Tribal Relations (OTR) at 2.701, through the Director of the Office of Office of Partnerships and Public Engagement (OPPE) at 2.38, to include the authority to consult with the Under Secretary for TFAA on the implementation of section 3312 of the Act to support greater inclusion of Tribal agricultural food products in Federal trade activities. The Director of OTR continues to advise the Secretary on matters of policy related to Indian tribes and to serve as the primary point of contact in accessing Department-wide information regarding tribal issues.

Title IV of the Act provides three new authorities that require delegations. Section 4021 amends the Food and Nutrition Act of 2008 to authorize pilot projects to encourage the use of public-private partnerships committed to addressing food insecurity. This rule adds a new delegation of authority for the Director of the National Institute of Food and Agriculture (NIFA) at 2.66, through the Under Secretary for Research, Education, and Economics (REE) at 2.21, to administer this program in consultation with the Under Secretary for Food, Nutrition, and Consumer Services (FNCS) and Administrator of the Food and Nutrition Service (FNS). Section 4206 authorizes a micro-grant program to increase food security, which is delegated to the Under Secretary for MRP and the Administrator of AMS. This rule also revises the delegations of the Under Secretary for FNCS at 2.19 and the Administrator of FNS at 2.57 to include a new authority under section 4208 of the Act for health fluid milk incentive projects.

Sections 4018 and 4104 of the Act makes several changes to the Emergency Food Assistance Act of 1983 (EFAA). The authority to administer the EFAA is covered by existing delegations to the Under Secretary for FNCS and the Administrator of FNS; this rule revises those delegations to reflect that the EFAA has been amended and to update the U.S. Code citation for the EFAA, which is now located at 7 U.S.C. 7501 *et seq.*

Title V of the Act, at section 5413, includes a new authority requiring the Secretary to submit to Congress on an annual basis a report describing certain characteristics of producers receiving farm loans and aspects of the loans for each State and county of the United States, and to submit to Congress every five years a comprehensive review of all annual reports. This authority has been delegated to the Under Secretary of FPAC and redelegated to the Administrator of FSA.

Title VI of the Act, at section 6212, includes a new authority requiring the Secretary of Agriculture to consult with the Assistant Secretary of Commerce for Communications and Information to assist in the verification of eligibility of the broadband loan and grant programs of the Department of Agriculture (7 U.S.C. 950bb–6). This rule revises the delegations of authority for the Under Secretary for Rural Development (formerly the Assistant to the Secretary for Rural Development) at 2.17 and the delegations of authority for the Administrator of the Rural Utilities Service (RUS) at 2.47 to include this authority.

Section 6302 of the Act is a new provision directing the Secretary, in coordination with the Office of Tribal Relations, to provide technical assistance to improve access by Tribal entities to rural development programs funded by the Department of Agriculture through available cooperative agreement authorities (7 U.S.C. 2671). This rule delegates this authority to the Under Secretary for RD at 2.17 and redelegates the authority to the Administrators of RUS, the Rural Business Cooperative Service (RBS), and the Rural Housing Service (RHS) at 2.47, 2.48, and 2.49, respectively. It also revises the delegations of authority to the Director of OTR to reflect this new authority.

Section 6504 of the Act makes changes to the Rural Economic Development Loan and Grant program at sections 313 and 313B of the Rural Electrification Act of 1936. The authority to administer the grant programs had previously been delegated by the Under Secretary for RD to the Administrator of RBS at 2.48, and the general delegation of authority from the Under Secretary for RD to the RUS Administrator to administer the Rural Electrification Act of 1936 at 2.47 had expressly excluded the authority to administer the rural economic development loan and grant program. This rule revises the general delegation of authority to the RUS Administrator at 2.47(a)(1) to remove the exception for the administration of the rural economic development loan and grant program to reflect the Secretary's intent that the RUS Administrator have delegated authority for the program under the Rural Electrification Act.

Subtitle A of Title VII of the Act adds several sections to the National Agricultural Research, Extension, and Teaching Policy Act of 1977 that require new delegations of authority. Section 7110 of the Act (7 U.S.C. 3158) authorizes a next generation agriculture technology challenge competition to incentivize mobile technology that removes marketplace entry barriers for beginning farmers and ranchers. Section 7116 of the Act (7 U.S.C. 2207d) directs the Secretary to prepare an annual report for Congress on disbursements of funds for agricultural research and extension at 1890 and 1862 Institutions under specific program authorities. Section 7117 (7 U.S.C. 3222a) authorizes grants to 1890 Institutions for purposes of awarding scholarships to individuals pursuing careers in the food and agricultural sciences, and section 7120 (7 U.S.C. 3222e) authorizes competitive grants to land-grant colleges and universities to provide support for Tribal students. Section 7126 (7 U.S.C. 3310a) authorizes competitive grants for the acquisition of special purpose scientific research equipment for use in the food and agricultural sciences programs of eligible institutions. This rule revises the delegations to reflect that all these authorities are delegated to the Under Secretary for REE and redelegated to the Director of NIFA.

Section 7123 of the Act (7 U.S.C. 3292) authorizes the Secretary to carry out several activities to promote cooperation and coordination between land grant institutions and international partner institutions in developing countries. This rule delegates the authority to carry out this section to the Administrator of the Agricultural Research Service (ARS) at 2.65 and the Director of NIFA, through the Under Secretary for REE, in coordination with the Administrator of FAS through the Under Secretary for TFAA, on the placement of interns from covered institutions in developing countries.

Section 7132 of the Act (7 U.S.C. 3319k) establishes a new pilot program, the Agriculture Advanced Research and Development Authority (''AGARDA''), which includes the authority to award grants and enter into contracts, cooperative agreements, and other transactions. The authority to administer the AGARDA program is delegated to the Under Secretary for REE.

Section 7212 of the Act (7 U.S.C. 5925g) authorizes the Secretary to make competitive grants to support development of urban, indoor, and other emerging agricultural production activities. This authority is delegated to the NIFA Director through the Under Secretary for REE. Section 7501 of the Act amends two sections of the Critical Agricultural Materials Act; this rule updates the language accompanying the existing delegations to the Under Secretary for REE and NIFA Director for these authorities codified at 7 U.S.C. 178–178n.

Section 7505 of the Act amends the Research Facilities Act to authorize a new competitive grant program to assist in the construction, alteration, acquisition, modernization, renovation, or remodeling of agricultural research facilities (7 U.S.C. 390b). This authority is delegated to the Director of NIFA through the Under Secretary for REE.

Section 7608 of the Act reauthorizes the Agriculture Innovation Center Demonstration Program under section 6402 of the Farm Security and Rural Investment Act of 2002. This rule revises the existing delegations of authority to the Under Secretary for RD at 2.17 and the Administrator, Rural Business-Cooperative Service (RBS) at 2.48 to reflect that this authority has been editorially reclassified from 7 U.S.C. 1621 note to 7 U.S.C. 1632b.

Section 7611 of the Act renames the Agriculture Conservation Experienced Services (ACES) program authorized under section 1252 of the Food Security Act of 1985 (16 U.S.C. 3851) the ''Experienced Services Program'' and expands the authority to cover technical, professional, and administrative services to support the Research, Education, and Economics mission area of the Department. This rule adds new delegations of authority for the expanded program authority to the Under Secretary for REE and NIFA.

Title VIII of the Act adds or amends several authorities requiring new delegations of authority. Section 8102 amends the Cooperative Forestry Assistance Act of 1978 to establish a competitive grant program to encourage science-based restoration of priority forest landscapes (16 U.S.C. 2109a). This authority is covered by the existing general delegations of authority to the Under Secretary for Natural Resources and Environment (NRE) and the Chief of the Forest Service at 2.20 and 2.60, respectively, to administer programs of cooperative forestry assistance. This rule revises the delegations of authority for the Under Secretary for FPAC and the Chief of NRCS to add an authority for the program at 16 U.S.C. 2109a.

Section 8623 authorizes the Secretary to lease administrative sites under the Secretary's jurisdiction. This rule revises the general delegations of authority to the Under Secretary for NRE and the Chief of the FS to acquire and dispose of Forest Service lands to add leasing authority. This rule also revises the delegations to the Under Secretary for FPAC and the Chief of NRCS to include the authority at Section 8628 of the Act related to the purchase of NRCS property in Riverside County, California by the Riverside Corona Resource Conservation District. The rule also delegates the new authority under Section 8643 of the Act to administer a wood innovation grant program (7 U.S.C. 7655d) to the Under Secretary for NRE and the Chief of the Forest Service.

Section 8702 of the Act amends the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125) to extend the Resource Advisory Committee functions and modify the membership requirements. This rule revises the delegations of authority to the Under Secretary for NRE and the Chief of the Forest Service to include the authority to administer the Secure Rural Schools payments to states program (16 U.S.C. 500; 16 U.S.C. 7101–7153); and to establish, maintain, and appoint members to Resource Advisory Committees (16 U.S.C. 7125). The Secretary previously delegated the authority to the Under Secretary for NRE to appoint members to the Secure Rural Schools Resource Advisory Committees in a Secretary's Memorandum issued on November 28, 2019.

Title IX of the Act at section 2009 amended the biobased market program authority at section 9002 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8102) to direct the Secretary to administer the program through the Rural Development mission area, with the exception of the authority at subsection (g) related to the Forest Products Laboratory. This rule adds new delegations to the Under Secretary for RD and the Administrator of RBS to carry out this program and revokes the delegations of authority for this program for the Assistant Secretary for Administration and the Director, Office of Property and Fleet Management at 2.24 and 2.90. The delegated authority to the Under Secretary for RD and the Administrator of RBS to implement the biobased market program includes the authority to administer and amend the regulations related to this program currently located at 7 CFR parts 3201 and 3202.

Section 9011 of the Act establishes a carbon utilization and biogas education program. This rule adds a delegation of authority for Administrator of NIFA, through the Under Secretary for REE, to administer this new competitive grant program (7 U.S.C. 8115).

Section 10102 of the Act establishes a new Local Agriculture Market Program authority that combines the Farmers' Market and Local Food Promotion Program formerly located at 7 U.S.C. 3005 and the value-added agricultural product market development grants formerly located at 7 U.S.C. 1632a(b). The delegations of authority are revised to reflect that the Local Agriculture Market Program at 7 U.S.C. 1627c will be administered on a coordinated basis by the Under Secretary for RD, Administrator, RBS, Under Secretary for MRP, and Administrator, AMS.

The delegations of authority of the Chief Economist (2.29) and the Director of the Office of Pest Management Policy (OPMP) (2.75) are revised to include the new authority at Section 10103 of the Act to conduct a multiple crop and pesticide use survey.

Section 12105 of the Act amended the authority for the National Aquatic Health Plan under section 11013 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8322). This rule amends the delegations of the Under Secretary of MRP and the Administrator of the Animal and Plant Health Inspection Service (APHIS) (2.80) to include this cooperative agreement authority.

Title XII provides two new authorities that are delegated to the Under Secretary for MRP and the Administrator of AMS: Section 12108 (Regional Cattle and Carcass Grading Correlation and Training Centers) and section 12513 (Dairy Business Innovation Initiatives).

Sections 12201 and 12202 of the Act move the authority for the Office of Homeland Security (OHS) from section 14111 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8911) to subtitle A of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6922) and update the statutory authorities of OHS, including adding an agriculture and food threat awareness partnership program. OHS remains organizationally located in Departmental Administration, and this rule revises the delegations of the Assistant Secretary for Administration (ASA) at 2.24 and the Director, OHS at 2.95 to reflect the updated authorities in section 12202 of the Act.

Section 12203 of the Act (7 U.S.C. 8914) provides authority for responding to plant and animal diseases or pests of concern. This rule delegates authority under 12203(b) to the Under Secretary for MRP and the APHIS Administrator; delegates authority under 12203(c) to the Under Secretary for REE and the NIFA Administrator; and delegates authority under 12203(d) to the Under Secretary for REE and the ARS Administrator.

Section 12301 of the Act moves the authority for the beginning farmer and rancher development program established under section 7405 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3319f) to section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279)

under the newly established ''Farmer Opportunities Training and Outreach'' subheading. This rule revises the delegations of the Under Secretary for REE and the NIFA Administrator to update the citation for the beginning farmer and rancher development program, which continues to be administered by NIFA. This rule also revises the delegations of authority for the Director of OPPE and the Director of the Office of Advocacy and Outreach (OAO) to include updated citations for the 2501 programs (7 U.S.C. 2279).

Section 12302 of the Act amends the Department of Agriculture Reorganization Act of 1994 to include an Office of Urban Agriculture and Innovative Production (7 U.S.C. 6923). The Secretary established this office in the FPAC mission area, under the Chief of NRCS, in Secretary's Memorandum 1076–030. This rule revises the delegations of the Under Secretary for FPAC and the Chief, NRCS to include the authority to carry out the duties of this office.

This rule revises the delegations of authority for the Director of OTR to include the authority to oversee the Tribal Advisory Committee established under Section 12303 of the Act as an amendment to section 309 of the Department of Agriculture Reorganization Act of 1994.

Title XII of the Act authorized the Secretary to create five new coordinator positions in the Department, which the Secretary established in SM 1076–030. This rule revises the delegations of authority to include the authority to carry out the duties of these positions as follows: The Under Secretary for FPAC and the Administrator, FSA (Section 12304, Beginning Farmer and Rancher Coordinator); the Director, OPPE (Section 12305, Agricultural Youth Coordinator); the Under Secretary for RD (Section 12409, Rural Health Liaison); the Chief Economist (Section 12504, Food Loss and Waste Reduction Liaison); and the Under Secretary for FNCS and the Administrator, FNS (Section 12614, Food Access Liaison).

Section 12403(a) of the Act requires the Secretary to conduct civil rights impact analyses in accordance with Departmental Regulation 4300–004 issued on October 17, 2016, with respect to the Department's employment, federally conducted programs and activities, and federally assisted programs and activities. This authority is delegated to the Assistant Secretary for Civil Rights at 2.25.

Section 12411 of the Act amends section 251 of the Department of Agriculture Reorganization Act of 1994 to update the name of the Research, Education, and Extension Office to the Office of the Chief Scientist, along with other amendments and corrections. This rule revises the delegations of authority to the Director, Office of the Chief Scientist at 2.69 to reflect the updated title.

This rule revises the delegations of authority for the Under Secretary of RD at 2.17 and the Administrator of the Rural Housing Service (RHS) at 2.49 to include the new authority of the Secretary at Section 12502 of the Act, in consultation with the Department of Justice, Secretary of Housing and Urban Development, and Secretary of Health and Human Services, to administer the emergency and transitional pet shelter and housing assistance grant program (34 U.S.C. 20127).

Section 12508 of the Act establishes a program for recognizing ''century farms,'' defined as farms that have been in continuous operation and owned by the same family for at least 100 years. This authority is delegated to the Under Secretary of FPAC and, at 2.41, to the Chief Operating Officer of the FPAC Business Center.

Section 12510 of the Act codifies the Tribal Promise Zones program. This authority is delegated to the Director of OPPE at 2.38.

Section 12511 of the Act establishes a Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States. The Secretary's authority under this section is delegated to the Under Secretary for RD and the Administrator of RUS.

This rule revises the delegations of authority to the Chief Economist at 2.29 and the Chairman of the World Agricultural Outlook Board at 2.72 to include the Secretary's authority under Section 12512 of the Act related to improving the accuracy of the U.S. Drought Monitor.

This rule also revises the delegations of authority to the Under Secretary of MRP and the Administrator, AMS to include the Secretary's authority under Section 12513 of the Act to carry out dairy business innovation initiatives.

This rule revises the existing delegations of the Under Secretary for NRE and the Chief of the Forest Service to administer the Public Lands Corps program to include the new direct hire authority of the Secretary under Section 12518 of the Act (16 U.S.C. 1726b).

Section 12519 of the Act authorizes the Secretary to noncompetitively convert to an appointment in the competitive service a recent graduate or student who is a United States citizen and has been awarded and successfully completed a scholarship program granted to the individual by the Department through the 1890 National Scholars Program or the 1994 Tribal Scholars Program. This authority is delegated to the ASA at 2.24.

Section 12520 of the Act authorizes the Department to employ law enforcement officers or special agents to carry out protection operations for the Secretary, Deputy Secretary, and other specified individuals, and authorizes the law enforcement officers or special agents to carry firearms and make arrests without a warrant for any offense against the United States committed in the presence of the law enforcement officer or special agent, among other duties. The Secretary delegates the authority to administer these protective detail activities to the Chief Security Director of the newly established Office of Safety, Security and Protection (OSSP) at 2.94 through the ASA.

The rule revises the delegations of authority of the Under Secretary for MRP and the APHIS Administrator to include the authority at Section 12601 of the Act relating to baiting of migratory game birds.

Section 12605 of the Act establishes a Citrus Trust Fund, funded by transfers from the Commodity Credit Corporation, to carry out the Emergency Citrus Disease Research and Extension Program under section 412(j) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7632(j). The authority to administer the Citrus Trust Fund comes within the scope of the existing delegation to the Under Secretary of REE and the Administrator of NIFA to administer the Specialty Crop Research Initiative, so no revisions to the published delegations are needed.

Section 12607(b) of the Act authorizes the Secretary to collect and report data and analysis on farmland ownership, tenure, transition, and entry of beginning farmers and ranchers and socially disadvantaged farmers and ranchers. This authority is delegated to the Administrator of the National Agricultural Statistics Service (NASS) through the Under Secretary for REE.

Finally, Section 12612 of the Act authorizes the Secretary to carry out a national agriculture imagery program, and Section 12615 authorizes the Secretary to provide farm loan numbers for farm operators on ''heirs property,'' as defined by the Uniform Partition of Heirs Property Act. This rule revises the delegations to reflect that these authorities have been delegated to the Under Secretary for FPAC and the FSA Administrator.

C. Office of Safety, Security, and Protection

On September 13, 2019, the Secretary established a new Office of Safety, Security, and Protection (OSSP) within Departmental Administration. *See* SM 1076–032 available at *https://www.ocio.usda.gov/document/sm1076-032-office-safety-security-and-protection-091319.* OSSP is headed by a Chief Security Director who reports to the ASA. This rule adds a new section of delegations by the ASA to the Chief Security Director, OSSP at 2.94. In addition to the delegation for the protective services detail authorized by Section 12520 of the Act, described above, this rule also reflects that the following delegations of authority have been transferred to the Chief Security Director, OSSP: The delegations of the ASA previously delegated to the Director of OHS at 2.95 concerning the protection of physical facilities, and the delegations of the ASA previously delegated to the Director of the Office of Operations at 2.96 concerning maintenance of the physical security program at USDA facilities in the National Capital Region.

D. Realignment of the Office of the Chief Information Officer and the Departmental Freedom of Information Act (FOIA) Office

In September 2019, the Secretary realigned the Office of the Chief Information Officer (OCIO) from its previous organizational location in the Departmental Administration mission area, under the supervision of the ASA, to report directly to the Office of the Secretary. *See* SM 1076–034 available at *https://www.ocio.usda.gov/document/secretarys-memorandum-1076-034.* The Secretary also transferred the Departmental Freedom of Information Act (FOIA) Office from OCIO to the Office of the General Counsel (OGC) and designated the General Counsel as the Chief FOIA Officer. *See* SM 1076–033 available at *https://www.ocio.usda.gov/document/secretarys-memorandum-1076-033.*

This rule accordingly reassigns the delegations of authority related to FOIA previously delegated to the ASA in 2.24 to the General Counsel in 2.31. The delegations of authority to the ASA related to information technology and information resources are removed. The delegations of authority to the Chief Information Officer, previously located at 2.89 under Subpart P—Delegations of Authority by the Assistant Secretary for Administration, are now located at 2.32 under Subpart D—Delegations of Authority to Other General Officers and Agency Heads.

E. Office of Customer Experience

In February 2018, the Secretary established an Office of Customer Experience in the Departmental Administration mission area to provide coordination for efforts to improve customer service across the Department. *See* SM 1076–022 available at *https://www.ocio.usda.gov/document/secretarys-memorandum-1076-022.* This authority was extended in Secretary's Memorandum 1076–030 on July 1, 2019. This rule adds a new delegation for the ASA to coordinate efforts to improve customer service to reflect that the Office of Customer Experience is under the purview of Departmental Administration.

F. Miscellaneous Revisions

In 2017, the Office of the Law Revision Council editorially reclassified several sections of the U.S. Code formerly located at 7 U.S.C. 450a *et seq.* to other locations in Title 7 of the U.S. Code. This rule revises citations throughout Part 2 to reflect the current U.S. Code citations for these sections, to correct other outdated or mistaken citations, and to delete obsolete authorities. Due to the number of updates to the statutory citations for authorities delegated to the Forest Service and the need to renumber paragraphs, this rule revises the full text of the delegations of the Under Secretary for NRE at 2.20(a)(2) and the Chief of the Forest Service at 2.60(a) rather than providing individual amendments.

Classification

This rule relates to internal agency management. Accordingly, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. This rule also is exempt from the provisions of Executive Orders 12866 and 13771. This action is not a rule as defined by the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.,* or the Congressional Review Act, 5 U.S.C. 801 *et seq.,* and thus is exempt from the provisions of those acts. This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, as discussed in the preamble, 7 CFR part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

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

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949–1953 Comp., p. 1024.

■ 2. In part 2, revise all references to ''Assistant to the Secretary for Rural Development'' to read ''Under Secretary for Rural Development''.

Subpart A—General

■ 3. Section 2.4 is revised to read as follows:

§ 2.4 General officers.

The work of the Department is under the supervision and control of the Secretary who is assisted by the following general officers: The Deputy Secretary, the Under Secretary for Farm Production and Conservation; the Under Secretary for Food, Nutrition, and Consumer Services, the Under Secretary for Food Safety; the Under Secretary for Marketing and Regulatory Programs; the Under Secretary for Natural Resources and Environment; the Under Secretary for Research, Education, and Economics; the Under Secretary for Rural Development; the Under Secretary for Trade and Foreign Agricultural Affairs; the Assistant Secretary for Administration; the Assistant Secretary for Civil Rights; the Assistant Secretary for Congressional Relations; the Chief Economist; the Chief Financial Officer; the Chief Information Officer; the General Counsel; the Inspector General; the Judicial Officer; the Director, National Appeals Division; the Director, Office of Budget and Program Analysis; the Director, Office of Communications; the Director, Office of Partnerships and Public Engagement; the Director, Office of Tribal Relations; and the Director, Office of Small and Disadvantaged Business Utilization.

Subpart C—Delegations of Authority to the Deputy Secretary, Under Secretaries, and Assistant Secretaries

■ 4. Amend § 2.16 by:

■ a. In paragraph (a)(1)(ix), removing the term ''7 U.S.C. 450j *et seq.*'' and adding, in its place, the term ''7 U.S.C. 4551 *et*

seq.'', and in paragraph (a)(1)(xviii), removing the term ''16 U.S.C. 1231 *et seq.*'' and adding, in its place, the term ''16 U.S.C. 3831 *et seq.*'';

■ b. Revising paragraph (a)(1)(xxxvi) introductory text;

■ c. Adding paragraph (a)(1)(xxxix);

■ d. Revising paragraph (a)(3)(iii) introductory text;

■ e. Revising paragraphs (a)(3)(iv)(A) and (a)(3)(v) and (xiii);

■ f. Adding paragraphs (a)(3)(xviii), (xxvi), and (xxvii) and (a)(4)(x);

■ g. Revising paragraph (a)(7)(xiv); and

■ h. Adding paragraph (a)(11).

The revisions and additions to read as follows:

§ 2.16 Under Secretary for Farm Production and Conservation.

(a) * * *

(1) * * *

(xxxvi) Administer the following provisions of the Agricultural Act of 2014, Public Law 113–79, as amended:

* * * * *

(xxxix) Administer the following provisions of the Agriculture Improvement Act of 2018, Public Law 116–334:

(A) Section 5413 relating to reporting on farm loans (7 U.S.C. 2008x).

(B) Section 12304 relating to the National Beginning Farmer and Rancher Coordinator (7 U.S.C. 6934a).

(C) Section 12612 relating to a national agriculture imagery program (7 U.S.C. 2204j).

(D) Section 12615 relating to the eligibility for farm operators on heirs' property to obtain a farm loan number (7 U.S.C. 2266b).

* * * * *

(3) * * *

(iii) Administer the basic program of soil and water conservation under Public Law 74–46, and related laws (16 U.S.C. 590a–f, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

* * * * *

(iv) * * *

(A) The eleven authorized watershed projects authorized under the Flood Control Act of 1944 (Pub. L. 78–534);

* * * * *

(v) Administer the Abandoned Mine Reclamation Program for Rural Lands and other responsibilities assigned under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), except those responsibilities assigned to the Under Secretary for Natural Resources and Environment.

* * * * *

(xiii) Except as otherwise delegated, administer natural resources conservation authorities, including authorities related to programs of the Commodity Credit Corporation that provide assistance with respect to natural resources conservation, under Title XII of the Food Security Act of 1985 (the Act), as amended (16 U.S.C. 3801 *et seq.*), including the following:

(A) Technical assistance related to the conservation of highly erodible lands and wetlands pursuant to sections 1211–1224 of the Act (16 U.S.C. 3811–3824).

(B) Technical assistance related to the Conservation Reserve Program authorized by sections 1231–1235 of the Act (16 U.S.C. 3831–3835).

(C) The Wetlands Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237F of the Act (16 U.S.C. 3837–3837f) prior to February 7, 2014, the transition authority under section 2703 of the Agricultural Act of 2014, and the Emergency Supplemental Appropriations for Relief from the Major, Widespread Flooding in the Midwest Act (Pub. L. 103–75).

(D) The Conservation Security Program authorized by sections 1238–1238C of the Act (16 U.S.C. 3838–3838c) and the Conservation Stewardship Program authorized by sections 1240I–1240L–1 (16 U.S.C. 3839aa–21—3839aa–25).

(E) The Farmland Protection Program authorized by sections 1238H–1238I of the Act (16 U.S.C. 3838h–3838i) prior to February 7, 2014, and the transition authority under section 2704 of the Agricultural Act of 2014.

(F) The Farm Viability Program authorized by section 1238J of the Act (16 U.S.C. 3838j) prior to February 7, 2014, and the transition authority under section 2704 of the Agricultural Act of 2014.

(G) The Environmental Quality Incentives Program authorized by sections 1240–1240H of the Act (16 U.S.C. 3839aa–3839aa–8), the Agricultural Water Enhancement Program authorized by section 1240H of the Act (16 U.S.C. 3839aa–9) prior to February 7, 2014, and section 2706 of the Agricultural Act of 2014.

(H) The conservation of private grazing lands authorized by section 1240M of the Act (16 U.S.C. 3839bb).

(I) The Wildlife Habitat Incentives Program authorized by section 1240N of the Act (16 U.S.C. 3839bb–1) prior to February 7, 2014 and Section 2707 of the Agricultural Act of 2014.

(J) The program for soil erosion and sedimentation control in the Great Lakes basin authorized by section 1240P of the Act (16 U.S.C. 3839bb–3) prior to February 7, 2014, and section 2708 of the Agricultural Act of 2014.

(K) The Chesapeake Bay Watershed Program authorized by section 1240Q of the Act (16 U.S.C. 3839bb–4) prior to February 7, 2014, and section 2709 of the Agricultural Act of 2014.

(L) The delivery of technical assistance under section 1242 of the Act (16 U.S.C. 3842), including the approval of persons or entities outside of USDA to provide technical services.

(M) The authority for partnerships and cooperation provided by section 1243 of the Act (16 U.S.C. 3843) prior to February 7, 2014, and section 2710 of the Agricultural Act of 2014.

(N) The incentives for certain farmers and ranchers and Indian tribes and the protection of certain proprietary information related to natural resources conservation programs as provided by section 1244 of the Act (16 U.S.C. 3844).

(O) The Agriculture Conservation Experienced Services Program authorized by section 1252 of the Act (16 U.S.C. 3851).

(P) The authority under sections 1261–1262 of the Act (16 U.S.C. 3861–3862) to establish and utilize State Technical Committees.

(Q) The Grassland Reserve Program under sections 1238N–1238Q of the Act (16 U.S.C. 3838n–3838q) prior to February 7, 2014, and section 2705 of the Agricultural Act of 2014.

(R) The authority in section 1241 of the Act (16 U.S.C. 3841) to accept and use voluntary contributions of non-Federal funds in support of natural resources conservation programs under subtitle D of title XII of the Act with respect to authorities delegated to the Under Secretary for Farm Production and Conservation.

(S) The Agricultural Conservation Easement Program authorized by sections 1265–1265D of the Act (16 U.S.C. 3865–3865d).

(T) The Regional Conservation Partnership Program authorized by sections 1271–1271F of the Act (16 U.S.C. 3871–3871f).

(U) The Voluntary Public Access and Habitat Incentive Program authorized by section 1240R of the Act (16 U.S.C. 3839bb–5).

(V) A wetlands mitigation banking program authorized by section 1222(k) of the Act (16 U.S.C. 3822(k)).

* * * * *

(xviii) Enter into cooperative agreements, which may provide for the acquisition of goods or services, including personal services, as authorized by Public Law 106–387 (7 U.S.C. 6962a).

* * * * *

(xxvi) Administer the state and private forest landscape-scale restoration program (16 U.S.C. 2109a).

(xxvii) Administer the following provisions of the Agriculture Improvement Act of 2018 (Pub. L. 116–334):

(A) Section 1704 (7 U.S.C. 1308–3a), authorizing waivers of the adjusted gross income limitation.

(B) In consultation with the Director of the U.S. Fish and Wildlife Service, Section 2707 (16 U.S.C. 1531 note), relating to wildlife management.

(C) In coordination with the Under Secretary for Marketing and Regulatory Programs, Section 2408 (7 U.S.C. 8351 note), relating to the Feral Swine Eradication and Control Pilot Program.

(D) Section 8628, relating to the purchase of Natural Resources Conservation Service property in Riverside County, California.

(E) Section 12302, relating to the Office of Urban Agriculture and Innovative Production.

* * * * *

(4) * * *

(x) Coordinate between agencies of the Department on the type and format of data received under the noninsured crop disaster assistance program as authorized by Sec. 196 of the Federal Agriculture Improvement and Reform Act of 1996, (Pub. L. 104–127, as amended) (7 U.S.C. 7333).

* * * * *

(7) * * *

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act.

* * * * *

(11) Administer a Century Farms Program as authorized by section 12508 of the Agriculture Improvement Act of 2018 (7 U.S.C. 2266a).

* * * * *

■ 5. Amend § 2.17 by:

■ a. Adding paragraphs (a)(20)(x) and (xv);

■ b. Revising paragraphs (a)(21)(xxi) and (xxii); and

■ c. Adding paragraph (a)(21)(xxviii) and (xxix), (a)(22)(iii), (a)(28), and (a)(32).

The revisions and additions read as follows:

§ 2.17 Under Secretary for Rural Development.

(a) * * *

(20) * * *

(x) Consult with the Assistant Secretary of Commerce for Communications and Information to assist in the verification of eligibility of the broadband loan and grant programs of the Department of Agriculture (7 U.S.C. 950bb–6).

* * * * *

(xv) In coordination with the Federal Communications Commission, administer Section 12511 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334) relating to the precision agriculture connectivity task force.

(21) * * *

(xxi) In coordination with the Under Secretary of Marketing and Regulatory Programs, administer the value-added producer grants program and farmers' markets and local food promotion program (7 U.S.C. 1627c(d)(5)–(6)).

(xxii) Administer the Agriculture Innovation Center Demonstration program (7 U.S.C. 1632b).

* * * * *

(xxviii) Implementation of a program for the Federal procurement of biobased products and of a voluntary ''USDA Certified Biobased product'' labeling program (7 U.S.C. 8102).

(xxix) Entering into cooperative agreements to further research programs in the food and agricultural sciences, related to establishing and implementing Federal biobased procurement and voluntary biobased labeling programs (7 U.S.C. 3318).

(22) * * *

(iii) In consultation with the Department of Justice, Secretary of Housing and Urban Development, and Secretary of Health and Human Services, administer the emergency and transitional pet shelter and housing assistance grant program (34 U.S.C. 20127).

* * * * *

(28) In coordination with the Office of Tribal Relations, provide technical assistance to improve access by Tribal entities to rural development programs funded by the Department of Agriculture through available cooperative agreement authorities (7 U.S.C. 2671).

* * * * *

(32) Oversee the Rural Health Liaison (7 U.S.C. 6946).

* * * * *

■ 6. Amend § 2.19 by revising paragraph (a)(1)(i)(A), adding paragraphs (a)(1)(i)(M) and (N), and revising paragraph (a)(1)(ii)(L) to read as follows:

§ 2.19 Under Secretary for Food, Nutrition, and Consumer Services.

(a) * * *

(1) * * *

(i) * * *

(A) The Food and Nutrition Act of 2008, as amended (7 U.S.C. 2011 *et seq.*), except for section 25, regarding assistance for community food projects.

* * * * *

(M) Section 4208 of the Agriculture Improvement Act of 2018 (7 U.S.C. 2026a).

(N) Section 12614 of the Agriculture Improvement Act of 2018 (7 U.S.C. 6925).

(ii) * * *

(L) Emergency Food Assistance Act of 1983, as amended (7 U.S.C. 7501 *et seq.*);

* * * * *

■ 7. Amend § 2.20 by revising paragraph (a)(2) to read as follows:

§ 2.20 Under Secretary for Natural Resources and Environment.

(a) * * *

(2) *Related to forestry.* (i) Provide national leadership in forestry. (As used here and elsewhere in this section, the term ''forestry'' encompasses renewable and nonrenewable resources of forests, including lands governed by the Alaska National Interest Lands Conservation Act, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative values such as economic strength and social well-being).

(ii) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System.

(iii) Acquire, dispose of, and lease lands and interests in lands as may be authorized for the protection, management, and administration of the National Forest System, including the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and special forest receipts acts, as follows: (Pub. L. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 427, 76th Cong., 54 Stat. 46; Pub. L. 589, 76th Cong., 54 Stat. 297; Pub. L. 591, 76th Cong., 54 Stat. 299; Pub. L. 637, 76th Cong., 54 Stat. 402; Pub. L. 781, 84th Cong., 70 Stat. 632).

(iv) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or more which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest

boundaries established under the authority of the Weeks Act.

(v) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670*o*.

(vi) For the purposes of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559b–559g), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(A) To carry firearms;

(B) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(C) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(D) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(E) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(F) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(vii) Authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of, and enforcement of, section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(viii) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125(a)–(c), 138, 202(a)–(b), 203, 204(a)–(c), 205(a)–(d), 211, 317, 402(a)).

(ix) Exercise the administrative appeal review functions of the Secretary of Agriculture for decisions of the Chief of the Forest Service pursuant to 36 CFR parts 214, 218, and 219.

(x) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: Renewable resource management research, renewable resource environmental research; renewable resource protection research; renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(xi) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(xii) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(xiii) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 3105, 1624; 16 U.S.C. 582a–8, 1643–1645, 1649).

(xiv) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(xv) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3152, 3318).

(xvi) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(xvii) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas and forest lands in foreign countries (16 U.S.C. 2101–2114).

(xviii) Provide assistance to States and other units of government in forest resources planning and forestry rural revitalization (7 U.S.C. 6601, 6611–6617; 16 U.S.C. 2107).

(xix) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(xx) Administer Rural Fire Protection and Control Programs (16 U.S.C. 2106c).

(xxi) Provide technical assistance on forestry technology or the implementation of the Conservation Reserve and Softwood Timber Programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(xxii) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(xxiii) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead–Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1013a).

(xxiv) Under such general program criteria and procedures as may be established by the Natural Resources Conservation Service:

(A) Administer the forestry aspects of the programs listed in paragraphs (a)(2)(xxiii)(A)(*1*) through (*3*) of this section on the National Forest System, rangelands with national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands;

(1) The cooperative river basin surveys and investigations program (16 U.S.C. 1006);

(2) The Eleven Authorized Watershed Improvement Programs and Emergency Flood Prevention Measures Program under the Flood Control Act of 1944 (Pub. L. 78–534); and

(3) The Small Watershed Protection Program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701a–h; 16 U.S.C. 1001–1009); and

(B) Exercise responsibility in connection with the forestry aspects of the Resource Conservation and Development Program authorized by title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(xxv) Provide assistance to the Farm Service Agency in connection with the Agricultural Conservation Program, the Naval Stores Conservation Program, and the Cropland Conversion Program (16 U.S.C. 590g–q).

(xxvi) Provide assistance to the Rural Housing Service in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1923.

(xxvii) Coordinate mapping work of USDA including:

(A) Clearing mapping projects to prevent duplication;

(B) Keeping a record of mapping done by USDA agencies;

(C) Preparing and submitting required USDA reports;

(D) Serving as liaison on mapping with the Office of Management and Budget, Department of Interior, and other departments and establishments;

(E) Promoting interchange of technical mapping information, including techniques which may reduce costs or improve quality; and

(F) Maintaining the mapping records formerly maintained by the Office of Operations.

(xxviii) Administer the radio frequency licensing work of USDA, including:

(A) Representing USDA on the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(B) Establishing policies, standards, and procedures for allotting and assigning frequencies within USDA and for obtaining effective utilization of them;

(C) Providing licensing action necessary to assign radio frequencies for use by the agencies of USDA and maintenance of the records necessary in connection therewith;

(D) Providing inspection of USDA's radio operations to ensure compliance with national and international regulations and policies for radio frequency use; and

(xxix) Represent USDA in all matters relating to responsibilities and authorities under the Federal Power Act (16 U.S.C. 791a–823).

(xxx) Administer the Youth Conservation Corps Act (16 U.S.C. 1701–1706) for USDA.

(xxxi) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor; and administration of other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(xxxii) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(xxxiii) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(xxxiv) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1287).

(xxxv) Jointly administer gypsy moth eradication activities with the Assistant Secretary for Marketing and Regulatory Programs, under the authority of section 102 of the Organic Act of 1944, as amended; and the Act of April 6, 1937, as amended (7 U.S.C. 7759, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 1633), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

(xxxvi) Exercise the functions of the Secretary authorized in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226 *et seq.*).

(xxxvii) Administer the Public Lands Corps program (16 U.S.C. 1721 *et seq.;* 16 U.S.C. 1726b) for USDA consistent with the Department's overall national service program.

(xxxviii) Focusing on countries that could have a substantial impact on global warming, provide assistance that promotes sustainable development and global environmental stability; share technical, managerial, extension, and administrative skills; provide education and training opportunities; engage in scientific exchange; and cooperate with domestic and international organizations that further international programs for the management and protection of forests, rangelands, wildlife, fisheries and related natural resources (16 U.S.C. 4501–4505).

(xxxix) Establish programs with any bureau of the U.S. Department of the Interior (DOI), or with other agencies within USDA, in support of the Service First initiative for the purpose of promoting customer service and efficiency including delegating to employees of DOI and other USDA agencies the authorities of the Forest Service necessary to carry out projects on behalf of USDA (43 U.S.C. 1703).

(xl) At the request of the Director, Homeland Security Staff (Director), designate law enforcement personnel of the Forest Service to assist the Director in providing for the personal security for the Secretary and the Deputy Secretary in the National Forest System.

(xli) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(xlii) Administer a program for providing loans to eligible units of local government to finance the purchase of equipment to monitor, remove, dispose of, and replace infested trees located under their jurisdiction and within the borders of quarantined areas (16 U.S.C. 2104a).

(xliii) [Reserved]

(xliv) Administer the community wood energy program providing grants to develop community wood energy plans, acquire or upgrade community wood energy systems, and establish or expand biomass consumer cooperatives (7 U.S.C. 8113).

(xlv) Conduct activities that assist the Chief Economist in developing guidelines regarding the development of environmental services markets.

(xlvi) Administer the programs authorized by the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6501 *et seq.*), except for the Healthy Forests Reserve Program authorized in title V of such act (16 U.S.C. 6571–6578).

(xlvii) Administer Good Neighbor contracts and cooperative agreements with a State to carry out forest, rangeland, and watershed restoration services on National Forest System lands (16 U.S.C. 2113a).

(xlviii) Utilize the Agriculture Conservation Experienced Services (ACES) Program (16 U.S.C. 3851) to provide technical services for conservation-related programs and authorities carried out on National Forest System lands (16 U.S.C. 3851a).

(xlix) Enter into reciprocal fire agreements or contracts with domestic entities. Administer reimbursements received for fire suppression (42 U.S.C. 1856–1856e).

(l) Administer the large airtanker and aerial asset lease program (16 U.S.C. 551c).

(li) Provide technical and other assistance with respect to eligibility of forest products for the ''USDA Certified Biobased Products'' labeling program (7 U.S.C. 8102(g)).

(lii) Cooperate with public or private entities or individuals to perform work on state, county, municipal, or private lands within or near the boundary of National Forest System lands for administration, protection, improvement, reforestation, and other kinds of work the Forest Service is authorized to do on National Forest System lands, and cooperate with public or private entities or individuals to perform the same kinds of work in connection with the use or occupancy of National Forest System lands (16 U.S.C. 572).

(liii) Enter into reciprocal fire agreements with foreign fire organizations. (42 U.S.C. 1856m–1856o).

(liv) Administer the payments to states program (16 U.S.C. 500; 16 U.S.C. 7101–7153); establish, maintain, and appoint members to Resource Advisory Committees (16 U.S.C. 7125).

(lv) Administer the Wood Innovation Grant program (7 U.S.C. 7655d).

* * * * *

■ 8. Amend § 2.21 by:
■ a. Adding paragraph (a)(1)(iii);
■ b. Revising paragraph (a)(1)(iv);
■ c. Adding paragraph (a)(1)(xvii);
■ d. In paragraph (a)(1)(xviii), removing the term ''7 U.S.C. 450a'' and adding in its place the term ''7 U.S.C. 3318a''; in paragraph (a)(1)(xix), removing the term ''7 U.S.C. 450i(e)'' and adding in its place the term ''7 U.S.C. 3157(e)''; and in paragraph (a)(1)(xx), removing the term ''7 U.S.C. 450i(b), (c)'' and adding in its place the term ''7 U.S.C. 3157(b), (c)'';
■ e. Adding paragraphs (a)(1)(xxxi), (xlii), (xlv), (lv), (lxiii), (lxvii), (lxxii), (lxxiii), (lxxviii), (lxxxiii), (cxi), and (cxlii);
■ f. In paragraph (a)(1)(clxxiii), removing the term ''7 U.S.C. 3319f'' and adding in its place the term ''7 U.S.C. 2279(d)'';
■ g. Adding paragraph (a)(1)(cc); and
■ h. Revising paragraph (a)(8)(xi).

The revisions to read as follows:

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) * * *

(1) * * *

(iii) Exercise the authorities of the Secretary in administering the Agriculture Advanced Research and Development Authority, including awarding grants and entering into contracts, cooperative agreements, and other transactions (7 U.S.C. 3319k).

(iv) Carry out research, technology development, technology transfer, and demonstration projects related to the economic feasibility of the manufacture and commercialization of natural rubber from plants containing hydrocarbons and other critical agricultural materials from native agricultural crops having strategic and industrial importance (7 U.S.C. 178–178n).

* * * * *

(xvii) Administer a program to make competitive grants to assist in the construction, alteration, acquisition, modernization, renovation, or remodeling of agricultural research facilities (7 U.S.C. 390b).

* * * * *

(xxxi) Prepare an annual report to Congress on disbursements of funds for agricultural research and extension at 1890 and 1862 Institutions for programs under the following authorities: 7 U.S.C. 3221; 7 U.S.C. 3222; 7 U.S.C. 343(b) and (c); and 7 U.S.C. 361a *et seq.* (7 U.S.C. 2207d).

* * * * *

(xlii) Promote cooperation and coordination between 1862, 1890, 1994, and NLGCA Institutions, HSACUs, and cooperating forestry schools and international partner institutions in developing countries by exercising the Secretary's authority in 7 U.S.C. 3292, including coordinating with the Under Secretary for Trade and Foreign Affairs to place interns from covered institutions in, or in service to benefit, developing countries.

* * * * *

(xlv) Administer a next generation agriculture technology challenge competition to incentivize mobile technology that removes marketplace entry barriers for beginning farmers and ranchers (7 U.S.C. 3158).

* * * * *

(lv) Administer grants to 1890 Institutions, including Tuskegee University, for purposes of awarding scholarships to individuals pursuing careers in the food and agricultural sciences (7 U.S.C. 3222a).

* * * * *

(lxiii) Make competitive grants to land-grant colleges and universities, including 1994 Institutions, to provide identifiable support specifically targeted for Tribal students (7 U.S.C. 3222e).

* * * * *

(lxvii) Administer competitive grants for the acquisition of special purpose scientific research equipment for use in the food and agricultural sciences programs of eligible institutions (7 U.S.C. 3310a).

* * * * *

(lxxii) Establish a National Plant Diagnostic Network to monitor and surveil through diagnostics threats to plant health from diseases or pests of concern in the United States, and establish cooperative agreements with land-grant colleges and universities (7 U.S.C. 8914(c)).

(lxxiii) Establish a National Plant Disease Recovery System to engage in strategic long-range planning to recover from high-consequence plant transboundary diseases (7 U.S.C. 8914(d)).

* * * * *

(lxxviii) In consultation with the Secretary of Energy, administer competitive grants to provide education about carbon utilization and biogas (7 U.S.C. 8115).

* * * * *

(lxxxiii) In consultation with the Urban Agriculture and Innovative Production Advisory Committee, administer competitive grants to support research, education, and extension activities for the purposes of facilitating the development of urban, indoor, and other emerging agricultural production, harvesting, transportation, aggregation, packaging, distribution, and markets (7 U.S.C. 5925g).

* * * * *

(cxi) Administer an experienced services program to obtain technical, professional, and administrative services to support the research, education, and economics mission area of the Department (16 U.S.C. 3851).

* * * * *

(cxlii) In consultation with the Under Secretary for Food, Nutrition, and Consumer Services, administer pilot projects to encourage the use of public-private partnerships committed to addressing food insecurity (7 U.S.C. 2036d).

* * * * *

(cc) Administer a competitive grant program to support the development and expansion of advanced training programs in agricultural biosecurity planning and response for food science professionals and veterinarians (7 U.S.C. 8913).

(8) * * *

(xi) Collect and, not less frequently than once every 3 years report, data and analysis on farmland ownership, tenure, transition, and entry of beginning farmers and ranchers and socially disadvantaged farmers and ranchers (7 U.S.C. 2204i).

* * * * *

■ 9. Amend § 2.22 by:
■ a. Revising paragraph (a)(1)(viii)(CCC);
■ b. Adding paragraphs (a)(1)(viii)(MMM), (PPP), and (TTT) and (a)(1)(xvi) and (xvii);
■ c. Revising paragraphs (a)(2)(ii), (xiv), (xviii), (xxiii), and (xxiv); and
■ d. Adding paragraphs (a)(2)(xliii) through (xlvi).

The revisions and additions read as follows:

§ 2.22 Under Secretary for Marketing and Regulatory Programs.

(a) * * *

(1) * * *

(viii) * * *

(CCC) Local Agriculture Market Program (7 U.S.C. 1627c), in coordination with the Under Secretary for Rural Development.

* * * * *

(MMM) Section 12108 of the Agriculture Improvement Act of 2018 (7 U.S.C. 1622 note).

* * * * *

(PPP) Section 4206 of the Agriculture Improvement Act of 2018 (7 U.S.C. 7518).

* * * * *

(TTT) Section 12513 of the Agriculture Improvement Act of 2018 (7 U.S.C. 1632d).

* * * * *

(xvi) Administer the Economic Adjustment Assistance for Textile Mills program (7 U.S.C. 9037(c))

(xvii) In coordination with the Under Secretary for Farm Production and Conservation, administer payments under the Special Competitive Provisions for Extra Long Staple Cotton (7 U.S.C. 9038).

(2) * * *

(ii) The Terminal Inspection Act, as amended (7 U.S.C. 7760);

* * * * *

(xiv) Talmadge Aiken Act (7 U.S.C. 1633) with respect to cooperation with States in control and eradication of plant and animal diseases and pests;

* * * * *

(xviii) Section 101(d), Organic Act of 1944 (7 U.S.C. 398);

* * * * *

(xxiii) The Act of March 2, 1931 (7 U.S.C. 8351–8352);

(xxiv) The Act of December 22, 1987 (7 U.S.C. 8353);

* * * * *

(xliii) Section 11013 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8322).

(xliv) In coordination with the Under Secretary for Farm Production and Conservation, Section 2408 relating to the Feral Swine Eradication and Control Pilot Program (7 U.S.C. 8351 note),

(xlv) Section 12203(b) of the Agriculture Improvement Act of 2018 relating to diseases and pests of concern (7 U.S.C. 8914(b)).

(xlvi) Section 12601 of the Agriculture Improvement Act of 2018 relating to baiting of migratory game birds (16 U.S.C. 704 note).

* * * * *

■ 10. Amend § 2.24 by:

■ a. Removing and reserving paragraph (a)(2);

■ b. Adding paragraph (a)(4)(xxii);

■ c. Removing and reserving paragraphs (a)(6)(ii)(J) and (K); and

■ d. Revising paragraph (a)(8); and

■ e. Adding paragraph (a)(13)(ii).

The addition and revisions read as follows:

§ 2.24 Assistant Secretary for Administration.

(a) * * *

(4) * * *

(xxii) Exercise the authority to noncompetitively convert to an appointment in the competitive service a recent graduate or student who is a United States citizen and has been awarded and successfully completed a scholarship program granted to the individual by the Department through the 1890 National Scholars Program or the 1994 Tribal Scholars Program, provided the individual meets the requirements for such conversion and meets Office of Personnel Management qualification standards, as determined by the Assistant Secretary for Administration (7 U.S.C. 2279j).

* * * * *

(8) *Related to homeland security, personnel and document security, and emergency coordination.* (i) Serve as the principal advisor to the Secretary on homeland security, including emergency management and agriculture and food defense;

(ii) Coordinate activities of the Department, including policies, processes, budget needs, and oversight relating to homeland security, including emergency management and agriculture and food defense;

(iii) Act as the primary liaison on behalf of the Department with other Federal departments and agencies in activities relating to homeland security, including emergency management and agriculture and food defense, and provide for interagency coordination and data sharing;

(iv) Coordinate in the Department the gathering of information relevant to early warning and awareness of threats and risks to the food and agriculture critical infrastructure sector; and share that information with, and provide assistance with interpretation and risk characterization of that information to, the intelligence community (as defined in 5 U.S.C. 3003), law enforcement agencies, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of Health and Human Services, and State fusion centers (as defined in section 210A(j) of the Homeland Security Act of 2002 (6 U.S.C. 124h(j));

(v) Liaise with the Director of National Intelligence to assist in the development of periodic assessments and intelligence estimates, or other intelligence products, that support the defense of the food and agriculture critical infrastructure sector;

(vi) Coordinate the conduct, evaluation, and improvement of exercises to identify and eliminate gaps in preparedness and response;

(vii) Produce a Department-wide centralized strategic coordination plan to provide a high-level perspective of the operations of the Department relating to homeland security, including emergency management and agriculture and food defense; and

(viii) Establish and carry out an interagency Agriculture and Food Threat Awareness Partnership Program, including by entering into cooperative agreements or contracts with Federal, State, or local authorities (7 U.S.C. 6922).

(ix) Provide administrative supervision to the unit that grants, denies, or revokes security clearances for USDA employees and contractors.

(x) Administer the Department Emergency Preparedness Program. This includes:

(A) Coordinate the delegations and assignments made to the Department under the Defense Production Act of 1950, 50 U.S.C. App. 2061, *et seq.;* the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.;* and by Executive Orders 12148, ''Federal Emergency Management'' (3 CFR, 1979 Comp., p. 412), 12656, ''Assignment of Emergency Preparedness Responsibilities'' (3 CFR, 1988 Comp., p. 585), and 13603, ''National Defense Resources Preparedness'' (3 CFR, 2012 Comp., p. 225), or any successor to these Executive Orders, to ensure that the Department has sufficient capabilities to respond to any occurrence, including natural disaster, military attack, technological emergency, or any all hazards incident.

(B) Manage the Department Emergency Operations Center at Headquarters and the Secretary's alternative facilities; provide senior staff with international, national, and regional situational awareness reports; and provide and maintain current information systems technology and National Security Systems to support USDA executive crisis management capability.

(C) Provide facilities and equipment to facilitate inter-agency coordination during emergencies.

(D) Activate the USDA incident management system in accordance with the National Response Framework and the National Incident Management System in the event of a major incident; and provide oversight and coordination of the Department's Emergency Support Functions as outlined in the National Response Framework.

(E) Develop and promulgate policies for the Department regarding emergency preparedness and national security, including matters relating to anti-terrorism and agriculture-related emergency preparedness planning both

national and international, and guidance to USDA State and County Emergency Boards.

(F) [Reserved]

(G) Provide representation and liaison for the Department in contacts with other Federal entities and organizations, including the National Security Council, Homeland Security Council, Office of Management and Budget, Department of Homeland Security, Federal Emergency Management Agency, Office of The Director of National Intelligence, and Department of Defense concerning matters of a national security, natural disaster, other emergencies, and agriculture/food-related international civil emergency planning and related activities.

(H) Act as the primary USDA representative for anti-terrorism activities.

(I) [Reserved]

(J) Provide guidance and direction regarding radiological emergency preparedness programs and the implementation of the National Response Framework's Nuclear/Radiological Incident Annex to Departmental staff offices, mission areas, and agencies.

(K) Provide program leadership and coordination for USDA's radiological emergency preparedness requirements with respect to Emergency Management and Assistance (44 CFR parts 350–352).

(L) Represent USDA on the Federal Radiological Preparedness Coordinating Committee (FRPCC) and Regional Assistance Committees (RACs) and assist them in carrying out their functions.

(M) Support USDA in its management of the Department's emergency response program with respect to radiological emergency response activities.

(iii) Administer the Classified Network, Controlled Unclassified Information, and Insider Threat programs of the Department (E.O. 13587; E.O. 13556 and 32 CFR part 2002).

(iv) Serve as the primary point of contact for Government Accountability Office (GAO) and Office of the Inspector General (OIG) audits of USDA homeland security activities.

(v) Coordinate interaction between Department agencies and private sector businesses and industries in emergency planning and public education under Department authorities delegated or assigned under the National Response Framework, National Infrastructure Protection Plan, Defense Production Act of 1950, 50 U.S.C. App. 2061, *et seq.,* and Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*

(vi) Oversee the Department's ability to collect and disseminate information and prepare for an agricultural disease emergency, agroterrorist act, or other threat to agricultural biosecurity, and coordinate such activities among agencies and offices within the Department (7 U.S.C. 8912).

(vii) Carry out protection operations for the Secretary, Deputy Secretary, and other individuals as specified in Section 12520 of the Agriculture Improvement Act of 2018, including by authorizing law enforcement officers or special agents to carry firearms; conduct criminal investigations into potential threats to the security of individuals protected under Section 12520; make arrests without a warrant for any offense against the United States committed in the presence of the law enforcement officer or special agent; perform protective intelligence work, including identifying and mitigating potential threats and conducting advance work to review security matters relating to sites and events; and coordinate with local law enforcement authorities (7 U.S.C. 2279k).

(viii) Promulgate Departmental policies, standards, techniques, and procedures; and represent the Department in maintaining the security of physical facilities and providing security guidance to the Food and Agricultural Sector nationwide.

(A) Lead and coordinate the development and maintenance of a mission critical facility inventory with agency involvement to ensure proper security countermeasures are implemented in the Department's most critical infrastructure.

(B) Provide guidance to USDA agencies in matters of physical security through use of physical security assessments and development of mitigation strategies.

(C) Provide guidance to USDA agencies and the Food and Agricultural Sector in matters of security through use of assessments and development of mitigation strategies.

(D) Represent and act as liaison for the Department in contacts with other Federal security entities and organizations, including the Interagency Security Committee and the Department of Homeland Security.

(E) Provide guidance and direction to ensure physical security and agriculture/food security are fully integrated in USDA's security preparations, which are reported to and coordinated with the White House.

(F) Provide assistance to the USDA agencies in preparation for and during a disaster to identify critical assets and possible alternate storage locations.

(G) Conduct physical security investigations and compliance reviews Department-wide.

(H) Review and provide coordinated technical physical security assessments for all new construction of laboratories, data centers, germplasm repositories, and other mission critical infrastructure during the design phase, and all leased facilities prior to contract award.

(I) Oversee and manage physical security aspects of the Common Identification Card (LincPass) Program to ensure National Institute of Standards and Technology (NIST) and General Services Administration (GSA) compliancy within the National Capital Region and the physical access to USDA facilities.

(J) Provide enterprise connectivity to agency physical access control systems that provide cost leveraging and provisioning/de-provisioning nationwide.

(ix) Provide oversight and coordination of the development and administration of the Department Continuity Program. This includes:

(A) Provide guidance and direction regarding continuity of operations to the Office of the Secretary, Departmental staff offices, mission areas, and agencies.

(B) Represent and act as liaison for the Department in contacts with other Federal entities and organizations concerning matters of assigned continuity program responsibilities.

(C) Oversee Department continuity of operations and emergency relocation facility planning, development, equipping, and preparedness to ensure that resources are in a constant state of readiness.

(x) Provide for the development and administration of a Public Trust program for the safeguarding of national security information:

(A) Direct and administer USDA's public trust program established pursuant to 5 CFR part 731 and Executive Order 13488, ''Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust'' (74 FR 4111, 3 CFR, 2010 Comp., p. 189).

(B) Direct and administer USDA's program under which information is safeguarded pursuant to Executive Order 13526, ''Classified National Security Information'' (75 FR 707, 3 CFR, Comp. 2010, p. 298), or subsequent orders.

(C) Establish and maintain Information Security policies and procedures for classifying, declassifying, safeguarding, and disposing of classified

national security information and materials.

(D) Investigate or delegate authority to investigate any potential compromises of classified national security information and take corrective action for violations or infractions under section 5.5(b) of Executive Order 13526 or any subsequent order.

(E) Develop and maintain oversight of all facilities throughout USDA where classified national security information is or will be safeguarded, discussed, or processed including sole authority to liaison with the Central Intelligence Agency concerning guidance, approval, requirements, and oversight of USDA secure facilities.

(F) Act as the USDA focal point to identify, receive, disseminate and safeguard USDA related intelligence information as required; convey information to USDA policy officials; and liaise with the intelligence community, as appropriate.

(xi) Control within USDA the acquisition, use, and disposal of material and equipment that can be a source of ionizing radiation.

(A) Promulgate policies and procedures for ensuring the safety of USDA employees, the public, and the environment resulting from USDA's use of ionizing radiation sources.

(B) Maintain and ensure compliance with the Nuclear Regulatory Commission regulations (Title 10, Code of Federal Regulations) and license(s) issued to USDA for the acquisition, use, and disposal of radioactive materials.

* * * * *

(13) * * *

(ii) Provide Departmentwide coordination for efforts to improve customer service.

* * * * *

■ 11. Amend § 2.25 by adding paragraph (a)(26) to read as follows:

§ 2.25 Assistant Secretary for Civil Rights

(a) * * *

(26) As directed by section 12403(a) of the Agriculture Improvement Act of 2018, conduct civil rights impact analyses in accordance with Departmental Regulation 4300–004 issued on October 17, 2016, with respect to the Department's employment, federally conducted programs and activities, and federally assisted programs and activities.

* * * * *

■ 12. Amend § 2.26 by adding paragraphs (a)(1)(xxx), (xlv), and (xlviii) and (a)(1)(l) to read as follows:

§ 2.26 Under Secretary for Trade and Foreign Agricultural Affairs.

(a) * * *

(1) * * *

(xxx) Promote cooperation and coordination between 1862, 1890, 1994, and NLGCA Institutions, HSACUs, and cooperating forestry schools and international partner institutions in developing countries by exercising the Secretary's authority in 7 U.S.C. 3292, including coordinating with the Under Secretary for Research, Education, and Economics to place interns from covered institutions in, or in service to benefit, developing countries.

* * * * *

(xlv) Administer the International Agricultural Education Fellowship Program (7 U.S.C. 3295).

* * * * *

(xlviii) Compile and make available information relating to the improvement of international food security, and provide technical assistance for the improvement of international food security to Federal, State, or local agencies; agencies or instrumentalities of the government of foreign country; domestic or international organizations; or intergovernmental organizations (7 U.S.C. 1736dd).

* * * * *

(l) In consultation with the Tribal Advisory Committee and the Director of the Office of Tribal Relations, and in coordination with the Secretaries of Commerce, State, Interior, and the heads of any other relevant Federal agencies, implement section 3312 of the Agriculture Improvement Act of 2018 (7 U.S.C. 5608) to support greater inclusion of Tribal agricultural food products in Federal trade activities.

* * * * *

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

■ 13. Amend § 2.29 by adding paragraphs (a)(4)(v) and (a)(14)(iv) and revising paragraph (a)(16) to read as follows:

§ 2.29 Chief Economist.

(a) * * *

(4) * * *

(v) Coordinate with the Director of the National Drought Mitigation Center and the Administrator of the National Oceanic and Atmospheric Administration to enhance the collection of data to improve the accuracy of the United States Drought Monitor (7 U.S.C. 5856).

* * * * *

(14) * * *

(iv) Carry out the duties of the Food Loss and Waste Reduction Liaison, including entering into contracts or cooperative agreements with the research centers of the Research, Education, and Economics mission area, institutions of higher education, or non-profit organizations (7 U.S.C. 6924).

* * * * *

(16) *Related to Pest Management and Policy.* (i) Coordinate USDA policy relative to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*) and coordinate the Department's Integrated Pest Management Programs and the Pesticide Assessment Program (7 U.S.C. 136–136y) (7 U.S.C. 7653).

(ii) Conduct a multiple crop and pesticide use survey as authorized by section 10109 of the Agricultural Improvement Act of 2018.

* * * * *

■ 14. Amend § 2.31 by adding paragraph (c) to read as follows:

§ 2.31 General Counsel.

* * * * *

(c) *Related to the Freedom of Information Act.* (1) Serve as the Chief Freedom of Information Act Officer for the Department; oversee general officers and agency heads in efficient and appropriate compliance with the provisions of the Freedom of Information Act (5 U.S.C. 552); monitor implementation of 5 U.S.C. 552 throughout the agency and keep the Secretary and the Attorney General informed regarding agency performance in its implementation; recommend to the Secretary necessary adjustments to agency practices, policies, personnel, and funding to improve implementation of 5 U.S.C. 552; review and report to the Attorney General, through the Secretary, as the Attorney General may direct; and, facilitate public understanding of the purposes of the statutory exemptions contained in 5 U.S.C. 552.

(2) Manage the Freedom of Information Act operations for the Research, Education, and Economics mission area, the Trade and Foreign Agricultural Affairs mission area, and all staff offices of the Department.

■ 15. Add § 2.32 to read as follows:

§ 2.32 Chief Information Officer.

(a) *Delegations.* The Chief Information Officer is responsible for executing the duties enumerated in Public Law 104–106 for agency Chief Information Officers, and additional specified duties, as follows:

(1) Report directly to the Secretary of Agriculture regarding information technology matters.

(2) Oversee all information technology and information resource management activities relating to the programs and

operations of the Department and component agencies. This oversight includes approving information technology investments, monitoring and evaluating the performance of those investments and information resource management activities, approval of all architectures and components thereto and determining whether to continue, modify, or terminate an information technology program or project.

(3) Provide advice and other assistance to the Secretary and other senior management personnel to ensure that information technology acquired and managed for the Department consistent with chapter 35 of title 44, United States Code (Coordination of Federal Information Policy).

(4) Develop, implement, and maintain a sound and integrated Departmentwide information technology architecture.

(5) Promote the effective and efficient design and operation of all major information resources management processes for the Department, including improvements to work processes of the Department.

(6) Approve the acquisition or procurement of information technology resources by, or on behalf of, any Department agency or office.

(7) Collaborate with Department procurement personnel with respect to information technology acquisition strategy and policy.

(8) Function as the Major Information Technology Systems Executive in USDA to integrate and unify the management process for the Department's major information technology system acquisitions and to monitor implementation of the policies and practices set forth in Office of Management and Budget (OMB) Circular No. A–109, Major Systems Acquisitions, for information technology. This includes the authority to:

(i) Ensure that OMB Circular No. A–109 is effectively implemented for information technology systems in the Department and that the management objectives of the Circular are realized.

(ii) Review the program management of each major information technology system acquisition.

(iii) Approve the appointment of the program manager for each major information technology systems acquisition.

(iv) Designate any Departmental information technology acquisition as a major system acquisition under OMB Circular No. A–109.

(9) On an annual basis:

(i) Assess Departmentwide personnel requirements regarding knowledge and skill in information resources management, and the adequacy of such requirements, to achieve the performance goals established for information resources management.

(ii) Develop strategies and specific plans for hiring, training, and professional development at the executive and management level to meet personnel information technology personnel requirements.

(iii) Report to the Assistant Secretary for Administration on progress made in improving information resources management capability.

(10) Function as the senior official to carry out the responsibilities of the Department under chapter 35 of title 44, United States Code (Coordination of Federal Information Policy), including:

(i) Ensure that the information policies, principles, standards, guidelines, rules and regulations prescribed by OMB are appropriately implemented within the Department.

(ii) Review proposed Department reporting and record keeping requirements, including those contained in rules and regulations, to ensure that they impose the minimum burden upon the public and have practical utility for the Department.

(iii) Develop and implement procedures for assessing the burden to the public and costs to the Department of information requirements contained in proposed legislation affecting Department programs.

(iv) Assist OMB in the performance of its functions assigned under the E-Government Act of 2002 (Pub. L. 107–347), including review of Department and Agency activities for compliance.

(v) Assist OMB in the performance of its functions assigned under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), including review of Department and Agency activities for compliance.

(11) The Chief Information Officer is also responsible for the following:

(i) Provide Departmentwide guidance and direction in planning, developing, documenting, and managing applications software projects in accordance with Federal and Department information processing standards, procedures, and guidelines.

(ii) Provide Departmentwide guidance and direction in all aspects of information technology, including: Feasibility studies; economic analyses; systems design; acquisition of equipment, software, services, and timesharing arrangements; systems installation; systems performance and capacity evaluation; information technology investment governance; cybersecurity; and privacy. Monitor these activities for agencies' major systems development efforts to assure effective and economic use of resources and compatibility among systems of various agencies when required.

(iii) Manage the Enterprise Data Centers, with the exception of the National Finance Center; and oversee the delivery of Enterprise Data Center goods and services, with authority to take actions required by law or regulation to perform such services as a Working Capital Fund activity.

(iv) Manage a comprehensive set of end user office automation services and oversee the delivery of goods and services associated with end user office automation services, including desktop computers, enterprise networking support, handheld devices, and voice telecommunications, with authority to take actions required by law or regulation to perform such services as a Working Capital Fund activity.

(v) Manage the Agricultural Security Operations Center to enable the Department to effectively monitor, detect, analyze, protect, report, and respond against known cyber vulnerabilities, attacks, and exploitations.

(vi) Manage the Department's Certification and Accreditation process to ensure the Department and agencies have successfully conducted periodic risk assessments of its systems; grant the authority to operate for systems that have successfully completed the Certification and Accreditation process; and rescind or suspend the authority to operate for systems subject to repeated and/or significant security issues.

(vii) Ensure that OMB Circular No. A–16, Coordination of Geographic Information and Related Spatial Data Activities, is effectively implemented in the Department and that the management objectives of the Circular are realized; and providing Departmentwide guidance and direction in governing, developing, implementing, and maintaining a sound and integrated geospatial architecture.

(viii) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to ensure full consideration and evaluation of advanced technology; designate the Executive Secretary for the Remote Sensing Coordination Committee; and coordinate administrative, management, and budget information relating to the Department's remote sensing activities including:

(A) Inter- and intra-agency meetings, correspondence, and records;

(B) Budget and management tracking systems; and

(C) Inter-agency contacts and technology transfer.

(ix) Review and evaluate information technology activities related to delegated functions to assure that they conform to all applicable Federal and Department information technology management policies, plans, standards, procedures, and guidelines.

(x) Design, develop, implement, and revise systems, processes, work methods, and techniques to improve the management and operational effectiveness of information resources.

(xi) Manage all aspects of the USDA Telecommunications Program including planning, development, acquisition, and use of equipment and systems for voice, data, and communications, excluding the actual procurement of data transmission equipment, software, maintenance, and related supplies.

(xii) Manage Departmental telecommunications contracts.

(xiii) Provide technical advice throughout the Department.

(xiv) Implement a program for applying information resources management technology to improve productivity in the Department.

(xv) Plan, develop, install, and operate computer-based systems for message exchange, scheduling, computer conferencing, televideo technologies, and other applications of office automation technology which can be commonly used by multiple Department agencies and offices.

(xvi) Represent the Department in contacts with the Government Accountability Office, the General Services Administration, OMB, the National Institute of Standards and Technology, and other organizations or agencies on matters related to delegated responsibilities.

(12) Implement policies established pursuant to paragraphs (a)(1) through (a)(11) of this section by:

(i) Disposing of information technology that is acquired by a Department agency in violation of procedures or standards for the Department Information Systems Technology Architecture.

(ii) Establishing information technology and information resources management performance standards for mission area Chief Information Officers, information resources managers, and project managers to be used in the performance appraisal process.

(iii) Approving the selection of mission area Chief Information Officers and mission area major information technology system project managers in accordance with OMB policies.

(iv) Providing recommendations to mission area heads for the removal or replacement of information technology project managers, when, in the opinion of the Chief Information Officer, applicable laws and policies are being violated, or, when the cost, schedule, or performance of an information technology project would indicate management deficiencies.

(v) Withdrawing agencies' authority to obligate funds on Information Technology programs or projects if the agency violates the Chief Information Officer policies, standards, or Department Information Systems Technology Architecture.

(vi) Requiring mission areas to validate and verify major information technology systems through the use of an existing contract for such purpose designated by the Chief Information Officer.

(vii) Requiring approval by the Chief Information Officer of any proposed acquisition of information technology (whether through the award or modification of a procurement contract, a cooperative or other agreement with a non-Federal party, or an interagency agreement) to ensure technical conformance to the Department technical architecture.

(viii) Providing guidance to USDA regarding implementation of Section 508 of the Rehabilitation Act, as well as on-going consultative assistance regarding information technology accessibility, and reviewing progress made toward achieving information technology accessibility for USDA employees and individuals with disabilities.

(13) *Related to the Privacy Act.* Appoint a Department Privacy Act Officer; oversee general officers and agency heads in the development and implementation of policies issued pursuant to the provisions of the Privacy Act, 5 U.S.C. 552a; and provide consultation and guidance regarding those policies.

(b) [Reserved]

■ 16. Amend § 2.38 by revising paragraph (a)(1)(iv) and adding paragraphs (a)(2)(vi) through (viii) and (a)(7) and (8) to read as follows:

§ 2.38 Director, Office of Partnerships and Public Engagement.

(a) * * *

(1) * * *

(iv) Administer section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279), as amended, except for the beginning farmer and rancher development program in subsection (d) and authorities related to the Census of Agriculture and economic studies in subsection (j) of that section.

* * * * *

(2) * * *

(vi) Consult with the Under Secretary for Trade and Foreign Agricultural Affairs on the implementation of section 3312 of the Agriculture Improvement Act of 2018 (7 U.S.C. 5608) to support greater inclusion of Tribal agricultural food products in Federal trade activities.

(vii) In coordination with the Under Secretary for Rural Development, provide technical assistance to improve access by Tribal entities to rural development programs funded by the Department of Agriculture through available cooperative agreement authorities (7 U.S.C. 2671).

(viii) Oversee the Tribal Advisory Committee (7 U.S.C. 6921).

* * * * *

(7) Oversee the Agricultural Youth Organization Coordinator (7 U.S.C. 6934b).

(8) Exercise the authority of the Secretary related to Tribal Promise Zones under section 12510 of the Agriculture Improvement Act of 2018 (25 U.S.C. 4301 note).

* * * * *

Subpart F—Delegations of Authority by the Under Secretary for Farm Production and Conservation

■ 17. Amend § 2.41 by adding paragraph (a)(6) to read as follows:

§ 2.41 Chief Operating Officer, Farm Production and Conservation Business Center.

(a) * * *

(6) Administer a Century Farms Program as authorized by section 12508 of the Agriculture Improvement Act of 2018 (7 U.S.C. 2266a).

* * * * *

■ 18. Amend § 2.42 by:

■ a. In paragraph (a)(10), removing the term ''7 U.S.C. 450j *et seq.*'' and adding in its place the term ''7 U.S.C. 4551 *et seq.*''; and

■ b. Revising paragraph (a)(58) introductory text; and

■ c. Adding paragraph (a)(63).

The revision and additions read as follows:

§ 2.42 Administrator, Farm Service Agency.

(a) * * *

(58) Administer the following provisions of the Agricultural Act of 2014, Public Law 113–79, as amended:

* * * * *

(63) Administer the following provisions of the Agriculture Improvement Act of 2018, Public Law 116–334:

(i) Section 5413 relating to reporting on farm loans (7 U.S.C. 2008x).

(ii) Section 12304 relating to the National Beginning Farmer and Rancher Coordinator (7 U.S.C. 6934a).

(iii) Section 12612 relating to a national agriculture imagery program (7 U.S.C. 2204j).

(iv) Section 12615 relating to the eligibility for farm operators on heirs' property to obtain a farm loan number (7 U.S.C. 2266b).

* * * * *

■ 19. Amend § 2.43 by:
■ a. Revising paragraphs (a)(3) introductory text and (a)(4)(i);
■ b. Removing and reserving paragraph (a)(5);
■ c. Revising paragraph (a)(13);
■ d. Adding paragraph (a)(16);
■ e. Revising paragraph (a)(23)(xiv); and
■ f. Adding paragraphs (a)(31) and (32).

The revisions and additions to read as follows:

§ 2.43 Chief, Natural Resources and Conservation Service.

(a) * * *

(3) Administer the basic program of soil and water conservation under Public Law 74–46, as amended, and related laws (16 U.S.C. 590a–f, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

* * * * *

(4) * * *

(i) The eleven authorized watershed projects authorized under the Flood Control Act of 1944 (Pub. L. 78–534), except for responsibilities assigned to the Forest Service;

* * * * *

(13) Administer natural resources conservation authorities, including authorities related to programs of the Commodity Credit Corporation that provide assistance with respect to natural resources conservation, under Title XII of the Food Security Act of 1985 (the Act), as amended (16 U.S.C. 3801 *et seq.*), including the following:

(i) Technical assistance related to the conservation of highly erodible lands and wetlands pursuant to sections 1211–1224 of the Act (16 U.S.C. 3811–3824);

(ii) Technical assistance related to the Conservation Reserve Program authorized by sections 1231–1235 of the Act (16 U.S.C. 3831–3835);

(iii) The Wetlands Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237F of the Act (16 U.S.C. 3837–3837f) prior to February 7, 2014, the transition authority under section 2703 of the Agricultural Act of 2014, and the Emergency Supplemental Appropriations for Relief from the Major, Widespread Flooding in the Midwest Act, Public Law 103–75;

(iv) The Conservation Security Program authorized by sections 1238–1238C of the Act (16 U.S.C. 3838–3838c) and the Conservation Stewardship Program authorized by sections 1240I–1240L–1 (16 U.S.C. 3839aa–21—3839aa–25).

(v) The Farmland Protection Program authorized by sections 1238H–1238I of the Act (16 U.S.C. 3838h–3838i) prior to February 7, 2014, and the transition authority under section 2704 of the Agricultural Act of 2014;

(vi) The Farm Viability Program authorized by section 1238J of the Act (16 U.S.C. 3838j) prior to February 7, 2014, and the transition authority under section 2704 of the Agricultural Act of 2014;

(vii) The Environmental Quality Incentives Program authorized by sections 1240–1240H of the Act (16 U.S.C. 3839aa–3839aa–8), the Agricultural Water Enhancement Program authorized by section 1240H of the Act (16 U.S.C. 3839aa–9) prior to February 7, 2014, and section 2706 of the Agricultural Act of 2014;

(viii) The conservation of private grazing lands authorized by section 1240M of the Act (16 U.S.C. 3839bb);

(ix) The Wildlife Habitat Incentives Program authorized by section 1240N of the Act (16 U.S.C. 3839bb–1) prior to February 7, 2014 and Section 2707 of the Agricultural Act of 2014;

(x) The program for soil erosion and sedimentation control in the Great Lakes basin authorized by section 1240P of the Act (16 U.S.C. 3839bb–3) prior to February 7, 2014, and section 2708 of the Agricultural Act of 2014;

(xi) The Chesapeake Bay Watershed Program authorized by section 1240Q of the Act (16 U.S.C. 3839bb–4) prior to February 7, 2014, and section 2709 of the Agricultural Act of 2014;

(xii) The delivery of technical assistance under section 1242 of the Act (16 U.S.C. 3842), including the approval of persons or entities outside of USDA to provide technical services;

(xiii) The authority for partnerships and cooperation provided by section 1243 of the Act (16 U.S.C. 3843) prior to February 7, 2014, and section 2710 of the Agricultural Act of 2014; and

(xiv) The incentives for certain farmers and ranchers and Indian tribes and the protection of certain proprietary information related to natural resources conservation programs as provided by section 1244 of the Act (16 U.S.C. 3844), except for responsibilities assigned to the Administrator, Farm Service Agency.

(xv) The Agriculture Conservation Experienced Services Program authorized by section 1252 of the Act (16 U.S.C. 3851).

(xvi) The authority under sections 1261–1262 of the Act (16 U.S.C. 3861–3862) to establish and utilize State Technical Committees.

(xvii) Those portions of the Grassland Reserve Program under sections 1238N–1238Q of the Act (16 U.S.C. 3838n–3838q) prior to February 7, 2014, and section 2705 of the Agricultural Act of 2014 that are or become the responsibility of the Under Secretary for Farm Production and Conservation.

(xiii) The authority in section 1241 of the Act (16 U.S.C. 3841) to accept and use voluntary contributions of non-Federal funds in support of natural resources conservation programs under subtitle D of title XII of the Act with respect to authorities delegated to the Chief, Natural Resources Conservation Service.

(xix) The Agricultural Conservation Easement Program authorized by sections 1265–1265D of the Act (16 U.S.C. 3865–3865d).

(xx) The Regional Conservation Partnership Program authorized by sections 1271–1271F of the Act (16 U.S.C. 3871–3871f).

(xxi) The Voluntary Public Access and Habitat Incentive Program authorized by section 1240R of the Act (16 U.S.C. 3839bb–5).

(xxii) A wetlands mitigation banking program authorized by section 1222(k) of the Act (16 U.S.C. 3822(k)).

* * * * *

(16) Administer the state and private forest landscape-scale restoration program (16 U.S.C. 2109a).

* * * * *

(23) * * *

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlement, but excluding section 122(b)(1) of the Act.

* * * * *

(31) Enter into cooperative agreements, which may provide for the acquisition of goods or services, including personal services, as authorized by Public Law 106–387 (7 U.S.C. 6962a).

(32) Administer the following provisions of the Agriculture Improvement Act of 2018 (Pub. L. 116–334):

(i) Section 1704 (7 U.S.C. 1308–3a), authorizing waivers of the adjusted gross income limitation.

(ii) In consultation with the Administrator, Farm Service Agency, and the Director of the U.S. Fish and Wildlife Service, Section 2707 (16 U.S.C. 1531 note), relating to wildlife management.

(iii) In coordination with the Under Secretary for Marketing and Regulatory Programs, Section 2408 (7 U.S.C. 8351 note), relating to the Feral Swine Eradication and Control Pilot Program.

(iv) Section 8628, relating to the purchase of Natural Resources Conservation Service property in Riverside County, California.

(v) Section 12302, relating to the Office of Urban Agriculture and Innovative Production.

* * * * *

■ 20. Amend § 2.44 by adding paragraph (a)(9) to read as follows:

§ 2.44 Administrator, Risk Management Agency and Manager, Federal Crop Insurance Corporation.

(a) * * *

(9) Coordinate with the Administrator, Farm Service Agency, on the type and format of data received under the noninsured crop assistance program authorized by Sec. 196 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L 104–127, as amended) (7 U.S.C. 7333).

* * * * *

Subpart G—Delegations of Authority by the Under Secretary for Rural Development

■ 21. Correctly designate §§ 2.45 through 2.49 as subpart G under the heading set forth above.

■ 22. Add § 2.45 to read as follows:

§ 2.45 Deputy Under Secretary for Rural Development.

Pursuant to § 2.17(a), subject to reservations in § 2.17(b), and subject to policy guidance and direction by the Under Secretary for Rural Development, the following delegation of authority is made to the Deputy Under Secretary for Rural Development, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Rural Development.

■ 23. Amend § 2.47 by revising (a)(1) and adding paragraphs (a)(9), (11), and (15) to read as follows:

§ 2.47 Administrator, Rural Utilities Service.

(a) * * *

(1) Administer the Rural Electrification Act of 1936, as amended (7 U.S.C. 901, *et seq.*): Provided, however, that the Administrator may utilize consultants and attorneys for the provision of legal services pursuant to 7 U.S.C. 918, with the concurrence of the General Counsel.

* * * * *

(9) Consult with the Assistant Secretary of Commerce for Communications and Information to assist in the verification of eligibility of the broadband loan and grant programs of the Department of Agriculture (7 U.S.C. 950bb–6).

* * * * *

(11) In coordination with the Federal Communications Commission, administer Section 12511 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334) relating to the precision agriculture connectivity task force.

* * * * *

(15) In coordination with the Office of Tribal Relations, provide technical assistance to improve access by Tribal entities to rural development programs funded by the Department of Agriculture through available cooperative agreement authorities (7 U.S.C. 2671).

* * * * *

■ 24. Amend § 2.48 by adding paragraph (a)(15), revising paragraphs (a)(28) and (29), and adding paragraphs (a)(35) and (36) to read as follows:

§ 2.48 Administrator, Rural Business-Cooperative Service.

(a) * * *

(15) In coordination with the Office of Tribal Relations, provide technical assistance to improve access by Tribal entities to rural development programs funded by the Department of Agriculture through available cooperative agreement authorities (7 U.S.C. 2671).

* * * * *

(28) In coordination with the Administrator of the Agricultural Marketing Service, administer the value-added producer grants program and farmers' markets and local food promotion program (7 U.S.C. 1627c(d)(5)–(6)).

(29) Administer the Agriculture Innovation Center Demonstration program (7 U.S.C. 1632b).

* * * * *

(35) Implementation of a program for the Federal procurement of biobased products and of a voluntary ''USDA Certified Biobased product'' labeling program (7 U.S.C. 8102).

(36) Entering into cooperative agreements to further research programs in the food and agricultural sciences, related to establishing and implementing Federal biobased procurement and voluntary biobased labeling programs (7 U.S.C. 3318).

* * * * *

■ 25. Amend § 2.49 by adding paragraphs (a)(7) and (9) to read as follows:

§ 2.49 Administrator, Rural Housing Service.

(a) * * *

(7) In coordination with the Office of Tribal Relations, provide technical assistance to improve access by Tribal entities to rural development programs funded by the Department of Agriculture through available cooperative agreement authorities (7 U.S.C. 2671).

* * * * *

(9) In consultation with the Department of Justice, Secretary of Housing and Urban Development, and Secretary of Health and Human Services, administer the emergency and transitional pet shelter and housing assistance grant program (34 U.S.C. 20127).

* * * * *

Subpart I—Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services

■ 26. Amend § 2.57 by adding paragraphs (a)(1)(xiii) and (xiv) and revising paragraph (a)(2)(xii) to read as follows:

§ 2.57 Administrator, Food and Nutrition Service

(a) * * *

(1) * * *

(xiii) Section 4208 of the Agriculture Improvement Act of 2018 (7 U.S.C. 2026a).

(xiv) Section 12614 of the Agriculture Improvement Act of 2018 (7 U.S.C. 6925).

(2) * * *

(xii) Emergency Food Assistance Act of 1983, as amended (7 U.S.C. 7501 *et seq.*);

* * * * *

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

■ 27. Amend § 2.60 by revising paragraph (a) to read as follows:

§ 2.60 Chief, Forest Service.

(a) Delegations. Pursuant to § 2.20(a)(1), (2), and (6), (a)(7)(ii), and (a)(8), the following delegations of authority are made by the Under Secretary for Natural Resources and Environment to the Chief of the Forest Service:

(1) Provide national leadership in forestry. (As used here and elsewhere in this section, the term ''forestry'' encompasses renewable and nonrenewable resources of forests, including lands governed by the Alaska National Interest Lands Conservation Act, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative values such as economic strength and social well-being).

(2) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System.

(3) Acquire, dispose, and lease lands and interest in lands as may be authorized for the protection, management, and administration of the National Forest System, except that the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended, and special forest receipts acts (Pub. L. No. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 427, 76th Cong., 54 Stat. 46; Pub. L. 589, 76th Cong., 54 Stat. 297; Pub. L. 591, 76th Cong., 54 Stat. 299; Pub. L. 637, 76th Cong., 54 Stat. 402; Pub. L. 781, 84th Cong., 70 Stat. 632) is limited to acquisitions of less than $250,000 in value.

(4) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or less which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(5) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670.

(6) For the purposes of the National Forests System Drug Control Act of 1986 (16 U.S.C. 559b 559g), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(i) To carry firearms;

(ii) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(iii) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(iv) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(v) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(vi) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(7) Cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of, and enforcement of, section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(8) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125(a)–(c), 138, 202(a)–(b), 203, 204(a)–(c), 205(a)–(d), 211, 317, 401).

(9) Administer provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272, 1305) as they relate to management of the National Forest System.

(10) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: Renewable resource management research; renewable resource environmental research; renewable resource protection research, renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(11) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(12) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(13) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 3105, 1624; 16 U.S.C. 582a–8, 1643–1645, 1649).

(14) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(15) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3152, 3318).

(16) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(17) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas and forest lands in foreign countries (16 U.S.C. 2101–2114).

(18) Provide assistance to States and other units of government in forest resources planning and forestry rural revitalization (7 U.S.C. 6601, 6611–6617; 16 U.S.C. 2107).

(19) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(20) Administer rural fire protection and control program (16 U.S.C. 2106c).

(21) Provide technical assistance on forestry technology or the implementation of the conservation reserve and softwood timber programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(22) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(23) Exercise the custodial functions of the Secretary for lands and interests

in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead–Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1013a).

(24) Under such general program criteria and procedures as may be established by the Natural Resources Conservation Service:

(i) Administer the forestry aspects of the programs listed in paragraphs (a)(24)(i)(A) through (C) of this section on the National Forest System, rangelands with national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands:

(A) The cooperative river basin surveys and investigations program (16 U.S.C. 1006);

(B) The eleven authorized watershed improvement programs and emergency flood prevention measures program under the Flood Control Act of 1944 (Pub. L. 78–534);

(C) The small watershed protection program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701a–h; 16 U.S.C. 1001–1009).

(ii) Exercise responsibility in connection with the forestry aspects of the resource conservation and development program authorized by title III of the Bankhead–Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(25) Provide assistance to the Farm Service Agency in connection with the agricultural conservation program, the naval stores conservation program, and the cropland conversion program (16 U.S.C. 590g–q).

(26) Provide assistance to the Rural Housing Service in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1923;

(27) Coordinate mapping work of USDA including:

(i) Clearing mapping projects to prevent duplication;

(ii) Keeping a record of mapping done by USDA agencies;

(iii) Preparing and submitting required USDA reports;

(iv) Serving as liaison on mapping with the Office of Management and Budget, Department of the Interior, and other departments and establishments;

(v) Promoting interchange of technical mapping information, including techniques which may reduce costs or improve quality; and

(vi) Maintaining the mapping records formerly maintained by the Office of Operations.

(28) Administer the radio frequency licensing work of USDA, including:

(i) Representing USDA on the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(ii) Establishing policies, standards, and procedures for allotting and assigning frequencies within USDA and for obtaining effective utilization of them;

(iii) Providing licensing action necessary to assign radio frequencies for use by the agencies of USDA and maintenance of the records necessary in connection therewith; and

(iv) Providing inspection of USDA's radio operations to ensure compliance with national and international regulations and policies for radio frequency use.

(29) Represent USDA in all matters relating to responsibilities and authorities under the Federal Power Act (16 U.S.C. 791a–823).

(30) Administer the Youth Conservation Corps Act (16 U.S.C. 1701–1706)) for USDA.

(31) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor; and administration of other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(32) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(33) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(34) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. 4501 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), relating to forests and forest products, rural fire defense, and forestry research.

(35) Represent USDA on Regional Response Teams on hazardous spills and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*), the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*), the Oil Pollution Act (OPA), as amended (33 U.S.C. 2701 *et seq.*), Executive Order 12580, 3 CFR, 1987 Comp., p. 193, Executive Order 12777, 3 CFR, 1991 Comp., p. 351, and the National Contingency Plan, 40 CFR part 300.

(36) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1287, except for making recommendations to the President regarding additions to the National Wild and Scenic Rivers System.

(37) Issue proposed rules relating to the authorities delegated in this section, issue final rules and regulations as provided in 36 CFR 261.70, issue technical amendments and corrections to final rules issued by the Secretary or Under Secretary for Natural Resources and Environment, and issue proposed and final rules necessary and appropriate to carry out title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215) with regard to National Forest System Lands.

(38) Jointly administer gypsy moth eradication activities with the Animal and Plant Health Inspection Service, under the authority of section 102 of the Organic Act of 1944, as amended; and the Act of April 6, 1937, as amended (7 U.S.C. 7759, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 1633), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

(39) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the

reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(g) of the Act (42 U.S.C. 9613(g)), with respect to receiving notification of a natural resource trustee's intent to file suit;

(x) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(xi) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xii) Section 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xiii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiv) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(40) Exercise the functions of the Secretary authorized in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226 *et seq.*).

(41) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendment, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended, (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(42) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, and Executive Order 12777, 3 CFR, 1991 Comp., p. 351, to act as Federal trustee for natural resources in accordance with section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)), section 311(f)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(f)(5)), and section 1006(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2706(b)(2)).

(43) With respect to land and facilities under his or her authority, to exercise the authority vested in the Secretary of Agriculture to act as the ''Federal Land Manager'' pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

(44) Administer the Public Lands Corps program (16 U.S.C. 1721 *et seq.*) for USDA consistent with the Department's overall national service program.

(45) [Reserved]

(46) Focusing on countries that could have a substantial impact on global warming, provide assistance that promotes sustainable development and global environmental stability; share technical, managerial, extension, and administrative skills; provide education and training opportunities; engage in scientific exchange; and cooperate with domestic and international organizations that further international programs for the management and protection of forests, rangelands, wildlife, fisheries and related natural resources (16 U.S.C. 4501–4505).

(47) Exercise the functions of the Secretary of Agriculture authorized in Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998, Public Law 105–83, relating to the acquisition so the New World Mines and other priority land acquisitions, land exchanges, and other activities.

(48) Establish programs with any bureau of the U.S. Department of the Interior (DOI), or with other agencies within USDA, in support of the Service First initiative for the purpose of promoting customer service and efficiency, including delegating to employees of DOI and other USDA agencies the authorities of the Forest Service necessary to carry out projects on behalf of USDA (43 U.S.C. 1703).

(49) At the request of the Director, Homeland Security Staff (Director), designate law enforcement personnel of the Forest Service to assist the Director in providing for the personal security for the Secretary and the Deputy Secretary in the National Forest System.

(50) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(51) Administer a program, through the Deputy Chief of State and Private Forestry, for providing loans to eligible units of local government to finance the purchase of equipment to monitor, remove, dispose of, and replace infested trees located under their jurisdiction and within the borders of quarantined areas (16 U.S.C. 2104a).

(52) [Reserved]

(53) Administer the community wood energy program providing grants to develop community wood energy plans, acquire or upgrade community wood energy systems, and establish or expand biomass consumer cooperatives (7 U.S.C. 8113).

(54) Conduct activities that assist the Director, Office of Environmental

Markets, in developing guidelines regarding the development of environmental services markets.

(55) Administer the programs authorized by the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6501 *et seq.*), except for the Healthy Forests Reserve Program authorized in title V of such act (16 U.S.C. 6571–6578).

(56) Administer Good Neighbor contracts and cooperative agreements with a State to carry out forest, rangeland, and watershed restoration services on National Forest System lands (16 U.S.C. 2113a).

(57) Utilize the Agriculture Conservation Experienced Services (ACES) Program (16 U.S.C. 3851) to provide technical services for conservation-related programs and authorities carried out on National Forest System lands (16 U.S.C. 3851a).

(58) Enter into reciprocal fire agreements or contracts with domestic entities. Administer reimbursements received for fire suppression (16 U.S.C. 1856–1856e).

(59) Administer the large airtanker and aerial asset lease program (16 U.S.C. 551c).

(60) Provide technical and other assistance with respect to eligibility of forest products for the ''USDA Certified Biobased Products'' labeling program (7 U.S.C. 8102(g)).

(61) Cooperate with public or private entities or individuals to perform work on state, county, municipal, or private lands within or near the boundary of National Forest System lands for administration, protection, improvement, reforestation, and other kinds of work the Forest Service is authorized to do on National Forest System lands, and cooperate with public or private entities or individuals to perform the same kinds of work in connection with the use or occupancy of National Forest System lands (16 U.S.C. 572).

(62) Enter into reciprocal fire agreements with foreign fire organizations. (42 U.S.C. 1856m–1856o).

(63) Administer the payments to states program (16 U.S.C. 500; 16 U.S.C. 7101–7153); establish, maintain, and appoint members to Resource Advisory Committees (16 U.S.C. 7125).

(64) Administer the Wood Innovation Grant program (7 U.S.C. 7655d).

* * * * *

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

■ 28. Amend § 2.65 by revising paragraph (a)(2) and adding paragraphs (a)(30) and (47) to read as follows:

§ 2.65 Administrator, Agricultural Research Service.

(a) * * *

(2) Conduct research related to the economic feasibility of the manufacture and commercialization of natural rubber from hydrocarbon-containing plants and other critical agricultural materials from native agricultural crops having strategic and industrial importance (7 U.S.C. 178–178n).

* * * * *

(30) Promote cooperation and coordination between 1862, 1890, 1994, and NLGCA Institutions, HSACUs, and cooperating forestry schools and international partner institutions in developing countries by exercising the Secretary's authority in 7 U.S.C. 3292, including coordinating with the Administrator, Foreign Agricultural Service to place interns from covered institutions in, or in service to benefit, developing countries.

* * * * *

(47) Establish a National Plant Disease Recovery System to engage in strategic long-range planning to recover from high-consequence plant transboundary diseases (7 U.S.C. 8914(d)).

* * * * *

■ 29. Amend § 2.66 by:

■ a. Revising paragraph (a)(1);

■ b. Adding paragraphs (a)(9), (14), (15), (21), (27), (34), (35), (43), (56), (77), (79), (91), and (103);

■ c. Revising paragraph (a)(132); and

■ d. Adding paragraphs (a)(137) and (152).

The revisions to read as follows:

§ 2.66 Director, National Institute of Food and Agriculture.

(a) * * *

(1) Administer research and technology development grants related to the economic feasibility of the manufacture and commercialization of natural rubber from hydrocarbon-containing plants and other critical agricultural materials from native agricultural crops having strategic and industrial importance (7 U.S.C. 178–178n).

* * * * *

(9) Administer a next generation agriculture technology challenge competition to incentivize mobile technology that removes marketplace entry barriers for beginning farmers and ranchers (7 U.S.C. 3158).

* * * * *

(14) Administer a program to make competitive grants to assist in the construction, alteration, acquisition, modernization, renovation, or remodeling of agricultural research facilities (7 U.S.C. 390b).

(15) Promote cooperation and coordination between 1862, 1890, 1994, and NLGCA Institutions, HSACUs, and cooperating forestry schools and international partner institutions in developing countries by exercising the Secretary's authority in 7 U.S.C. 3292, including coordinating with the Administrator, Foreign Agricultural Service to place interns from covered institutions in, or in service to benefit, developing countries.

* * * * *

(21) Administer grants to 1890 Institutions, including Tuskegee University, for purposes of awarding scholarships to individuals pursuing careers in the food and agricultural sciences (7 U.S.C. 3222a).

* * * * *

(27) Make competitive grants to land-grant colleges and universities, including 1994 Institutions, to provide identifiable support specifically targeted for Tribal students (7 U.S.C. 3222e).

* * * * *

(34) Administer competitive grants for the acquisition of special purpose scientific research equipment for use in the food and agricultural sciences programs of eligible institutions (7 U.S.C. 3310a).

(35) Establish a National Plant Diagnostic Network to monitor and surveil through diagnostics threats to plant health from diseases or pests of concern in the United States and establish cooperative agreements with land-grant colleges and universities (7 U.S.C. 8914(c)).

* * * * *

(43) In consultation with the Urban Agriculture and Innovative Production Advisory Committee, administer competitive grants to support research, education, and extension activities for the purposes of facilitating the development of urban, indoor, and other emerging agricultural production, harvesting, transportation, aggregation, packaging, distribution, and markets (7 U.S.C. 5925g).

* * * * *

(56) Prepare an annual report to Congress on disbursements of funds for agricultural research and extension at 1890 and 1862 Institutions for programs under the following authorities: 7 U.S.C. 3221; 7 U.S.C. 3222; 7 U.S.C. 343(b) and (c); and 7 U.S.C. 361a *et seq.* (7 U.S.C. 2207d).

* * * * *

(77) Recognize centers of excellence, led by 1890 Institutions, focused on student success and workforce development; nutrition, health, wellness, and quality of life; farming

systems, rural prosperity, and economic sustainability; global food security and defense, natural resources, energy, and environment; and emerging technologies, and submit an annual report to Congress on the resources invested in and work being done by such centers (7 U.S.C. 5926).

* * * * *

(79) Administer grants to consortia of land-grant colleges and universities to enhance the ability of the consortia to carry out multi-State research projects aimed at understanding and combating diseases of wheat, triticale, and barley caused by Fusarium graminearum and related fungi or Tilletia indica and related fungi (7 U.S.C. 7628).

* * * * *

(91) Administer an experienced services program to obtain technical, professional, and administrative services to support the research, education, and economics mission area of the Department (16 U.S.C. 3851).

* * * * *

(103) In consultation with the Administrator of the Food and Nutrition Service, administer pilot projects to encourage the use of public-private partnerships committed to addressing food insecurity (7 U.S.C. 2036d).

* * * * *

(132) Administer a program of competitive grants, establish education teams, and establish an online clearinghouse of curricula and training materials and programs, all for training, education, outreach, and technical assistance initiatives for the benefit of beginning farmers and ranchers (7 U.S.C. 2279(d)).

* * * * *

(137) In consultation with the Secretary of Energy, administer competitive grants to provide education about carbon utilization and biogas (7 U.S.C. 8115).

* * * * *

(152) Administer a competitive grant program to support the development and expansion of advanced training programs in agricultural biosecurity planning and response for food science professionals and veterinarians (7 U.S.C. 8913).

* * * * *

■ 30. Amend § 2.68 by adding paragraph (a)(14) to read as follows:

§ 2.68 Administrator, National Agricultural Statistics Service.

(a) * * *

(14) Collect and, not less frequently than once every 3 years report, data and analysis on farmland ownership, tenure, transition, and entry of beginning farmers and ranchers and socially disadvantaged farmers and ranchers (7 U.S.C. 2204i).

* * * * *

§ 2.69 [Amended]

■ 31. Amend § 2.69 in paragraph (b) by removing the term ''Research, Education, and Extension Office'' and adding in its place the term ''Office of the Chief Scientist''.

Subpart L—Delegations of Authority by the Chief Economist

■ 32. Amend § 2.72 by adding paragraph (a)(2)(v) to read as follows:

§ 2.72 Chairman, World Agricultural Outlook Board.

(a) * * *

(2) * * *

(v) Coordinate with the Director of the National Drought Mitigation Center and the Administrator of the National Oceanic and Atmospheric Administration to enhance the collection of data to improve the accuracy of the United States Drought Monitor (7 U.S.C. 5856).

* * * * *

■ 33. Amend § 2.75 by adding paragraph (a)(2) to read as follows:

§ 2.75 Director, Office of Pest Management Policy.

(a) * * *

(2) Conduct a multiple crop and pesticide use survey as authorized by section 10109 of the Agricultural Improvement Act of 2018.

* * * * *

Subpart N—Delegations of Authority by the Under Secretary for Marketing and Regulatory Programs

■ 34. Amend § 2.79 by revising paragraph (a)(8)(lxiii) and adding paragraphs (a)(8)(lxxiii), (lxxvi), (lxxx), and (a)(23) and (24) to read as follows:

§ 2.79 Administrator, Agricultural Marketing Service.

(a) * * *

(8) * * *

(lxiii) Local Agriculture Market Program (7 U.S.C. 1627c), in coordination with the Administrator, Rural Business-Cooperative Service.

* * * * *

(lxxiii) Section 12108 of the Agriculture Improvement Act of 2018 (7 U.S.C. 1622 note).

* * * * *

(lxxvi) Section 4206 of the Agriculture Improvement Act of 2018 (7 U.S.C. 7518).

* * * * *

(lxxx) Section 12513 of the Agriculture Improvement Act of 2018 (7 U.S.C. 1632d).

* * * * *

(23) Administer the Economic Adjustment Assistance for Textile Mills program (7 U.S.C. 9037(c)).

(24) In coordination with Administrator, Farm Service Agency, administer payments under the Special Competitive Provisions for Extra Long Staple Cotton (7 U.S.C. 9038).

* * * * *

■ 35. Amend § 2.80 by revising paragraphs (a)(14), (19), (26), and (27) and adding paragraphs (a)(49) through (52) to read as follows:

§ 2.80 Administrator, Animal and Plant Health Inspection Service.

(a) * * *

(14) Talmadge-Aiken Act (7 U.S.C. 1633) with respect to cooperation with States in control and eradication of plant and animal diseases and pests.

* * * * *

(19) Section 101(d), Organic Act of 1944 (7 U.S.C. 398).

* * * * *

(26) The Act of March 2, 1931 (7 U.S.C. 8351–8352).

(27) The Act of December 22, 1987 (7 U.S.C. 8353).

* * * * *

(49) Section 11013 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8322).

(50) In coordination with the Chief, Natural Resources Conservation Service, Section 2408 relating to the Feral Swine Eradication and Control Pilot Program (7 U.S.C. 8351 note).

(51) Section 12203(b) of the Agriculture Improvement Act of 2018 relating to diseases and pests of concern (7 U.S.C. 8914(b)).

(52) Section 12601 of the Agriculture Improvement Act of 2018 relating to baiting of migratory game birds (16 U.S.C. 704 note).

* * * * *

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

§ 2.89 [Removed and Reserved]

■ 36. Remove and reserve § 2.89.

§ 2.90 [Amended]

■ 37. Amend § 2.90 by removing paragraphs (a)(1)(vi) and (vii).

■ 38. Add § 2.94 to read as follows:

§ 2.94 Chief Security Director, Office of Safety, Security, and Protection.

(a) *Delegations from the Assistant Secretary for Administration.* Pursuant

to § 2.24(a)(8) and (9), and with due deference for delegations to other Departmental Administration officials, the following delegations of authority are made by the Assistant Secretary for Administration to the Chief Security Director:

(1) Promulgate Departmental policies, standards, techniques, and procedures; and represent the Department in maintaining the security of physical facilities and providing security guidance to the Food and Agricultural Sector nationwide. This includes the following activities:

(i) Lead and coordinate the development and maintenance of a mission critical facility inventory with agency involvement to ensure proper security countermeasures are implemented in the Department's most critical infrastructure.

(ii) Provide guidance to USDA agencies in matters of physical security through use of physical security assessments and development of mitigation strategies.

(iii) Conduct physical security investigations and compliance reviews Department-wide.

(iv) Review and provide coordinated technical physical security assessments for all new construction of laboratories, data centers, germplasm repositories, and other mission critical infrastructure during the design phase, and all leased facilities prior to contract award.

(v) Oversee and manage physical security aspects of the Common Identification Card (LincPass) Program to ensure National Institute of Standards and Technology (NIST) and General Services Administration (GSA) compliancy within the National Capital Region and the physical access to USDA facilities.

(vi) Provide enterprise connectivity to agency physical access control systems that provide cost leveraging and provisioning/de-provisioning nationwide.

(2) Promulgate Departmental regulations, standards, techniques, and procedures and represent the Department in managing and maintaining a comprehensive physical and technical security program including access control, management of special police officer and guard services, executive driving, parking, ID badging in accordance with HSPD–12, occupant emergency and warden services at the USDA Headquarters Complex, George Washington Carver Center and, in coordination with GSA, USDA leased facilities in the Washington, DC metropolitan area, as well as at emergency relocation sites and certain critical facilities specified by the Assistant Secretary for Administration.

(3) Carry out protection operations for the Secretary, Deputy Secretary, and other individuals as specified in Section 12520 of the Agriculture Improvement Act of 2018, including by authorizing law enforcement officers or special agents to carry firearms; conduct criminal investigations into potential threats to the security of individuals protected under Section 12520; make arrests without a warrant for any offense against the United States committed in the presence of the law enforcement officer or special agent; perform protective intelligence work, including identifying and mitigating potential threats and conducting advance work to review security matters relating to sites and events; and coordinate with local law enforcement authorities (7 U.S.C. 2279k).

(b) [Reserved]

■ 39. Amend § 2.95 by revising paragraph (b) to read as follows:

§ 2.95 Director, Office of Homeland Security.

* * * * *

(b) *Delegations from the Assistant Secretary for Administration.* Pursuant to § 2.24(a)(8), and with due deference for delegations to other Departmental Administration officials, the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Homeland Security:

(1) Serve as the principal advisor to the Secretary on homeland security, including emergency management and agriculture and food defense;

(2) Coordinate activities of the Department, including policies, processes, budget needs, and oversight relating to homeland security, including emergency management and agriculture and food defense;

(3) Act as the primary liaison on behalf of the Department with other Federal departments and agencies in activities relating to homeland security, including emergency management and agriculture and food defense, and provide for interagency coordination and data sharing;

(4) Coordinate in the Department the gathering of information relevant to early warning and awareness of threats and risks to the food and agriculture critical infrastructure sector; and share that information with, and provide assistance with interpretation and risk characterization of that information to, the intelligence community (as defined in 5 U.S.C. 3003), law enforcement agencies, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of Health and Human Services, and State fusion centers (as defined in section 210A(j) of the Homeland Security Act of 2002 (6 U.S.C. 124h(j));

(5) Liaise with the Director of National Intelligence to assist in the development of periodic assessments and intelligence estimates, or other intelligence products, that support the defense of the food and agriculture critical infrastructure sector;

(6) Coordinate the conduct, evaluation, and improvement of exercises to identify and eliminate gaps in preparedness and response;

(7) Produce a Department-wide centralized strategic coordination plan to provide a high-level perspective of the operations of the Department relating to homeland security, including emergency management and agriculture and food defense; and

(8) Establish and carry out an interagency Agriculture and Food Threat Awareness Partnership Program, including by entering into cooperative agreements or contracts with Federal, State, or local authorities (7 U.S.C. 6922).

(9) Administer the Department Emergency Preparedness Program. This includes:

(i) Coordinate the delegations and assignments made to the Department under the Defense Production Act of 1950, 50 U.S.C. App. 2061, *et seq.;* the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.;* and by Executive Orders 12148, ''Federal Emergency Management'' (3 CFR, 1979 Comp., p. 412), 12656, ''Assignment of Emergency Preparedness Responsibilities'' (3 CFR, 1988 Comp., p. 585), and 13603, ''National Defense Resources Preparedness'' (3 CFR, 2012 Comp., p. 225), or any successor to these Executive Orders, to ensure that the Department has sufficient capabilities to respond to any occurrence, including natural disaster, military attack, technological emergency, or any all hazards incident.

(ii) Manage the Department Emergency Operations Center at Headquarters and the Secretary's alternative facilities; provide senior staff with international, national, and regional situational awareness reports; and provide and maintain current information systems technology and National Security Systems to support USDA executive crisis management capability.

(iii) Provide facilities and equipment to facilitate inter-agency coordination during emergencies.

(iv) Activate the USDA incident management system in accordance with the National Response Framework and the National Incident Management System in the event of a major incident; and provide oversight and coordination of the Department's Emergency Support Functions as outlined in the National Response Framework.

(v) Develop and promulgate policies for the Department regarding emergency preparedness and national security, including matters relating to anti-terrorism and agriculture-related emergency preparedness planning, both national and international, and guidance to USDA State and County Emergency Boards.

(vi) [Reserved]

(vii) Provide representation and liaison for the Department in contacts with other Federal entities and organizations, including the National Security Council, Homeland Security Council, Office of Management and Budget, Department of Homeland Security, Federal Emergency Management Agency, Office of The Director of National Intelligence, and Department of Defense concerning matters of a national security, natural disaster, other emergencies, and agriculture/food-related international civil emergency planning and related activities.

(viii) Act as the primary USDA representative for anti-terrorism activities.

(ix) [Reserved]

(x) Provide guidance and direction regarding radiological emergency preparedness programs and the implementation of the National Response Framework's Nuclear/Radiological Incident Annex to Departmental staff offices, mission areas, and agencies.

(xi) Provide program leadership and coordination for USDA's radiological emergency preparedness requirements with respect to Emergency Management and Assistance (44 CFR parts 350 through 352).

(xii) Represent USDA on the Federal Radiological Preparedness Coordinating Committee (FRPCC) and Regional Assistance Committees (RACs) and assist them in carrying out their functions.

(xiii) Support USDA in its management of the Department's emergency response program with respect to radiological emergency response activities.

(xiv) [Reserved]

(10) Administer the Classified Network, Controlled Unclassified Information, and Insider Threat programs of the Department (E.O. 13587; E.O. 13556 and 32 CFR part 2002).

(11) Serve as the primary point of contact for Government Accountability Office (GAO) and Office of the Inspector General (OIG) audits of USDA homeland security activities.

(12) Coordinate interaction between Department agencies and private sector businesses and industries in emergency planning and public education under Department authorities delegated or assigned under the National Response Framework, National Infrastructure Protection Plan, Defense Production Act of 1950, 50 U.S.C. App. 2061, *et seq.,* and Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*

(13) Oversee the Department's ability to collect and disseminate information and prepare for an agricultural disease emergency, agroterrorist act, or other threat to agricultural biosecurity, and coordinate such activities among agencies and offices within the Department (7 U.S.C. 8912).

(14) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in providing security guidance to the Food and Agricultural Sector nationwide. This includes the following duties:

(i) Provide guidance to USDA agencies and the Food and Agricultural Sector in matters of security through use of assessments and development of mitigation strategies.

(ii) Represent and act as liaison for the Department in contacts with other Federal security entities and organizations, including the Interagency Security Committee and the Department of Homeland Security.

(iii) Provide guidance and direction to ensure physical security and agriculture/food security are fully integrated in USDA's security preparations, which are reported to and coordinated with the White House.

(iv) Provide assistance to the USDA agencies in preparation for and during a disaster to identify critical assets and possible alternate storage locations.

(15) Provide oversight and coordination of the development and administration of the Department Continuity Program. This includes:

(i) Provide guidance and direction regarding continuity of operations to the Office of the Secretary, Departmental staff offices, mission areas, and agencies.

(ii) Represent and act as liaison for the Department in contacts with other Federal entities and organizations concerning matters of assigned continuity program responsibilities.

(iii) Oversee Department continuity of operations and emergency relocation facility planning, development, equipping, and preparedness to ensure that resources are in a constant state of readiness.

(16) Provide for the development and administration of a Public Trust program for the safeguarding of national security information:

(i) Direct and administer USDA's public trust program established pursuant to 5 CFR part 731 and Executive Order 13488, ''Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust'' (74 FR 4111, 3 CFR, 2010 Comp., p. 189).

(ii) Direct and administer USDA's program under which information is safeguarded pursuant to Executive Order 13526, ''Classified National Security Information'' (75 FR 707, 3 CFR, 2010 Comp., p. 298), or subsequent orders.

(iii) Establish and maintain Information Security policies and procedures for classifying, declassifying, safeguarding, and disposing of classified national security information and materials.

(iv) Investigate or delegate authority to investigate any potential compromises of classified national security information and take corrective action for violations or infractions under section 5.5(b), of Executive Order 13526 or any subsequent order.

(v) Develop and maintain oversight of all facilities throughout USDA where classified national security information is or will be safeguarded, discussed, or processed including sole authority to liaison with the Central Intelligence Agency concerning guidance, approval, requirements, and oversight of USDA secure facilities.

(vi) Act as the USDA focal point to identify, receive, disseminate and safeguard USDA related intelligence information as required; convey information to USDA policy officials; and liaise with the intelligence community, as appropriate.

(17) Control within USDA the acquisition, use, and disposal of material and equipment that can be a source of ionizing radiation.

(i) Promulgate policies and procedures for ensuring the safety of USDA employees, the public, and the environment resulting from USDA's use of ionizing radiation sources.

(ii) Maintain and ensure compliance with the Nuclear Regulatory Commission regulations (Title 10, Code of Federal Regulations) and license(s)

issued to USDA for the acquisition, use, and disposal of radioactive materials.

§ 2.96 [Amended]

■ 40. Amend § 2.96 by removing and reserving paragraph (a)(3).

Subpart T—Delegations of Authority by the Chief Financial Officer

■ 41. Amend § 2.500 by revising the section heading, and in the section text by removing ''Deputy Chief Financial Officer'' and adding in its place ''Principal Deputy Chief Financial Officer''.

The revision reads as follows:

§ 2.500 Principal Deputy Chief Financial Officer.

* * * * *

Subpart U—Delegations of Authority by the Under Secretary for Trade and Foreign Agricultural Affairs

■ 42. Amend § 2.601 by adding paragraphs (a)(21), (46), (49), and (51) to read as follows:

§ 2.601 Administrator, Foreign Agricultural Service.

(a) * * *

(21) Promote cooperation and coordination between 1862, 1890, 1994, and NLGCA Institutions, HSACUs, and cooperating forestry schools and international partner institutions in developing countries by exercising the Secretary's authority in 7 U.S.C. 3292, including coordinating with the Director of the National Institute of Food and Agriculture and Administrator of the Agricultural Research Service to place interns from covered institutions in, or in service to benefit, developing countries.

* * * * *

(46) Administer the International Agricultural Education Fellowship Program (7 U.S.C. 3295).

* * * * *

(49) Compile and make available information relating to the improvement of international food security, and provide technical assistance for the improvement of international food security to Federal, State, or local agencies; agencies or instrumentalities of the government of foreign country; domestic or international organizations; or intergovernmental organizations (7 U.S.C. 1736dd).

* * * * *

(51) In consultation with the Tribal Advisory Committee and the Director of the Office of Tribal Relations, and in coordination with the Secretaries of Commerce, State, Interior, and the heads of any other relevant Federal agencies, implement section 3312 of the Agriculture Improvement Act of 2018 (7 U.S.C. 5608) to support greater inclusion of Tribal agricultural food products in Federal trade activities.

* * * * *

Subpart V—Delegations of Authority by the Director, Office of Partnerships and Public Engagement

■ 43. Amend § 2.700 by revising paragraph (a)(4) to read as follows:

§ 2.700 Director, Office of Advocacy and Outreach.

(a) * * *

(4) Administer section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279), as amended, except for the beginning farmer and rancher development program in subsection (d) and authorities related to the Census of Agriculture and economic studies in subsection (j) of that section.

* * * * *

■ 44. Amend § 2.701 by adding paragraphs (a)(6) through (8) to read as follows:

§ 2.701 Director, Office of Tribal Relations.

(a) * * *

(6) Consult with the Administrator, Foreign Agricultural Service on the implementation of section 3312 of the Agriculture Improvement Act of 2018 (7 U.S.C. 5608) to support greater inclusion of Tribal agricultural food products in Federal trade activities.

(7) In coordination with the Administrators of the Rural Utilities Service, Rural Business-Cooperative Service, and Rural Housing Service, provide technical assistance to improve access by Tribal entities to rural development programs funded by the Department of Agriculture through available cooperative agreement authorities (7 U.S.C. 2671).

(8) Oversee the Tribal Advisory Committee (7 U.S.C. 6921).

* * * * *

Stephen L. Censky,

Deputy Secretary of Agriculture.

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Part IV

Department of the Treasury

Internal Revenue Service

26 CFR Part 53

Guidance on the Determination of the Section 4968 Excise Tax Applicable to Certain Colleges and Universities; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 53

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Guidance on the Determination of the Section 4968 Excise Tax Applicable to Certain Colleges and Universities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations for determining the excise tax applicable to the net investment income of certain private colleges and universities. The regulations affect certain private colleges and universities.

DATES:

Effective Date: These regulations are effective on October 14, 2020.

Applicability Date: For date of applicability, see § 53.4968–4.

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SUPPLEMENTARY INFORMATION:

Background

This document amends the Foundation and Similar Excise Tax Regulations (26 CFR part 53) by adding final regulations under section 4968 of the Internal Revenue Code (Code). Section 4968 was added to the Code by section 13701 of Public Law 115–97 (131 Stat. 2054, 2167–68 (2017)), commonly referred to as the Tax Cuts and Jobs Act (TCJA). Section 4968(a) imposes on each applicable educational institution, as defined in section 4968(b)(1), an excise tax equal to 1.4 percent of the institution's net investment income, determined under section 4968(c). Further, section 4968(d) treats a portion of certain assets and net investment income of certain related organizations as assets and net investment income of the educational institution.

Section 4968(b)(1) defines the term ''applicable educational institution'' as an eligible educational institution (as defined in section 25A(f)(2)) that, during the preceding taxable year, had at least 500 tuition-paying students, more than 50 percent of whom were located in the United States, that is not a state college or university as described in the first sentence of section 511(a)(2)(B), and that had assets (other than those assets used directly in carrying out the institution's exempt purpose) the aggregate fair market value of which was at least $500,000 per student of the institution.

Section 4968(b)(2) provides that, for purposes of section 4968(b)(1), the number of students of an institution (including for purposes of determining the number of students at a particular location) is based on the daily average number of full-time students attending such institution, with part-time students taken into account on a full-time student equivalent basis.

Section 4968(c) provides that, for purposes of section 4968, ''net investment income'' is determined under rules similar to the rules of section 4940(c).

Section 4968(d)(1) provides that, for purposes of determining the aggregate fair market value of an educational institution's assets not used directly in carrying out its exempt purpose,[1] and for purposes of determining an institution's net investment income, the assets and net investment income of any related organization with respect to the institution are treated as assets and net investment income, respectively, of the educational institution, with two exceptions. First, no such amount is to be taken into account with respect to more than one educational institution. Second, unless such organization is controlled by such institution or is a supporting organization described in section 509(a)(3) with respect to such institution for the taxable year, assets and net investment income that are not intended or available for the use or benefit of the educational institution are not taken into account.

Section 4968(d)(2) provides that the term ''related organization,'' with respect to an educational institution, means any organization that: (1) Controls, or is controlled by, such institution; (2) is controlled by one or more persons that also control such institution; or (3) is a supported organization (as defined in section 509(f)(3)), or a supporting organization (as described in section 509(a)(3)), during the taxable year with respect to the educational institution.

The Conference Report for the TCJA, H. Rept. 115–466, 115th Cong., 1st Sess., December 15, 2017 (Conference Report), at 555, states ''It is intended that the Secretary promulgate regulations to carry out the intent of the provision,'' including regulations that describe: (1) Assets that are used directly in carrying out an educational institution's exempt purpose; (2) the computation of net investment income; and (3) assets that are intended or available for the use or benefit of an educational institution.

In June 2018, the Department of the Treasury (Treasury Department) and the IRS issued Notice 2018–55, 2018–26 I.R.B. 773, to provide interim guidance on certain issues related to the application of the tax imposed by section 4968. Specifically, Notice 2018–55 stated that, in the case of property held on December 31, 2017, and continuously thereafter to the date of its disposition, the Treasury Department and the IRS intended to propose regulations stating that basis for purposes of determining gain (but not loss) is deemed to be not less than the fair market value of such property on December 31, 2017, plus or minus all adjustments after December 31, 2017, and before the date of disposition, consistent with the regulations under section 4940(c). Notice 2018–55 additionally stated that the Treasury Department and the IRS expected the proposed regulations to provide that losses from sales or other dispositions of property generally would be allowed only to the extent of gains, with no capital loss carryovers or carrybacks, and that losses from sales or other dispositions of property by related organizations will be allowed to offset overall net gains from other related organizations or the applicable educational institution.

On July 3, 2019, the Treasury Department and the IRS published a notice of proposed rulemaking in the **Federal Register** (REG–106877–18, 84 FR 31795) that contained proposed regulations regarding the requirements of section 4968, including the manner for determining the excise tax applicable to the net investment income of certain private colleges and universities. The proposed regulations incorporated the provisions set forth in Notice 2018–55. The proposed regulations also provided definitions for several of the terms necessary for an educational institution to determine whether the section 4968 excise tax is applicable to it, including the terms ''student,'' ''tuition-paying,'' ''located in the United States,'' and ''assets used directly in carrying out an institution's exempt purpose.'' Eighteen comments were received in response to the proposed regulations, one of which was the collective comment of forty educational institutions likely to be subject to this excise tax. No public hearing was requested or held.

After consideration of the comments received, the proposed regulations

[1] Section 4968(d)(1) erroneously cross references section 4968(b)(1)(C). The correct cross reference should be to section 4968(b)(1)(D). See Joint Committee on Taxation, ''General Explanation of Public Law 115–97'' (JCS–1–18), December 2018, at 290, n. 1357.

under section 4968 are adopted as final regulations as modified by this Treasury Decision. The major areas of comment and the revisions to the proposed regulations are discussed in the Summary of Comments and Explanation of Revisions. Eight commenters voiced objections to the Code section itself. No regulatory response to these comments is appropriate. Accordingly, these comments are not discussed in the Summary of Comments and Explanation of Revisions. All comments are available for public inspection at *www.regulations.gov* or on request.

Summary of Comments and Explanation of Revisions

These final regulations provide guidance on the tax imposed by section 4968 and the entities that are subject to the tax.

1. Applicable Educational Institution

Section 4968(b)(1) defines the term ''applicable educational institution,'' in part, as an eligible educational institution defined in section 25A(f)(2). Consistent with the statute, the proposed regulations provided that the term ''applicable educational institution'' means any eligible educational institution (as defined in section 25A(f)(2) and § 1.25A–2(b)): (1) That had at least 500 tuition-paying students attending the institution during the preceding taxable year; (2) more than 50 percent of whose tuition-paying students are located in the United States; (3) that is not described in the first sentence of section 511(a)(2)(B) (relating to state colleges and universities); and (4) the aggregate fair market value of the assets of which at the end of such preceding taxable year (other than those assets that are used directly in carrying out the institution's exempt purpose) is at least $500,000 per student attending the institution.

Two commenters addressed the definition of applicable educational institution. The first commenter recommended that the final regulations provide additional guidance to clarify that separate, but affiliated, educational institutions that are under common control (for example, within the same university system) should be aggregated for purposes of determining the number of students used in both the 500-student and the $500,000-per-student tests. These final regulations do not adopt this recommendation, because both section 4968(b)(1) and section 25A(f)(2) refer to individual institutions and neither contains any provisions for aggregating affiliated institutions for purposes of determining the number of students at an institution. The only aggregation in section 4968 is the requirement to treat certain assets and net investment income of related organizations as the assets and net investment income, respectively, of the institution.

The second commenter stated that, for purposes of defining ''eligible educational institution,'' the final regulations should not include a reference to the regulations at § 1.25A–2(b) and should use only the statutory definition contained in section 25A(f)(2). Section 1.25A–2(b) provides that an eligible educational institution means, in general, a college, university, vocational school, or other postsecondary educational institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) as in effect on August 5, 1997 (generally all accredited public, nonprofit, and proprietary postsecondary institutions) that (1) is participating in a Federal financial aid program under title IV of the Higher Education Act of 1965 or (2) is certified by the Department of Education as eligible to participate in such a program but chooses not to participate.

The commenter explained that there are several educational institutions whose organizational documents and mission prohibit them from applying for or receiving Federal funds (including accepting funds as part of a student Federal financial aid program under Title IV of the Higher Education Act of 1965). The commenter asked that applicability of section 4968 be determined based on the actions of an institution rather than by a Department of Education certification that is focused on whether the students of an institution can claim an individual tax credit under section 25A for expenses to attend the institution, which the commenter sees as being incompatible with both the terms of section 25A and the mission of such institutions.

Although the Treasury Department and the IRS appreciate the position of the commenter, section 4968 expressly defines applicable educational institution by reference to section 25A(f)(2). Section 25A(f)(2) provides that the term ''eligible educational institution'' means an institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of section 25A, and that ''is *eligible* to participate in a program under title IV of such Act.''

If the final section 4968 regulations did not include a reference to § 1.25A–2(b), an educational institution would still be ''eligible to participate in a program under title IV of such Act'' as long as it satisfied all of the requirements of that Act even if it chose not to participate in such a program and even if it was not certified by the Department of Education as eligible to participate in such a program. Thus, deleting the reference to § 1.25A–2(b) would not address the commenter's concerns. Further, § 1.25A–2 was adopted in 2002, and Congress is presumed to have been aware of the regulations when section 4968 was enacted. Congress did not express any intent in the legislative history of section 4968 for the regulations under section 25A to be disregarded for purposes of defining eligible educational institution. In addition, it would be very difficult for the Treasury Department and the IRS to provide in the regulations under section 4968 that the IRS is following a definition of eligible educational institution that is consistent with the statutory language of section 25A(f)(2) without also incorporating the regulations under section 25A unless there was specific language in section 4968 with which the regulations were in conflict, and that is not the case here. Lastly, the Treasury Department and the IRS understand that the number of educational institutions that do not participate in the Federal programs provided in the Higher Education Act or that are not certified as eligible to participate in the programs is very small, and it would be burdensome for the IRS to follow one definition of eligible educational institution for purposes of section 25A and another under section 4968 when both provisions are dependent on section 25A(f)(2).

Thus, these final regulations adopt the definition of applicable educational institution as proposed.

2. Student

The proposed regulations defined ''student,'' based in part on section 25A(b)(3) and the Higher Education Act, as a person enrolled in a degree, certification, or other program (including a program of study abroad approved for credit by the eligible educational institution at which such student is enrolled) leading to a recognized educational credential at an eligible educational institution, and who is not enrolled in an elementary or secondary school.

The proposed regulations also provided that the number of students of an educational institution (including for purposes of determining the number of students at a particular location) is based on the daily average number of full-time students attending such institution (with part-time students taken into account on a full-time

student equivalent basis). Under the proposed regulations, the standards for determining part-time students, full-time students, full-time equivalents, and daily average are determined by each educational institution. However, the standards may not be lower than the applicable standards established by the Department of Education under the Higher Education Act of 1965 (20 U.S.C. 1088), as amended.

Three commenters addressed the proposed definition of ''student,'' stating that section 4968 does not define the term student but it does provide that, for purposes of determining the number of students of an institution, an educational institution must determine the daily average number of full-time students attending the institution, with part-time students taken into account on a full-time student equivalent basis. Two of these commenters recommended that the definition should include all students attending the institution even if not enrolled in a degree, certification, or other program leading to a recognized educational credential, stating that section 4968 includes students that are taking a less-than half time load and that many of those students are not seeking a degree. The commenters stated that the definition of student for purposes of the Lifetime Learning Tax Credit (LLTC) [2] or the Family Educational Rights and Privacy Act (FERPA) [3] is broader than the definition that applies for purposes of the Higher Education Act and the American Opportunity Tax Credit,[4] which defines those eligible for student loans, and thus is more consistent with and thus appropriate for purposes of section 4968. In addition, two commenters recommended against a definition based on a recognized educational credential, questioning who would decide what constitutes such a credential and whether this would allow potential manipulation by the educational institutions. One other commenter suggested retaining the standard in the proposed regulations.

The Treasury Department and the IRS agree that section 4968 does not expressly state that a person must be enrolled in a degree, certification, or other program to be considered a student. However, section 4968 does require that a student be *attending* the institution: ''. . . the number of students of an institution . . . shall be based on the daily average number of full-time students attending such institution (with part-time students taken into account on a full-time student equivalent basis).''

The Treasury Department and the IRS have concluded that the definition of student provided in FERPA is overly broad, as it includes, for example, individuals who previously attended the educational institution.

However, the LLTC, which provides a tax credit based on certain tuition and fees required ''for the enrollment or attendance of'' an individual at an eligible educational institution ''for courses of instruction of such individual at such institution'' does provide a useful analogy, as it refers to a person who is enrolled, attending, and paying qualified tuition to an institution for courses of instruction at such institution.

Whereas the LLTC includes a requirement that the purpose of the course must be to acquire or improve job skills of the individual, the Treasury Department and the IRS have determined that it would be more appropriate and administrable instead to require that the course be taken for academic credit. Whereas neither an applicable educational institution nor the IRS is likely to know whether a course is taken to acquire or improve job skills of the individual, it should be easy to determine whether a course was taken for academic credit. Furthermore, anyone taking a course for academic credit is using the school's resources to receive the specific time and attention of the school's faculty for his or her individual instruction. Thus, it is appropriate to include taking a course for academic credit as a component of the definition of student for purposes of section 4968.

However, under the definition, a student, whether full time or part time, must be charged tuition at a rate that is commensurate with the rate charged to students enrolled for a degree. The Treasury Department and the IRS have concluded that this is necessary for a part-time student to be considered as attending the institution on an ''equivalent basis'' to a full-time student.

Thus, these final regulations define the term ''student'' for purposes of section 4968 as a person who is enrolled and attending a course for academic credit from the institution and who is being charged tuition at a rate that is commensurate with the tuition rate charged to students enrolled for a degree. No inference is to be drawn from this definition with regard to the definition of student for other purposes, including for purposes of applying section 25A.

These final regulations also adopt the portion of the definition of ''student'' found in the proposed regulations providing that the number of students of an educational institution (including for purposes of determining the number of students at a particular location) is based on the daily average number of full-time students (with part-time students taken into account on a full-time student equivalent basis). The standards for determining whether a student attends part-time or full-time and for calculating full-time equivalents and the daily average number of full-time students are determined by each educational institution. However, the standards may not be lower than the minimum applicable standards established by the Department of Education under the Higher Education Act of 1965 (20 U.S.C. 1088), as amended.

3. Tuition-Paying

The proposed regulations provided that the term ''tuition-paying'' means the payment of any tuition or fees required for the enrollment or attendance of a student for a course of instruction at an eligible educational institution. The proposed regulations stated that this does not include any separate payment for supplies or equipment required during a specific course once a student is enrolled in and attending the course or the payment of room and board or other personal living expenses. In addition, the proposed regulations provided that whether a student is ''tuition-paying'' is determined after taking into account any scholarships provided directly by the educational institution and any work study programs operated directly by the

[2] The Lifetime Learning Credit, found in section 25A(c), provides a tax credit equal to 20 percent of up to $10,000 of ''qualified tuition and related expenses'' paid by the taxpayer during the taxable year to acquire or improve job skills. Section 25A(f)(1) defines qualified tuition and related expenses as tuition and fees required for enrollment or attendance at an eligible educational institution for courses of instruction at such institution.

[3] The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g; 34 CFR part 99) is a Federal law that protects the privacy of student education records. It defines the term ''student'' as any individual who is or has been in attendance at an educational agency or institution, including at elementary and secondary school levels, and regarding whom the agency or institution maintains education records.

[4] The American Opportunity Tax Credit, found in section 25A(b), provides a tax credit equal to the sum of 100 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished to the eligible student during any academic period beginning in such taxable year) as does not exceed $2,000, plus 25 percent of such expenses so paid as exceeds $2,000 but does not exceed $4,000. Section 25A(b)(3) defines an eligible student for purposes of the American Opportunity Tax Credit as a student who meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)(1)), as in effect on the date of the enactment of section 25A, and is carrying at least ½ the normal full-time work load for the course of study the student is pursuing.

educational institution; however, scholarship payments provided by third parties, even if administered by the institution, are considered payments of tuition on behalf of the student.

Three commenters discussed the meaning of ''tuition-paying.'' One commenter expressed a concern that smaller educational institutions might modify their financial aid programs to offer fewer partial scholarships and more full scholarships to fall under the threshold of having 500 tuition-paying students. The Treasury Department and the IRS have determined that a modification to the regulations for this purpose is not necessary because any definition of tuition-paying may lead to this result and because the same definition of tuition-paying should apply regardless of the size of the institution.

Another commenter recommended that a student should be considered ''tuition-paying'' regardless of the source of tuition funds, except that an eligible educational institution that does not charge tuition to any student would not be considered to have any tuition-paying students. These final regulations do not adopt this suggestion because the statute does not refer to tuition ''charged,'' rather it refers to tuition ''paid.''

The third commenter asked whether the term ''scholarships'' in the proposed regulations was intended to include Pell Grants and other forms of Federal and state student financial aid as well as non-governmental grants made on behalf of students, recommending that these grants from government and non-government sources not be treated as the payment of tuition on behalf of students. The Treasury Department and the IRS agree that grants or scholarships made by Federal, state, and local governments should be disregarded when determining whether a student is tuition-paying. Grants or scholarships made by Federal, state, and local governments generally are governed by legislation, are intended to make a college education more affordable for all potential students, and generally are based on criteria that the government sets (such as a determination of financial need), applied without regard to which educational institution the student attends or the cost of the education. Pell Grants and other Federal grants are awarded and administered by the Department of Education, which determines each student's financial need and eligibility for the grant. Finally, almost all educational institutions, whether private or public, use Federal and state grants to offset the cost of tuition, and therefore it would be fundamentally unfair to include these government grants as payment of tuition by or on behalf of a student in determining whether an educational institution is liable for the excise tax imposed by section 4968.

Thus, these final regulations adopt the definition of ''tuition-paying'' found in the proposed regulations, which concluded that scholarships awarded by the institution are not tuition ''paid'' on behalf of the student, whereas scholarships from third parties essentially are payments of the student's tuition, but add that whether a student is tuition-paying is also determined after taking into account grants made by the Federal government or any state or local government.

4. Located in the United States

The proposed regulations provided that the term ''located in the United States'' refers to the location of a student, and that a student is considered to have been located in the United States if the student resided in the United States for at least a portion of the time the student attended the institution during the educational institution's preceding taxable year.

The preamble to the proposed regulations provided three examples relating to whether a student is considered to have been located in the United States. In the first example, a student who attended an educational institution in the preceding taxable year and who is a citizen of a foreign country is considered to have been a student located in the United States if the student resided in the United States for at least a portion of the time the student attended the educational institution in the preceding taxable year. In the second example, a student attending the educational institution in the preceding taxable year who was studying abroad in a foreign country is considered to have been a student located in the United States if the student resided in the United States for at least a portion of the time the student attended the educational institution. The third example illustrates that, if a student did not reside in the United States for any portion of the time the student attended the educational institution during the preceding taxable year, then that student would not be considered to have been located in the United States for purposes of section 4968(b)(1)(B). The proposed regulations asked for comments on whether further guidance is needed relating to whether a student is considered to have been located in the United States in a preceding taxable year.

One commenter addressed the definition of ''located in the United States.'' This commenter recommended that each institution be permitted to determine whether a student is located in the United States using any reasonable approach, as long as it was consistently used. However, the commenter said that the approach would have to consider students who spend substantial time in the United States attending classes as located in the United States.

The proposed rule contemplated that educational institutions could determine whether a student resided in the United States for at least a portion of the time that the student attended the institution during the institution's preceding taxable year using any reasonable method, but these final regulations make that explicit. The final regulations otherwise maintain the rule as proposed.

5. Assets Used Directly in Carrying Out an Institution's Exempt Purpose

a. In General

To be included in the definition of applicable educational institution under section 4968(b)(1), an institution must have assets (other than those assets that are used directly in carrying out the institution's exempt purpose) the aggregate fair market value of which is at least $500,000 per student. The phrase ''assets that are used directly in carrying out the institution's exempt purpose'' is not defined in section 4968, but a similar phrase is used in section 4942.

For purposes of section 4942, a private foundation must determine its minimum investment return as part of its calculation of its distributable amount for any taxable year. Minimum investment return is defined in section 4942(e) as five percent of the excess of the aggregate fair market value of all assets of the foundation ''other than those which are used (or held for use) directly in carrying out the foundation's exempt purpose,'' over the acquisition indebtedness with respect to such assets.

Because section 4968 contains a phrase similar to the language used in section 4942 (other than the omission of the parenthetical ''(or held for use)''), the proposed regulations generally followed § 53.4942(a)–2(c) for purposes of determining whether an educational institution's assets are used directly in carrying out the institution's exempt purpose, but not including any assets that would be considered ''held for use'' for section 4942 purposes.

More specifically, the proposed regulations provided that an asset is used directly in carrying out an institution's exempt purpose only if the asset is actually used by the institution in carrying out its exempt purpose. Whether an asset is used directly by the institution to carry out its exempt purpose must be determined based on all the facts and circumstances. If property is used for an exempt purpose and for other purposes, and the exempt use represents 95 percent or more of the total use, the property is considered to be used exclusively for an exempt purpose. If the exempt use of such property represents less than 95 percent of the total use, the institution must make a reasonable allocation between exempt and nonexempt uses.

The proposed regulations included examples of assets that are used directly in carrying out an institution's exempt purpose, stating that they include, but are not limited to: (1) Administrative assets, such as office equipment and supplies used by the institution directly in the administration of its exempt activities; (2) real estate or the portion of any building used by the institution directly in its exempt activities; (3) physical property such as paintings or other works of art owned by the institution that are on public display, fixtures and equipment in classrooms, research facilities and related equipment that, under the facts and circumstances, serve a useful purpose in the conduct of the institution's exempt activities; (4) the reasonable cash balances necessary to cover current administrative expenses and other normal and current disbursements directly connected with the educational institution's exempt activities (and, for this purpose, the proposed regulations provided a safe harbor for determining a reasonable cash balance: The portion of an educational institution's actual cash balances at the end of a year that does not exceed 1.5 percent of the fair market value of the institution's non-charitable use assets, determined without regard to any reduction for reasonable cash balances); and (5) any property the educational institution leases to other persons at no cost (or at a nominal rent) to the lessee in furtherance of the institution's exempt purposes.

The proposed regulations also provided the following examples of assets not considered to be used directly in carrying out an institution's exempt purpose: (1) Assets that are held for the production of income or for investment (for example, stocks, bonds, interest-bearing notes, endowment funds, or leased real estate), even if the income from such assets is used to carry out such exempt purpose; and (2) property (such as offices) used for the purpose of managing the institution's endowment funds.

The proposed regulations asked for comments on whether the use of the principles of the section 4942 regulations creates any concerns. Commenters asked that the final regulations expand the list of assets considered used directly in carrying out an institution's exempt purpose to include those that are ''held for use'' as well as including certain intangible assets and certain assets of functionally related businesses. Commenters also addressed how to calculate a reasonable cash balance that would be considered used directly in carrying out an institution's exempt purpose. In addition, commenters asked whether an asset of a related organization that is treated as an asset of an educational institution by section 4968(d) can be considered used directly by the institution in carrying out its exempt purpose.

b. Assets That Are Held for Use

One commenter asked that the proposed regulations be expanded to include as assets ''used directly in carrying out the institution's exempt purpose'' assets that are ''held for use'' to carry out such purposes, stating that there is no legislative history suggesting that Congress specifically intended to not include the ''held for use'' language contained in section 4942.

Because assets held for use could include a much broader category of assets, such as portions of an endowment fund set aside in some formal or informal way for an exempt purpose, the Treasury Department and the IRS have concluded that the category of assets used directly for an institution's exempt purposes should not be so expanded, especially because the statutory language of section 4968 does not include the ''(or held for use)'' parenthetical language that appears in section 4942. Accordingly, these final regulations do not adopt the commenter's suggestion.

c. Intangible Assets

One commenter requested that the final regulations permit intangible assets, in appropriate cases, to be treated as used directly in carrying out an institution's exempt purpose. The Treasury Department and the IRS agree that, in certain circumstances, intangible assets may be treated as used directly in carrying out an institution's exempt purpose. Thus, these final regulations provide that, to the extent that royalty income would be excluded from net investment income as described in part 6.a.iii. of this Summary of Comments and Explanation of Revisions, the patents, copyrights, and other intellectual property and other intangible property generating such royalty income are treated as assets used directly by the institution in furtherance of its exempt purposes. These final regulations also provide that trademarks on an institution's logo or name and intellectual property donated or sold to the institution are not assets used directly for the institution's exempt purposes.

d. Certain Assets of Functionally Related Businesses

The preamble to the proposed regulations asked for comments on whether and how educational institutions use functionally related businesses in conducting their operations and whether functionally related businesses should be explicitly included or excluded as examples of exempt use assets in the final regulations. One commenter requested that the final regulations provide that non-financial assets used in a functionally related business be considered assets used directly in carrying out an educational institution's exempt purpose. The commenter stated that university theatres that produce plays, student newspapers with circulation revenue or ad sales income, or similar activities that operate as legally separate businesses while buttressing the educational mission of an educational institution are examples of functionally related businesses. The commenter recommended that assets, including intangible assets, of such a functionally related business be considered to be used directly in furthering the educational institution's exempt purpose. The commenter further recommended, however, that working capital or other financial resources relating to such a functionally related business should be considered assets not used directly in furthering the educational institution's exempt purpose.

The Treasury Department and the IRS agree that, in certain circumstances, certain assets of functionally related businesses may be treated as used directly in carrying out an institution's exempt purpose. However, the Treasury Department and the IRS note that the concept of a functionally related business is relevant only for private foundations with respect to the excise taxes imposed under sections 4942 and 4943. Thus, instead of providing a special rule for a non-financial asset of

an activity of an educational institution, or of a related organization with respect to the educational institution, that meets the definition of a functionally related business found in § 53.4942(a)–2(c)(3)(iii), the general rule is that an educational institution evaluates each asset based on all the facts and circumstances to determine whether the asset is used directly in furthering the institution's exempt purpose applies.

e. Reasonable Cash Balance

The proposed regulations recognized that, for section 4942 purposes, an amount equal to 1.5 percent of the fair market value of a private foundation's non-charitable use assets (*i.e.,* assets not actually used by an institution in carrying out its exempt purpose), determined without regard to the reduction for the reasonable cash balance, is deemed to be a ''reasonable cash balance'' that is excluded from the asset base used in calculating a private foundation's minimum investment return under section 4942(e). For consistency with the section 4942 rules, the proposed regulations proposed to adopt the same definition as a safe harbor and asked for comments on whether, in light of the differences between the exempt activities and valuation date(s) of a private foundation and an educational institution, a different percentage or other measurement should be used as a reasonable cash balance at the end of the taxable year.

Two commenters stated that the 1.5 percent safe harbor should not be included in the final regulations, because there is a significant difference between the activities, and thus the need for cash for operating expenses, of a private foundation and an educational institution. The commenters indicated that the operating expenses of a private foundation whose exempt activity is awarding grants, and even of an operating private foundation, generally are substantially less than the salaries, maintenance, and other operating expenses of an educational institution with expansive physical facilities and human resources for conducting education and research.

One commenter stated that educational institutions affected by the excise tax under section 4968 vary widely in size and focus, and that their methods for the delivery of educational services—which are the drivers of operating expenses and corresponding cash outflow and timing—vary widely. This commenter also mentioned that some institutions have a summer session with a lower attendance (therefore requiring fewer resources) as compared to their traditional fall or spring sessions, and thus may have a lower cash balance at the end of their taxable year, which generally falls in the middle of summer on June 30th or July 31st. This commenter also stated that ratings agencies might downgrade the credit rating of some institutions based on their having cash on hand of only 1.5 percent of the value of non-exempt use assets, and that bond proceeds for exempt projects must be held in liquid assets. One commenter also stated that the amount required for the reasonable cash needs of the institution should include funds for the expenses of its educational and research functions as well as cash reserves for special projects and bond covenants. Both commenters recommended that the final regulations instead permit educational institutions to determine their own reasonable cash needs as of the end of the taxable year, based on the particular facts and circumstances of that institution.

The Treasury Department and the IRS note that the 1.5 percent safe harbor in proposed § 53.4968–1(a)(4)(ii)(D) was merely a safe harbor and did not prevent an educational institution from establishing under the general facts and circumstance rule of proposed § 53.4968–1(a)(4)(i) that another cash balance was reasonably necessary to cover its current administrative expenses and other normal and current disbursements directly connected with its exempt purposes. However, in recognition that commenters did not find the safe harbor useful, these final regulations instead provide a different safe harbor that is based on the specific expenses incurred by each educational institution. Specifically, these final regulations provide that a reasonable cash balance may be determined by any reasonable method, and that one such method would be to calculate an amount equal to three months of operating expenses allocable to program services, calculated by dividing annual functional expenses allocable to program services (2019 Form 990, Part IX, line 25, column (B), or the corresponding line provision of any successor Form 990) by four. Alternatively, a larger amount may be a reasonable cash balance for this purpose if, under the facts and circumstances, a larger amount is established to be necessary to cover administrative expenses and other normal disbursements directly connected with the institution's exempt activity.

f. Assets of Related Organizations

One commenter noted that section 4968(d) treats certain assets of related organizations with respect to an educational institution as assets of the educational institution, and that section 4968(b)(1)(D) requires the educational institution to determine whether, at the end of the preceding taxable year, the aggregate fair market value of its assets (other than those assets that are used directly in carrying out the institution's exempt purpose) is at least $500,000 per student of the institution. This commenter suggested that, in counting the assets of a related organization for this purpose, any asset of the related organization that is used directly in carrying out the educational institution's exempt purpose should be excluded from section 4968(b)(1)(D). In addition, the commenter asked how to apply the ''used directly in carrying out the institution's exempt purpose'' test in the case of a related organization with exempt purposes differing from those of the educational institution.

The Treasury Department and the IRS agree with these comments. Therefore, these final regulations provide that an asset of a related organization that is treated as an asset of the educational institution (in accordance with section 4968(d) and § 53.4968–3(c)) and is used directly in carrying out the educational institution's exempt purpose is considered used directly by the institution in carrying out its exempt purpose. These final regulations further provide that an asset of a related organization that is treated as an asset of the educational institution is considered to be used directly in carrying out the educational institution's exempt purpose if (1) the related organization is described in section 501(c)(3) and (2) the asset is being used directly in carrying out the related organization's exempt purpose.

For example, under this rule, if an educational institution controls (as described in part 7.b.ii of this Summary of Comments and Explanation of Revisions) a nonprofit nonstock organization that is a museum, then section 4968(d)(1)(B) would treat all of the museum's assets as assets of the educational institution, regardless of whether the assets are earmarked or restricted for the benefit of, or otherwise fairly attributable to, the educational institution, and even if they are specifically earmarked or restricted for another entity or for unrelated purposes or are otherwise not fairly attributable to the educational institution. However, when for purposes of section 4968(d)(1)(D) the educational institution values its assets (other than those used directly in carrying out the institution's exempt purpose) at the end of the preceding taxable year, the educational institution could exclude any museum

asset, such as artwork, that is being used directly in carrying out the museum's exempt purpose, even if such use does not directly carry out the educational institution's exempt purpose. (The Treasury Department and the IRS note that the general rule found in § 53.4968–1(b)(5)(iii) that neither assets that are held for the production of income or for investment nor property (such as offices and equipment) used for the purpose of managing funds are considered used directly in carrying out an exempt purpose. Thus, a related organization whose exempt purpose is grantmaking generally will have few assets considered to be used directly in carrying out the educational institution's exempt purpose.)

g. Valuation of Assets Not Used Directly in Carrying Out an Institution's Exempt Purpose

The proposed regulations provided that, for purposes of valuing an educational institution's non-exempt use assets, the institution should use rules similar to the rules of section 4942(e) and § 53.4942(a)–2(c)(4), with two modifications. First, the phrase ''educational institution'' is substituted for ''private foundation'' or ''foundation'' every place they appear. Second, an institution will have to make such adjustments as are reasonable and necessary to obtain the fair market value of non-exempt use assets as of the last day of the valuation taxable year, rather than any other time(s) required by the section 4942 regulations. The proposed regulations also requested comments on valuing assets using the principles of section 4942, as modified by this special timing rule. No comments were received. Accordingly, the proposed rule is adopted without substantive changes.

6. Net Investment Income

For taxable years beginning after December 31, 2017, section 4968(a) imposes a 1.4 percent excise tax on the net investment income of an applicable educational institution (as defined in section 4968(c)), and on certain amounts of net investment income of certain related organizations, as described in section 4968(d) and § 53.4968–3. Section 4968(c) provides that net investment income is determined under rules similar to the rules of section 4940(c). Accordingly, the proposed regulations provided that an applicable educational institution generally must calculate net investment income under the rules of section 4940(c) and § 53.4940–1(c) through (f), with certain modifications.

Specifically, § 53.4968–1(b)(3) of the proposed regulations (1) substituted ''applicable educational institution'' for ''private foundation'' or ''foundation'' each place they appear; (2) did not apply the rule in § 53.4940–1(d)(3), because it is narrowly focused on section 302 stock redemptions by corporations that are disqualified persons and is not applicable to colleges and universities; (3) substituted ''December 31, 2017'' for ''December 31, 1969'' every place that it occurs to determine the basis of assets held on December 31, 2017, for purposes of determining gain upon the sale or exchange of an asset held on December 31, 2017 in calculating the excise tax; (4) applied the special basis rule to assets held in partnerships as of December 31, 2017, as well; and (5) allowed overall net losses from sales or other dispositions of property by one related organization or by the applicable educational institution to reduce (but not below zero) overall net gains from such sales or other dispositions by other related organizations or by the applicable educational institution.

Several commenters requested that the final regulations further tailor those rules to take into account differences between a private foundation subject to section 4940 and an educational institution, including differences in funding sources, use of funds, structure, governance, and oversight. In response, as discussed further in the following paragraphs of this part 6, these final regulations omit the use of a cross reference to the regulations under section 4940(c) to define net investment income for purposes of section 4968. Instead, these final regulations prescribe specific rules under section 4968 that are similar to the rules of section 4940(c) but that are more tailored to educational institutions.

In particular, following the regulations under section 4940(c), the final regulations provide, as further described in this part 6, that net investment income generally is the amount by which the sum of the gross investment income and the capital gain net income exceeds the allowable deductions. Also consistent with section 4940(c)(5) and § 53.4940–1(c)(2), net investment income is determined by applying section 103 (relating to interest on certain governmental obligations) and section 265 (relating to expenses and interest relating to tax-exempt income). Finally, consistent with section 4940(c)(1) and § 53.4940–1(c)(1), net investment income is determined under the principles of subtitle A of the Code except to the extent inconsistent with the Code or regulations.

a. Gross Investment Income

The proposed regulations noted that section 4968 does not expressly provide that the tax on net investment income is limited to net investment income derived from assets that are not used directly in carrying out an applicable educational institution's exempt purpose. This lack of a limitation is in contrast to the specific language in section 4968(b)(1)(D) that excludes assets used directly in carrying out an institution's exempt purpose in determining whether the educational institution is an applicable educational institution. Instead, section 4968(c) provides that net investment income is determined under rules similar to the rules of section 4940(c).

To implement this provision, the proposed regulations proposed to adopt by cross reference the rules provided in section 4940(c) and the regulations thereunder, including § 53.4940–1(d)(1), which specifies that ''gross investment income'' means the gross amounts of income from interest, dividends, rents, royalties (including overriding royalties), and capital gain net income received by a private foundation from all sources, but does not include such income to the extent included in computing the tax on unrelated business taxable income imposed by section 511. Under this definition, consistent with specific language in § 53.4940–1(d), interest, dividends, rents, and royalties derived from assets devoted to an educational institution's exempt activities would be includible in gross investment income. Therefore, for example, under the proposed regulations, interest received on a student loan would have been includible in income for purposes of section 4968.

The proposed regulations requested comments on whether specific types of income should be excluded from gross investment income under section 4968 because taxing those types of income would not achieve the congressional intent in enacting section 4968. Commenters recommended excluding interest from student and faculty loans, rental income from student and faculty housing, royalty income from exempt functions, income from programmatic activities, and income from endowment funds if the income is used as a tuition replacement fund.

These final regulations adopt most of these recommendations. These final regulations specify that, consistent with section 4940(c), gross investment income generally means the gross amounts of income from interest, dividends, rents, payments with respect

to securities loans (as defined in section 512(a)(5)), and royalties, but not including any such income to the extent it is included in computing the tax imposed by section 511. Gross investment income also includes income from sources similar to those in the preceding sentence. In general, gross investment income includes the items of investment income described in § 1.512(b)–1(a).

However, in response to comments and consistent with the overall purpose of section 4968, these final regulations exclude from the definition of gross investment income (1) interest income from a student loan that was made by the applicable educational institution or a related organization to a student of the applicable educational institution in connection with the student's attendance at the institution; (2) rental income from the provision of housing by the applicable educational institution or a related organization to students of the applicable educational institution and from housing for faculty and staff if the housing is provided contingent on their roles as faculty or staff of the applicable educational institution; and (3) royalty income that is derived from patents, copyrights, and other intellectual property and intangible property to the extent those assets resulted from the work of student(s) or faculty member(s) in their capacities as such with the applicable educational institution. However, neither royalty income from trademarks on the institution's logo or name nor royalty income from intellectual property donated or sold to the institution is excluded from gross investment income under this rule).

i. Interest From Student Loans

The proposed regulations noted that the regulations under section 4940(c) specifically include student loan interest as gross investment income. However, recognizing that student loans provided directly by an applicable educational institution to its students can be seen as helping the applicable educational institution fulfill its mission of educating its students, and that, unlike private foundations, colleges and universities educate students and charge tuition as part of their primary exempt activities, the preamble to the proposed regulations asked whether student loans provided by an applicable educational institution to its students arguably can be viewed as a form of deferred tuition which will be paid when the student enters the workforce.

The preamble to the proposed regulations suggested distinguishing the interest on a student loan from investment interest by reference to the interest rate. If the interest is at a market (or higher) rate, it would be difficult to distinguish the interest on the student loan and interest on assets acquired for investment purposes. However, if the interest rate is set at a substantially below-market rate, the difference between the market interest rate and the interest rate on the student loan might be viewed as similar to a scholarship from the educational institution to the student. Under these circumstances, the remaining, below-market rate interest income might be considered distinguishable from income derived from assets acquired primarily for investment purposes. Finally, the preamble to the proposed regulations asked for comments on how a rule based on interest rates could be addressed to avoid administrative challenges for both the IRS and taxpayers in determining the relevant market-rate and an acceptable lower rate, and in adjusting to rate changes during the course of the loan.

Four commenters recommended excluding all interest income from loans to students from gross investment income, stating that loans made by colleges and universities to students are not offered with the intent of earning investment income for the institution, but are instead made to assist students who have gaps in funding and need financial assistance to complete their educations. Many of these student loans are need-based loans to low-income students who would not qualify for other programs or commercial loans. In addition, most of the student loans made by educational institutions are made on terms, taken as a whole, that are more favorable than similar commercial student loans. These better terms include lower interest rates, fixed interest rates, deferred or delayed repayment periods, low or no origination fees, relaxed eligibility requirements, and more flexible repayment plans than loans that are offered on the open market.

In response to these comments, these final regulations exclude from gross investment income interest income from a student loan that was made by the applicable educational institution (or a related organization of the institution) to a student of the institution in connection with the student's attendance at the institution.

While most of the student loans made by educational institutions (or their related organizations) may be made on terms, taken as a whole, that are more favorable than similar commercial student loans, many of those favorable terms are not centered on interest rates. For example, unlike commercial loans, no collateral or demonstrations regarding future income are required. Therefore, an exception based on whether terms are more favorable than commercial loans would be unduly burdensome to administer and these final regulations do not include such a requirement.

One commenter recommended extending this reasoning to faculty loans, which in many circumstances are provided in order to give an educational institution a competitive edge in attracting talented educational professionals. In most cases, this type of financing is an alternative to providing housing directly, the income or loss from which the commenter also recommended excluding. However, the commenter noted that there are nuances with respect to the types of faculty loans that may be provided by an educational institution that may warrant disparate treatment, and that an examination of all of the facts and circumstances (such as the resources of the borrowers, interest rate charged, availability of credit in the local area, and scope and extent of the program) would be necessary to determine whether a particular loan was effectively a substitute for bank financing and thus really an investment vehicle that should be considered to produce gross investment income.

These final regulations do not exclude interest on loans to faculty from gross investment income. Although loans to faculty might indirectly benefit students by attracting better faculty, so does paying faculty higher salaries. Some loans provide a substitute for bank financing for a faculty member to purchase a residence that then becomes an asset of the faculty member. All loans to faculty, even if on favorable terms as part of a compensation package in order to attract such faculty, are substantially different from loans to students which may be viewed as effectively representing deferred tuition. Furthermore, interest income received on loans to faculty is more difficult to distinguish from other interest income that is includible under section 4940(c), such as interest income at the applicable Federal rate on a loan to acquire a luxury home. While certain loans, such as one to allow faculty to secure appropriate housing that otherwise would not be attainable by faculty, might qualify as supporting the institution's exempt purposes, a similar loan in other circumstances might not. The difference would be heavily dependent upon interest rates, the local real estate market, and other facts and circumstances. Thus, in accord with the

language in section 4968(c) that net investment income for section 4968 purposes should be similar to the rules of section 4940(c), the final regulations under section 4968 do not exclude interest income on loans other than loans to students in connection with their attendance at the educational institution.

ii. Rental Income From Student, Faculty, and Staff Housing

The proposed regulations also noted that colleges and universities offer various types of housing (such as dormitories or apartments) for use by students, non-students (for example, during the summer), and faculty. The preamble to the proposed regulations requested comments on the differences, if any, among the housing arrangements, whether any of the arrangements include the signing of leases, the various amounts charged by a college or university related to provision of housing and meals, and particular factors that distinguish room and board payments from students living in a dormitory from rental income that institutions receive.

Five commenters recommended excluding income from student housing from gross investment income. These commenters stated that student housing is provided by educational institutions to their students for the purpose of furthering the students' education, rather than to create an investment return to the institution. On-campus housing provides a sense of community and creates non-classroom opportunities for students to engage with individuals with a similar academic focus as well as those with diverse perspectives and backgrounds, which promotes informal learning and development of social skills. It also facilitates studying and attending classes on campus, provides students with the full breadth of campus security services, and provides convenient access to campus dining halls. Many educational institutions require students to live in on-campus housing for one or more years. Further, several factors distinguish student housing from other rental properties that institutions may own. For example, typical residential rental agreements provide secure and exclusive access to a specific property for the tenant's use, and the tenant has the right to continuous occupancy and use of the specified space over the term of the lease. In contrast, students sign a contract for housing, but typically do not sign leases. They are assigned a space, within a room often shared by at least one other individual, frequently a stranger. Residence halls and student apartments or houses are typically not available year-round, but only during academic terms. For example, that housing might close over certain holidays and during breaks between semesters. Housing space normally is contingent on enrollment at the educational institution, and students that withdraw from the institution must vacate their rooms. Students are subject to specific housing rules and codes of conduct while in student housing, often including a prohibition on cooking. Residence halls also typically include the presence of a resident advisor, who is available 24 hours a day and may monitor the students' behavior. Guest access to student residences often is monitored or restricted.

The Treasury Department and the IRS agree that income received from the housing of current students of an educational institution is distinguishable from other types of traditional rental income, and these final regulations exclude such income from gross investment income, whether the housing is provided to the educational institution's students by the institution or a related organization of the institution.

Two commenters further recommended that rental income from faculty and staff housing also should be excluded from net investment income, stating that faculty and staff housing is a critical strategic resource used by universities to recruit and retain exceptional personnel. The commenters note that the provision of faculty and staff housing allows faculty and staff to live closer to campus, which not only is a convenience for such individuals but also allows them to more fully participate in the campus experience, contributing to a vibrant and dynamic residential and academic campus. Two commenters mentioned that housing rental prices generally are not set based on market rates but on actual cost, and many institutions operate housing at a loss, although it would be administratively burdensome to determine a theoretical market rate for each housing unit as well as to break out the income and expenses related to each housing unit.

The Treasury Department and the IRS agree that rental income from housing provided to an institution's faculty and staff can be distinguished from other types of rental income if the housing is provided contingent on their capacities as faculty or staff (for example, if the rental agreement contains a provision that the person must be currently employed as faculty or staff of the applicable educational institution). Thus, these final regulations exclude such income from gross investment income, whether the housing is provided to the educational institution's faculty or staff by the institution or a related organization of the institution. These final regulations do not, however, exclude rental income from other persons, or from former faculty or staff.

Two commenters recommended that rental income from dormitories and other student housing that is made available to students and nonstudents alike for educational programs and camps open to the public that are outside of the institution's academic year, particularly during the summer months, also be excluded from gross investment income. These final regulations do not adopt this suggestion. Such income may, depending on the circumstances, constitute unrelated business taxable income and be excluded from section 4968 for that reason. For example, if the income is from leasing to third parties that conduct summer camps and programs at the institution and the institution provides substantial personal services with respect to the rented facilities, it likely is unrelated business taxable income. Furthermore, the leasing of student housing to third parties for the operation of camps and programs run by third parties is not materially distinguishable from typical rental income. Also, if the summer camp or program is not operated by the educational institution, then the educational institution does not control who is staying in the housing and the housing is not necessarily provided for the benefit of the institution's current students or to contribute directly to achieving its educational purpose. However, the Treasury Department and IRS note that rental income from dormitories and other housing provided to current students that extends through the summer months (such as graduate student housing) would meet the exception for housing provided to students and would be excluded from gross investment income.

iii. Royalty Income From Exempt Functions

Two commenters asked that royalty income derived from educational and research activities conducted by an applicable educational institution be excluded from the institution's gross investment income. The commenters stated that universities conduct research as part of the pursuit of knowledge by faculty and students rather than for the purpose of earning income. Both commenters stated that royalties derived from research that is directly conducted by students, faculty, and researchers is

distinguishable from the royalty income earned by most private foundations because private foundations receiving royalty income ''normally'' have passive holdings in intellectual property that was not developed by the private foundations. (One commenter clarified that royalty income earned from ''passive investments'' was not intended to be included in this proposed exception for purposes of section 4968.)

Both commenters represented that it would be a significant administrative burden to capture all expenses and costs allocable to such royalty income, including expenses incurred in applying for, obtaining, and defending a patent and in developing and negotiating license agreements during the life of the patent, and both commenters estimated that such annual expenses would equal or exceed the annual gross investment income from such royalties.

The Treasury Department and the IRS agree that applicable educational institutions produce intellectual property as part of the pursuit of knowledge by faculty and students. These activities generally are not engaged in for profit and they are not passive investment activity. Instead, these activities are integral to an educational institution's exempt purposes. As a result, these final regulations exclude certain royalties generated by such educational and research activities from gross investment income for purposes of section 4968.

Specifically, these final regulations exclude from gross income royalty income that is derived from patents, copyrights, and other intellectual property and intangible property to the extent those assets resulted from the work of student(s) or faculty member(s) in their capacities as such with the applicable educational institution. However, neither royalty income from trademarks on the institution's logo or name nor royalty income from intellectual property donated or sold to the institution is excluded from gross investment income under this rule.

iv. Income From Programmatic Activities

Two commenters recommended excluding any income derived by an educational institution from the conduct of its core educational and research activities (that is, programmatic activities) from gross investment income. The commenters stated that taxing income that is derived directly from a college or university's exempt purpose is inconsistent with the intent of section 4968, which is intended to tax investment income. However, one commenter did not include any specific examples of types of income that would be gross investment income derived from the conduct of an applicable educational institution's core educational and research activities, and the other commenter gave as examples tuition, museum or gym admission fees, and income from a related business, such as a campus bookstore—none of which would be included in the definition of gross investment income under the proposed regulations.

The Treasury Department and the IRS note that private foundations may earn gross investment income in the conduct of their exempt activities, but that such income is explicitly considered gross investment income by section 4940(c) and § 53.4940–1(d). The preamble to the proposed regulations specifically asked commenters, when commenting on whether specific types of income should be excluded from gross investment income under section 4968 because taxing those types of income would not achieve the congressional intent in enacting section 4968, to state specifically how any such proposed exclusion would still be ''similar to'' the rules of section 4940(c) and the specific characteristics of each type of such income that would warrant deviating from the rules provided in section 4940 and the regulations thereunder. Furthermore, it is unclear what types of income, other than student loan interest, rental income from certain housing, and certain royalty income, otherwise would be gross investment income earned in the conduct of an applicable educational institution's exempt activities. Accordingly, other than the exclusions listed in part 6.a.i., ii., and iii., these final regulations do not include an exclusion from gross investment income for income earned in the conduct of an applicable educational institution's exempt activities.

v. Excluding Income on Endowment Funds if the Income Is Used as a Tuition Replacement Fund

One commenter recommended excluding income from endowment funds from gross investment income if the income is used as a tuition replacement fund for all of the applicable educational institution's students.

Section 4968(c) provides that, for purposes of section 4968, net investment income is determined under rules similar to the rules of section 4940(c). Neither section 4968(c) nor 4940(c) provide an exclusion from net investment income for the income from an institution's endowment fund, regardless of what the income is ultimately used for. Thus, these final regulations do not exclude the income from an institution's endowment fund (however defined) from gross investment income, even if the income from the endowment fund is used as a tuition replacement fund.

b. Deductions

i. In General

As stated in part 6.a of this Summary of Comments and Explanation of Revisions, the proposed regulations provided that an institution generally must calculate net investment income under rules similar to the rules of section 4940(c). The proposed regulations proposed to adopt this approach, incorporating by cross reference the provisions of § 53.4940–1(c) through (f), with certain modifications. These final regulations delete the use of a cross reference to the regulations under section 4940(c) and instead prescribe specific rules that are similar to the rules of section 4940.

Thus, consistent with section 4940(c) and § 53.4940–1(e)(1)(i), § 53.4968–2(c)(1)(i) of these final regulations explicitly states that there is allowed as a deduction from gross investment income all the ordinary and necessary expenses, including operating expenses, paid or incurred for the production or collection of gross investment income or for the management, conservation, or maintenance of property held for the production of such income, determined with the modifications described in part 6.b.ii of this Summary of Comments and Explanation of Revisions.

An applicable educational institution's operating expenses related to its gross investment income may include compensation of officers, other salaries and wages of employees, outside professional fees, interest, and rental payments and taxes upon property used in the applicable educational institution's operations other than in its exempt activities. An applicable educational institution's operating expenses that are incurred both for investment and exempt purposes, such as salaries for officers or other employees, must be allocated between the investment and exempt activities of that institution on some reasonable basis. Similarly, consistent with § 53.4940–1(e)(1)(iii), in cases in which only a portion of property produces, or is held for the production of, income subject to the section 4968 excise tax, and the remainder of the property is used for other purposes, the expenses are apportioned between the taxable and other uses. Furthermore, to

the extent an applicable educational institution's expenses are taken into account in computing the tax imposed by section 511, they are not deductible for purposes of computing the tax imposed by section 4968.

Consistent with § 53.4940–1(e)(1)(iii), no amount is allowable as a deduction to the extent it is paid or incurred for purposes other than the production or collection of gross investment income as determined for section 4968 purposes, or for the management, conservation, or maintenance of property held for the production of such income. Thus, for example, the charitable deduction prescribed under section 170 or 642(c), the net operating loss deduction prescribed under section 172, and certain special deductions for corporations under sections 241 through 250 prescribed under part VIII of subchapter B of chapter 1 of the Code (part VIII of subchapter B) are not allowable as a deduction in determining section 4968 net investment income. Taxes imposed under section 4968 are not paid or incurred for the production or collection of gross investment income.

ii. Modifications

Consistent with section 4940(c) and § 53.4940–1(e)(2), these final regulations provide that the following modifications must be made in determining deductions otherwise allowable under these final regulations, as explained in part 6.b.i of this Summary of Comments and Explanation of Revisions.

First, consistent with section 4940(c)(3)(B)(i) and § 53.4940–1(e)(2)(i), a depreciation deduction is allowed, but only on the basis of the straight line method provided in section 168(b)(3) and without regard to paragraphs (1) and (2) of section 168(b).

Second, consistent with section 4940(c)(3)(B)(ii) and § 53.4940–1(e)(2)(ii), a depletion deduction is allowed, but such deduction is determined without regard to sections 613 and 613A, relating to percentage depletion.

Third, consistent with § 53.4940–1(e)(2)(iii), basis to be used for purposes of calculating the deduction allowed for depreciation or depletion is the basis determined under the rules of part II of subchapter O of chapter 1 of the Code (part II of subchapter O), subject to the previously described modifications for calculating depreciation and depletion, and without regard to § 53.4968–2(d)(2) (relating to the basis for determining gain for property held on December 31, 2017, and continuously thereafter to the date of disposition, discussed in part 6.c of this Summary of Comments and Explanation of Revisions) or section 362(c) (relating to certain contributions to capital). Thus, an applicable educational institution must reduce the cost or other substituted or transferred basis by an amount equal to the straight-line depreciation or cost depletion, without regard to whether the institution deducted such depreciation or depletion during the period prior to its first taxable year beginning after December 31, 2017. However, in cases in which an applicable educational institution has previously taken depreciation or depletion deductions in excess of the amount which would have been taken had the straight line or cost method been employed, such excess depreciation or depletion also is taken into account to reduce basis. If the facts necessary to determine the basis of property in the hands of the donor or the last preceding owner by whom it was not acquired by gift are unknown to a donee applicable educational institution, then the institution's original basis in such property is determined under the rules of § 1.1015–1(a)(3).

One commenter requested that the step-up rule for calculating gain upon the disposition of assets held on December 31, 2017 (discussed later in this Summary of Comments and Explanation of Revisions) also apply for purposes of calculating depreciation and depletion, stating that educational institutions, which are more likely than private foundations to hold on to depreciable assets, otherwise may be motivated to engage in self-help by selling assets they own and purchasing similar use assets in order to obtain depreciation deductions based on the current fair market value basis. These final regulations do not adopt such a rule because it would be contrary to section 4940(c) and applicable educational institutions do not seem to be distinguishable from private foundations on this issue.

Fourth, consistent with § 53.4940–1(e)(2)(iv), the deduction for expenses paid or incurred in any taxable year for the production of gross investment income, as determined for section 4968 purposes, earned as an incident to a charitable function can be no greater than the income earned from such function which is includible as gross investment income for such year. For example, where rental income is incidentally realized in a year from historic buildings held open to the public, deductions for amounts paid or incurred in that year for the production of such income is limited to the amount of rental income includible as gross investment income for the year.

c. Capital Gains and Losses

The proposed regulations contained three special rules relating to capital gains and losses. First, consistent with Notice 2018–55, the proposed regulations substituted ''December 31, 2017'' for ''December 31, 1969'' each place it appears in § 53.4940–1(c)–(f), to provide a step-up in basis (if any) for purposes of calculating gain upon the sale or other disposition of assets held on December 31, 2017, and continuously thereafter to the date of disposition.

Second, in response to a comment received in response to Notice 2018–55, the proposed regulations provided that, if an applicable educational institution held an interest in a partnership (including through one or more tiers of partnerships) on December 31, 2017, and continuously thereafter, and the partnership held assets on December 31, 2017, and continuously thereafter to the date of disposition, the partnership's basis in its assets with respect to the applicable educational institution for purposes of determining the applicable educational institution's share of gain upon sale or other disposition of the assets by the partnership will not be less than the fair market value of such asset on December 31, 2017, plus or minus all adjustments as provided under § 53.4940–1(f)(2)(i) after December 31, 2017, and before the date of disposition. The proposed regulations stated that, to avail itself of this special partnership basis rule, an institution must obtain documentation from the partnership to substantiate the basis used.

Third, the proposed regulations provided that, for purposes of § 53.4940–1(f), overall net losses from sales or other dispositions of property by one related organization (or by the applicable educational institution) reduce (but not below zero) overall net gains from such sales or other dispositions by other related organizations (or by the applicable educational institution).

The preamble to the proposed regulations stated that, consistent with the requirement in section 4968(c) to calculate net investment income under rules similar to the rules under section 4940(c), the proposed regulations generally followed the rules for determining gain upon the sale or other disposition of property that have been used for section 4940(c) purposes since 1969. The preamble further stated that section 4940(c)(1) provides that, except to the extent inconsistent with the provisions of section 4940, net investment income is determined under the principles of subtitle A. Subtitle A

encompasses all of the income tax provisions (sections 1 through 1564) of the Code, including the basis rules in section 1015 (basis of property acquired by gift generally is the donor's basis). Accordingly, under the proposed regulations, an applicable educational institution generally must calculate gain on the sale or other disposition of a lifetime gift of property using the donor's basis. However, the preamble to the proposed regulations requested comments on whether a special rule excluding from capital gain net income any appreciation in a gift of donated property that occurred before the date of receipt by the applicable educational institution should be included under the final regulations and how a special rule excluding from gain such pre-donation appreciation would be consistent with the statutory language of section 4968.

Commenters addressed several aspects of the proposed rules for capital gain net income, including the taxation of capital gain net income on the sale of exempt use property; capital gain net income on the sale of donated property; the step-up rule for assets held in a partnership on December 31, 2017; and whether capital loss carryovers should be allowed.

In response to these public comments and as discussed in in more detail in part 6.c.i through iii of this Summary of Comments and Explanation of Revisions, these final regulations provide that (1) capital gain net income from the sale or exchange of property used by an institution for its exempt purpose is disregarded for the portion of the property that is used for the exempt purpose; (2) any appreciation in the value of donated property that occurred prior to the date of its donation to the institution is disregarded; and (3) capital loss carryovers are allowed but not capital loss carrybacks.

Consistent with section 4940(c)(4)(A) and (D) and the proposed regulations, these final regulations also provide that in determining capital gain net income for purposes of the tax imposed by section 4968, no gain or loss from the sale or other disposition of property is taken into account to the extent that such gain or loss is taken into account for purposes of computing the tax imposed by section 511.

i. Capital Gain Net Income on Sale of Exempt Use Property

Two commenters recommended excluding from capital gain net income gain from the sale of exempt use property. One of the commenters stated that exempt use property is excluded from section 4968(b)(1)(D)'s calculation for determining the applicability of section 4968, and that it would thus be inconsistent to tax the educational institution on the sale of such property. This commenter also stated that taxing income that is derived directly from a college or university's exempt purpose assets is inconsistent with the intent of section 4968, which is aimed at investment income. The other commenter said that the proposed regulation's reference to § 53.4940–1(f)(1) suggested such a result, but asked that the final regulations clarify this reading.

Section 4940(c)(4)(A) was amended in 2006 [5] to provide that ''there shall not be taken into account any gain or loss from the sale or other disposition of property to the extent that such gain or loss is taken into account for purposes of computing the tax imposed by section 511.'' By implication, section 4940(c)(4)(A) thus provides that all gain or loss from the sale or other disposition of any and all property, other than any gain or loss that is taken into account for purposes of computing the tax imposed by section 511, is taken into account for purposes of section 4940(c).[6]

Section 4968(c) provides that net investment income for purposes of section 4968 is determined under rules similar to the rules of section 4940(c). Section 4940(c) was specifically amended in 2006 and 2007 to provide that capital gain net income is no longer limited only to property that was held for investment purposes and, instead, extends to all property held by a private foundation, including property used for exempt purposes. The only exceptions to this general rule are for ''any gain or loss from the sale or other disposition of property to the extent that such gain or loss is taken into account for purposes of computing the tax imposed by section 511'' and for certain like-kind exchange-type dispositions. *See* Section 4940(c)(4)(A) and (D).

However, educational institutions as a general matter own more tangible property and more different types of tangible property used in the performance of their exempt purposes than a typical private foundation. Further, constantly changing and growing student populations, as well as new developments and innovations and needs in education and research, requires educational institutions to continually reevaluate their needs for property and possibly to replace or upgrade certain property. This process is likely to result in the need to sell assets in order to best serve the educational institution's exempt purposes. For instance, property such as residential and educational buildings, libraries, laboratories, and information technology assets often are sold as needs change. Income from such sales generally is reinvested in acquiring upgrades or replacements for that property, and therefore is integral to the performance of the exempt function of the institution, rather than for an investment purpose. Accordingly, these final regulations exclude from capital gain net income the gain from the sale or exchange of exempt use property for the portion of the property that is used for the exempt purpose.

ii. Capital Gain Net Income From the Sale of Donated Property

Five commenters responded to the proposed regulations' request for comments on the calculation of capital gain net income from the sale of donated property, all recommending that any appreciation that occurred prior to an institution's receipt of the donated property be excluded from such gain. The commenters stated that the purpose of section 4968 is to tax institutions on their own net investment income, not to tax donations, and that it would thus be inequitable to tax applicable educational institutions on the appreciation in value that occurred before the donee institution received the donation of a capital asset. Commenters also stated that donated property normally is not actually retained and held as an investment; instead, applicable educational institutions typically sell donated property as soon as possible. Thus, the gain upon sale of donated property often is attributable to the appreciation that occurred before the institution received the property.

[5] The amendments to section 4940(c)(4)(A) were made by the Pension Protection Act of 2006, Public Law 109–280, and the Tax Technical Corrections Act of 2007, Public Law 110–172 (which conformed the language of section 4940(c)(4)(A) to the 2006 JCT Technical explanation).

[6] According to the JCT Technical explanation (JCX–38–06), the reason for amending section 4940(d)(4)(A) in 2006 and 2007 was that section 4940(c) does not provide for the blanket exclusion of gain or loss from the sale or other disposition of assets used for exempt purposes that was provided in the section 4940 regulations. Section 53.4940–1(f)(1)), which has *not* been updated to reflect the amendments made in 2006 and 2007, provides that ''there shall be taken into account *only* capital gains and losses from the sale or other disposition of property held by a private foundation for investment purposes'' and ''*gains and losses from the sale or other disposition of property used for the exempt purposes of the private foundation are excluded.*'' (Emphasis added.) Although the section 4940 regulations, which have not been revised since 1992, have not been revised to reflect the changes to section 4940(c)(4)(A) made in 2006 and 2007, the current statute is clear that capital gain net income includes (and is intended to include) gain from property used by a private foundation for exempt purposes.

Three commenters noted that, although a private foundation must use the donor's transferred basis in computing any gain from the sale of donated property, a private foundation has the option of making gifts of appreciated property to section 501(c)(3) public charities by funding their grants in kind, resulting in no excise or income tax being imposed on either organization when the property eventually is sold. These commenters stated that it would be difficult for applicable educational institutions to take advantage of this strategy. One commenter opined that private foundations generally are able to time their sales to offset losses more efficiently than educational institutions can. The commenter asserted that the substantially higher operational expenses of an educational institution sometimes require that institution to sell a donated asset upon receipt. The commenter also opined that, because these donated assets are not retained for investment purposes, they do not produce net investment income.

All commenters stated that the requirement to obtain a donor's basis information will be administratively burdensome. Unlike private foundations, which typically receive donations from a small number of known donors, applicable educational institutions receive a large number of donations from a wide variety of donors. In many cases, institutions will be unable to determine (or verify) the transferred basis under section 1015 of the donated property. Further, the commenters stated, requesting donors to provide their basis information could negatively affect an applicable educational institution's relationships with donors.

One commenter stated that applicable educational institutions could work around this issue by encouraging donors to donate any appreciated property to a donor advised fund that then could sell the property and contribute the cash proceeds to the institution.

The Treasury Department and the IRS agree that the differences between applicable educational institutions and private foundations with respect to donations of property justify a rule under section 4968 that is different from the treatment found in section 4940(c) for the treatment of the capital gain net income of property donated to a private foundation. In addition, such a rule will increase administrability for both taxpayers and the IRS by removing the requirement to determine the donor's basis of the donated property. Furthermore, it will avoid placing different applicable educational institutions receiving stock of equal value but with different bases in different positions with regard to the computation of their respective net investment income merely from receiving the donated property.

Accordingly, these final regulations provide that any appreciation in the value of donated property that occurred prior to the date of donation to the applicable educational institution is disregarded in calculating gain for purposes of section 4968. This special rule does not, however, change the transferred basis of the donated property; thus, an applicable educational institution must obtain the transferred basis of donated property under section 1015 for purposes of claiming a loss upon its sale or other disposition or for purposes of calculating depreciation or depletion.

One commenter requested that the final regulations recognize that a college or university that disposes of contributed property at the first reasonable opportunity is not holding such property for investment purposes and, accordingly, exclude all of the proceeds from the sale of such contributed property from capital gain. The same commenter suggested a safe harbor under which property disposed of within 30 days of receipt would be treated as having been disposed of at the first reasonable opportunity. These final regulations do not adopt either suggestion, because there is no analog in section 4940(c) or in any other provision of the Code. Furthermore, any cut off would be arbitrary and there is no justification for why one day versus another day should not result in the recognition of gain. While these final regulations disregard any appreciation that occurred prior to an institution's receipt of the donated property, appreciation that occurs after an institution's receipt of the donated property is included in net investment income. For consistency with the rules applicable to charitable deductions, the date of donation is determined under the timing rules of § 1.170A–1(b) and the value on the date of donation is determined under the valuation rules of § 1.170A–1.

iii. Capital Loss Carryovers

One commenter requested that capital loss carryovers be allowed. This commenter represented that a private grant-making foundation, to the extent it has satisfied its minimum distribution requirements, can easily curtail its spending (and the realization of capital gains while converting investment assets to cash) by issuing fewer or smaller grant awards to manage its section 4940 tax liability. The commenter contrasted such a foundation with an educational institution that typically has a large operating budget with significant nondiscretionary expenses related to employees and infrastructure and must find ways to meet its ongoing cash needs, which may involve selling investments at particular times that may not be advantageous from an investment or tax perspective.

Although section 4940(c) explicitly allows losses from sales or other dispositions of property only to the extent of gains from such sales or other dispositions, and does not allow capital loss carryovers or carrybacks, the commenter represented that, given the differences between private foundations and educational institutions, the allowance of capital loss carryovers is necessary to achieve outcomes for educational institutions under section 4968 that are ''similar to'' the outcomes for private foundations under section 4940(c).

The Treasury Department and the IRS acknowledge that there are various and notable differences between private foundations subject to section 4940(c) and educational institutions in their missions, functions, and operating expenses. Therefore, based on a general understanding, as further informed by commenters, of the way educational institutions manage both their substantial, nondiscretionary operating expenses in furthering their exempt purposes and their investment activities, these final regulations allow the use of capital loss carryovers.

Accordingly, these final regulations adopt the rule in the proposed regulations that overall net losses from sales or other dispositions of property by one related organization (or by the applicable educational institution) reduce (but not below zero) overall net gains from such sales or other dispositions by other related organizations (or by the applicable educational institution). In addition, these final regulations adopt the rule in the proposed regulations that, should overall net losses from sales or other dispositions of property exceed gains from sales or other dispositions of such property during the same taxable year, such excess may not be deducted from gross investment income in any taxable year, nor may such excess be used to reduce gains in prior taxable years. However, the final regulations provide that capital loss carryovers are allowed and may be deducted from capital gains in a future year.

d. Basis

These final regulations provide rules for determining basis or a substitute for basis (in the context of section 4968) for purposes of determining (1) gain from the sale or other disposition of property other than a partnership interest; (2) a distributive share of gain from the sale or other disposition of an asset held in a partnership; (3) gain on the sale of a partnership interest; and (4) loss.

i. Basis for Purposes of Determining Gain From the Sale or Other Disposition of Property Other Than a Partnership Interest

Consistent with the proposed regulations and with section 4940(c), these final regulations provide that the basis for purposes of determining gain from the sale or other disposition of property (other than a partnership interest) is generally the greater of (1) fair market value of the property on December 31, 2017, plus or minus all adjustments after December 31, 2017, and before the date of its disposition under the rules of part II of subchapter O, provided that the property was held by the applicable educational institution on December 31, 2017, and continuously thereafter to the date of its disposition, or (2) basis as determined under the rules of part II of subchapter O, subject to the three modifications described at the beginning of part 6.b.ii. of this Summary of Comments and Explanation of Revisions (referring to the modifications relating to deductions against gross investment income). See parts 6.d.ii. and 6.e. of this Summary of Comments and Explanation of Revisions for special rules regarding determining a distributive share of capital gain from the sale or other disposition of an asset held in a partnership and on the sale of a partnership interest.

ii. Basis for Purposes of Determining a Partner's Distributive Share of Gain From the Sale or Other Disposition of an Asset Held in a Partnership and Gain From the Sale or Other Disposition of a Partnership Interest

The proposed regulations provided that if an applicable educational institution held an interest in a partnership (including through one or more tiers of partnerships) on December 31, 2017, and continuously thereafter, and the partnership held an asset on December 31, 2017, and continuously thereafter to the date of disposition by the partnership, the partnership's basis in such asset (for purposes of determining the applicable educational institution's share of gain upon sale or other disposition of that asset) is not less than the fair market value of such asset on December 31, 2017, plus or minus all adjustments as provided under § 53.4940–1(f)(2)(i) after December 31, 2017, and before the date of disposition.

Four commenters addressed the requirement in the proposed regulations that, for purposes of applying this rule, an applicable educational institution must obtain documentation from the partnership to substantiate the basis used. The commenters stated that, while an applicable educational institution can obtain documentation to establish its basis in its partnership interest (outside basis) as of December 31, 2017, obtaining documentation to establish its share of the basis of each partnership asset (inside basis) would be extremely burdensome and that an asset-by-asset determination of gain might, therefore, not be possible.

The commenters stated that applicable educational institutions often hold interests in hundreds of partnerships, many with numerous investors, that may involve multiple tiers of flow-through entities, and that applicable educational institutions generally are passive investors in these partnerships. Commenters stated that it would be very difficult, if not impossible, for applicable educational institutions to obtain the required basis documentation from all the partnerships, especially because there is no requirement for partnerships to provide such documentation and because reporting from partnerships generally is done on an aggregate basis and not on an asset-by-asset basis. Commenters added that many partnerships may not even be aware that their partners include an applicable educational institution.

The commenters recommended that the substantiation rule in the proposed regulations be removed and that an applicable educational institution instead be allowed to determine the amount of built-in gain in the applicable educational institution's share of partnership assets using any reasonable method. Two commenters recommended a method, described in part 6.e. of this Summary of Comments and Explanation of Revisions, that would use the difference between fair market value and outside basis of a partnership interest on December 31, 2017, to approximate the amount of cumulative built-in gain in an applicable educational institution's share of partnership assets on such date.

The Treasury Department and the IRS recognize the problem described by commenters with regard to the proposed substantiation rule and agree that another approach for determining the amount of built-in gain in partnership assets solely for purposes of applying section 4968 would be appropriate in alleviating the problem. Accordingly, these final regulations remove the proposed substantiation rule and eliminate the need to determine a step-up in a partner's share of bases in partnership assets for purposes of section 4968. As a result, the bases of partnership assets on December 31, 2017, are not stepped up for purposes of section 4968. Rather, for purposes of determining an applicable educational institution's share of gain upon the sale or other disposition of an asset held in a partnership, these final regulations provide that the applicable educational institution's basis in each partnership asset generally is determined under the rules of subchapter K of chapter 1 of the Code (subchapter K), but also provide a method, more fully described in part 6.e. of this Summary of Comments and Explanation of Revisions, which generally enables an applicable educational institution to offset its distributive share of capital gain net income from partnership asset dispositions by a portion of the built-in gain in the applicable educational institution's interest in the partnership as of December 31, 2017.

These final regulations provide a similar rule for determining an applicable educational institution's gain upon the sale or other disposition of all or a portion of a partnership interest.

iii. Basis for Purposes of Calculating Loss

Consistent with the proposed regulations and with section 4940(c), for purposes of determining loss from the sale or other disposition of property, basis is determined under the rules of part II of subchapter O, subject to the modifications of part 6.b.ii. of this Summary of Comments and Explanation of Revisions (referring to the modifications relating to depreciation and depletion deductions against gross investment income). For purposes of determining loss from the sale or other disposition of a partnership interest, basis is determined under the rules of subchapter K.

e. Special Rules Regarding Partnership Interests and Partnership Assets

As described in part 6.d.ii. of this Summary of Comments and Explanation of Revisions, commenters stated that it would be very difficult, if not impossible, for institutions to obtain the basis documentation necessary to apply the partnership asset basis step-up rule provided in the proposed regulations.

As an alternative, two commenters recommended a method that would use the difference between the fair market value and outside basis of an applicable educational institution's partnership interest on December 31, 2017, to approximate the difference between the fair market value and inside basis of, and thus the amount of built-in gain in, the applicable educational institution's share of partnership assets on such date. The commenters stated that the difference between fair market value and tax basis of an applicable educational institution's partnership interest on December 31, 2017, generally should reflect the amount of the applicable educational institution's built-in gain in its share of the partnership's assets on such date, and that, because educational institutions should know the fair market values and tax bases of their partnership interests on December 31, 2017, they should be able to calculate the built-in gain in their partnership interests as of December 31, 2017.

Specifically, the commenters recommended that an applicable educational institution should be allowed to offset the distributive share of partnership capital gain net income after December 31, 2017, allocated by a partnership by the amount of the built-in gain the applicable educational institution had in its partnership interest, determined as of December 31, 2017. Under the commenters' approach, an applicable educational institution would determine its built-in gain in a partnership interest as of December 31, 2017, and then not report any capital gain allocated from that partnership after December 31, 2017, as being subject to section 4968 until the cumulative amount of such excluded gain equals the amount of built-in gain in the interest. The commenters recommended that this rule be applied on a partnership-by-partnership basis and be available to reduce the amount of an applicable educational institution's capital gain net income on a first-recognized basis.

For the reasons described in part d.ii of this Summary of Comments and Explanation of Revisions, these final regulations adopt an approach that is similar to the approach recommended by the commenters in regard to determining an applicable educational institution's distributive share of gain allocated from a partnership (partnership asset disposition rule), as well as adding a partnership interest disposition rule. These final regulations provide that, for each partnership interest an applicable educational institution held on December 31, 2017, the applicable educational institution may determine an unadjusted step-up amount that is equal to the excess, if any, of the fair market value of such partnership interest on December 31, 2017, over the adjusted basis of such partnership interest on December 31, 2017. Then, for purposes of computing net investment income for taxable years beginning after December 31, 2017, an applicable educational institution will reduce its distributive share of capital gain net income from such partnership by the least of (1) the applicable educational institution's share of applicable capital gain from such partnership (that is, both short-term and long-term capital gain for the first taxable year after December 31, 2017, but only long-term capital gains and losses for subsequent years because short-term capital gains and losses in such years could not have been included in the amount of outside built-in gain as of December 31, 2017); (2) one-third of the applicable educational institution's unadjusted step-up for such partnership; or (3) the applicable educational institution's adjusted step-up for such partnership (which, in general, is its unadjusted step-up reduced by any capital gain that was previously excluded pursuant to the partnership asset disposition rule or the partnership interest disposition rule described in this paragraph).

These final regulations do not apply the capital gain net income reduction rule on a first-recognized basis, as recommended by the commenters. The excess of fair market value over tax basis of a partnership interest on December 31, 2017, may reflect built-in gain in partnership assets that would not be included in net investment income for purposes of section 4968—for example, ordinary income property. Additionally, application of the rule to offset all first-recognized capital gain net income in determining the educational institution's net investment income could provide a benefit to applicable educational institutions that would be inconsistent with the purpose of section 4968 by permitting a reduction in capital gain net income subject to section 4968 that is attributable to a partnership asset both acquired, and disposed of, after December 31, 2017. Accordingly, these final regulations adopt a middle ground position that spreads the exclusion without burdensome asset-by-asset matching by providing that the maximum amount of an applicable educational institution's capital gain net income from a partnership that may be excluded in any given year cannot exceed one-third of the applicable educational institution's unadjusted step-up for such partnership.

Commenters did not provide a recommendation for coordinating the partnership asset disposition rule with a partnership interest disposition rule. However, consistent with permitting an applicable educational institution to offset its distributive share of capital gain net income from partnership asset dispositions, these final regulations also provide a capital gain net income reduction rule in the context of a sale or other disposition of all or a portion of a partnership interest. These final regulations provide that, for purposes of computing net investment income, an applicable educational institution reduces the amount of its capital gain net income upon the sale or other disposition of all or a portion of a partnership interest by an amount that bears the same relation to the applicable educational institution's adjusted step-up for such partnership as the fair market value of the transferred portion of the interest bears to the fair market value of the applicable educational institution's entire interest in such partnership before the sale or other disposition.

7. Related Organizations

Section 4968(d)(1) provides, in part, that the assets and net investment income of any related organization with respect to an educational institution are to be treated as assets and net investment income, respectively, of the educational institution. To determine which assets of a related organization are included by section 4968(b)(1)(D) for a particular year, an educational institution determines which organizations are related organizations, as defined in section 4968(d)(2), as of the end of the educational institution's preceding taxable year, and values the relevant assets on that date. To determine the amount of net investment income of a related organization that is included by the applicable educational institution in calculating the tax imposed by section 4968(a) for a particular taxable year, an applicable educational institution determines which organizations are related organizations, as defined in section 4968(d)(2), as of the end of that taxable year of the applicable educational institution and includes the net investment income from each related organization's tax year that ends with or within that same taxable year of the applicable educational institution. If an organization becomes a related organization within the applicable educational institution's taxable year

and remains a related organization as of the end of the taxable year, then the applicable educational institution includes the organization's net investment income for the portion of the year that it was a related organization, using any reasonable method.

The statute provides two exceptions to the rules for including assets and net investment income of a related organization as assets and net investment income of the educational institution: (1) No such amount is to be taken into account with respect to more than one educational institution, and (2) unless the related organization is controlled by the institution or is described in section 509(a)(3) (relating to supporting organizations) with respect to the institution for the taxable year, assets and net investment income that are not intended or available for the use or benefit of the institution are not to be taken into account by it. Section 53.4968–3 of these final regulations provides definitions and special rules relating to related organizations.

a. Definition of Related Organization

Under section 4968(d)(2), the term ''related organization'' means, with respect to an educational institution, any organization that (1) controls the educational institution; (2) is controlled by the educational institution; (3) is controlled by one or more persons that also control the educational institution; (4) is a supported organization (as defined in section 509(f)(3)) with respect to the educational institution during the taxable year; or (5) is a supporting organization (as described in section 509(a)(3)) with respect to the educational institution during the taxable year.

The first three categories of related organizations require control of an organization, but the statute does not define the term ''control.'' Furthermore, whether the educational institution is the controlling or controlled entity matters because if the related organization controls the educational institution, or is controlled by one or more persons that also control the educational institution, then assets and net investment income of the related organization that are not intended or available for the use or benefit of the educational institution are not taken into account. In contrast, if a related organization is controlled by an educational institution, then all the assets and net investment income of the related organization are taken into account by the educational institution, with the exception that the same assets are not taken into account by more than one educational institution.

The proposed regulations provided a definition of control derived from section 512(b)(13)(D) and the regulations thereunder, consistent with the definition of control contained in Notice 2019–09, ''Interim Guidance Under Section 4960'' (2019–04 I.R.B. 403), and requested comments on whether there were any circumstances in which this proposed definition of control should be modified in the context of section 4968.

Specifically, the proposed regulations defined control as: (1) In the case of a corporation, ownership (by vote or value) of more than 50 percent of the stock of the corporation; (2) in the case of a partnership, ownership of more than 50 percent of the profits interests or capital interests in such partnership; (3) in the case of a trust with beneficial interests, ownership of more than 50 percent of the beneficial interests in the trust; or (4) in the case of a nonprofit organization or other organization without owners or persons having beneficial interests (nonstock organization), including a governmental entity, (a) more than 50 percent of the directors or trustees of the educational institution or nonstock organization are either representatives of, or are directly or indirectly controlled by, the other entity or (b) more than 50 percent of the directors or trustees of the nonstock organization are either representatives of, or are directly or indirectly controlled by, one or more persons that control the educational institution. For this purpose, a ''representative'' means a trustee, director, agent, or employee, and ''control'' includes the power to remove a trustee or director and designate a new trustee or director. Finally, the proposed regulations stated that section 318, which contains rules for determining constructive ownership of stock, applies for purposes of determining ownership of stock in a corporation, and similar principles apply for purposes of determining ownership of an interest in any other entity.

Commenters stated generally that use of the proposed definition of ''control'' would result in educational institutions' being required to take into account assets and net investment income that the educational institutions do not actually control and that they will never receive because the assets and income actually belong to unrelated third parties. The commenters also stated that such a rule is inconsistent with Congressional intent to include assets and income of related organizations only when the educational institution actually has control over the use of the related organization's assets and net investment income, and would not address Congressional concerns that educational institutions might attempt to avoid the section 4968 excise tax by holding assets in structures that, as compared to direct ownership, represent a difference in form but not substance.

More specifically, commenters stated that entities under common control with an educational institution could be deemed to be controlled by the educational institution, contrary to reality and thus inappropriately inflating the net investment income of the educational institution. In addition, the commenters stated that including controlled taxable entities, partnerships, split interest trusts, and employee benefit plans as related organizations for purposes of section 4968 would lead to double or triple taxation.

Parts 7.a.i. through v. of this Summary of Comments and Explanation of Revisions address entities that commenters recommended disregarding in applying the related organization provisions of section 4968(d): Taxable corporations; partnerships and other pass-through entities; certain trusts; employee benefit plans; and decedent's estates. Part 7.b of this Summary of Comments and Explanation of Revisions describes the rules for determining whether an educational institution will be considered to ''control'' an entity that is not disregarded for purposes of section 4968(d). Part 7.c of this Summary of Comments and Explanation of Revisions addresses the application of the rule that assets and net income of a controlled entity will be treated as the assets and net income of only one educational institution. Part 7.d of this Summary of Comments and Explanation of Revisions addresses the application of the rule that assets and net investment income of certain related organizations that are not intended or available for the use or benefit of an educational institution are not taken into account by the institution.

i. Taxable Corporations

The preamble to the proposed regulations stated that, because the net investment income that a taxable entity distributes or transfers to an educational institution has already been taxed, the Treasury Department and the IRS did not consider it consistent with Congressional intent to tax the income again under section 4968. Furthermore, with regard to the assets of a taxable corporation that is a related organization, the educational institution likely already has included the value of the shares of the corporation's stock that it owns in its non-exempt use assets; however, the stock value may differ

from the value of the taxable corporation's underlying assets. The proposed regulations requested comments on how to account for this difference without double-counting the assets, as well as more general comments on the treatment of taxable entities that may be related organizations for purposes of section 4968.

Commenters agreed that educational institutions should not be required to take into account the net investment income of a related organization that is a taxable entity, stating that this would result in double, and sometimes triple, taxation (U.S. Federal income tax at the entity level on the taxable entity's income; section 4968 tax on any payments of net investment income by a taxable entity to the educational institution; and section 4968 tax on the net investment income of the controlled taxable entity that is treated as the institution's income under section 4968(d)). Furthermore, the commenters said that the value of the educational institution's holdings in the taxable entity would already be reflected on the educational institution's books, and, if the educational institution owned more than 50 percent, but less than 100 percent, of the taxable entity, the proposed definition would attribute to the institution income and assets that actually belong to unrelated third parties.

To prevent this multiple taxation of a taxable entity's net investment income and to prevent overcounting of a taxable entity's assets, these final regulations exclude from the definition of ''related organization'' a taxable corporation and, as described in part 7.a.iii. of this Summary of Comments and Explanation of Revisions, taxable trusts, in each case whether foreign or domestic.

The Treasury Department and the IRS note that any investment-type income that is paid to an educational institution by a taxable entity (such as interest on money loaned by the institution to the taxable entity) is included in net investment income for purposes of section 4968(c) in the same manner as any other such investment-type income received by an institution from any other entity, regardless of whether the other entity is or is not controlled by the institution. In addition, for purposes of section 4968(b)(1)(D), the value of the educational institution's interest in a taxable entity is based on the fair market value of the interest on the last day of the preceding taxable year, rather than on the book value of the interest reflected on the educational institution's books and records.

ii. Partnerships and Other Pass-Through Entities

Commenters stated that the proposed regulations' definition of control of partnerships (*i.e.,* that ownership of more than 50 percent of the profits interest or capital interest in a partnership would result in the educational institution's being deemed to control the partnership), likewise would result in double taxation (section 4968 tax on the net investment income that is allocated to the educational institution by the partnership and section 4968 tax on the net investment income of the partnership that is treated as the institution's income under section 4968(d)), which is inconsistent with the principles of subchapter K. Furthermore, the value of the educational institution's interest in the partnership already would be reflected on the educational institution's books, and, if the educational institution owns more than 50 percent, but less than 100 percent, of the profits interest or capital interest in such partnership, the proposed definition would attribute to the institution income and assets that actually belong to other partners, including unrelated third parties.

One commenter stated that an educational institution often is a limited partner in an investment partnership and asked that the final regulations provide that an educational institution that is a limited partner in a partnership not be treated as controlling the partnership for purposes of section 4968. This commenter added that, even if an educational institution served as the general partner of a partnership, it would have limited powers to change equity holders' entitlements to the partnership income and thus would not control all of the income or assets of the partnership.

To prevent double taxation of a partnership's net investment income and overcounting of its assets, these final regulations exclude from the definition of ''related organization'' a partnership, S corporation, or other pass-through entity a portion of whose income flows through to the educational institution.

The Treasury Department and the IRS note that any net investment income that flows through to an educational institution is included in that institution's net investment income for purposes of section 4968(c). In addition, for purposes of section 4968(b)(1)(D), the value of an educational institution's partnership interest is the fair market value of the institution's partnership interest on the last day of the preceding taxable year, rather than the book value of that interest carried on the educational institution's books and records.

iii. Certain Trusts

Multiple commenters stated that the proposed regulations' definition of control of trusts, which provided that ownership of more than 50 percent of the beneficial interests in a trust results in an educational institution being deemed to control the trust, would lead to inequitable results. In particular, commenters recommended excluding split-interest trusts described in section 4947(a)(2) from the definition of related organization, stating that, with respect to charitable remainder trusts, an educational institution generally is not able to receive any benefit, and cannot use assets in the trust, until the termination of the interests of the income beneficiaries (which may be decades into the future). This is true even if the value of the educational institution's interest in the trust exceeds 50 percent of the present value of all beneficial interests in the trust. In addition, even though it is unlikely that an educational institution would receive any income from such a trust while the grantor is alive, income paid from a split-interest trust is not considered net investment income for purposes of section 4940(c) (*see* Notice 2004–35), and it seems inconsistent to treat income that would not be net investment income if it were received directly from the trust to be treated as net investment income when not received from the trust. Further, it seems inequitable and contrary to Congressional intent to tax an educational institution on income that is paid to the grantor or other non-charitable beneficiary during the grantor's lifetime. Finally, it would be difficult for an educational institution to obtain information about the income of a split-interest trust, as there is currently no Federal requirement for a split-interest trust to report this information to its remainder beneficiary(ies).

One commenter recommended that the final regulations provide that a charitable remainder trust is within the control of the institution only if the institution (1) has a vested remainder interest of at least 50 percent of all actuarial interests in the trust, (2) serves as the trustee of the trust, and (3) under the terms of the trust document, has the right as trustee to make distributions from the trust to itself as a charitable organization.

The Treasury Department and the IRS considered whether the present value of an educational institution's share of the remainder assets of a charitable

remainder trust should be included as assets of the institution for purposes of the $500,000-of-assets-per-student test in section 4968(b)(1)(D), given that such assets can demonstrate creditworthiness and because money is fungible. However, the Treasury Department and the IRS have determined that, for ease of administrability for both educational institutions and the IRS, and in view of the risk that, as a result of market forces, the remainder eventually received by the educational institution could be significantly less than its present value each year, an educational institution will not count the assets of a charitable remainder trust as its own assets until the educational institution actually becomes entitled to those assets at the termination of the interest of the income beneficiary. If this were not the rule, an educational institution would have to determine annually its share of the fair market value of the assets of each charitable remainder trust for which the educational institution is a remainder beneficiary, even though the educational institution might not know it had a remainder interest in all cases, the educational institution's remainder interest could be given to another charity in some instances, and the educational institution might not receive its remainder interest if the trust's investment returns turn out to be insufficient for the trust to possess any assets at the termination of the interests of the income beneficiaries. An educational institution similarly would have difficulty determining such a trust's net investment income. Therefore, these final regulations provide that a charitable remainder trust is not considered to be a related organization for purposes of section 4968(d).

An educational institution will not be a remainder beneficiary of a charitable lead trust. Instead, some portion of the trust's income is payable currently to one or more charities for a term, after which the remaining assets of the trust will be payable to noncharitable beneficiaries. Thus, an educational institution does not have any right to or interest in the principal or remainder of such a trust. As an income beneficiary of a charitable lead trust, any income payable currently to an educational institution will be included in the institution's net investment income for the current year. (This is true whether the trust is a grantor trust (whose income is taxed to the deemed owner of the trust and for which there is no current income tax deduction for the current distribution to charity) or a nongrantor trust (whose income is taxed to the trust itself, subject to a charitable deduction).) Thus, because the assets of a charitable lead trust are not available to the educational institution, and its net investment income is already included in the educational institution's assets and net investment income as received, the final regulations exclude charitable lead trusts from the definition of a related organization.

In addition, because there are only limited circumstances in which the educational institution would have sufficient control over a trust to justify treating the trust as a related organization, the final regulations also exclude all other taxable trusts from the definition of a related organization except to the extent the educational institution is deemed to control the trust, as provided in part 7.b.ii.B of this Summary of Comments and Explanation of Revisions.

iv. Employee Benefit Plans

Commenters stated that various retirement and benefit plans (including but not limited to section 403(b), section 457, voluntary employees' beneficiary associations (VEBAs) under section 501(c)(9), and defined benefit plans), should be excluded from the definition of related organization for purposes of section 4968(d), stating that the beneficiaries of these plans are employees of the educational institutions and it was not the intent of Congress to tax the investment income of these entities. One commenter also asked that other assets that are set aside or dedicated by an educational institution to pay for the institution's commitment to provide certain employee benefits be excluded from the definition of related organization.

These final regulations base the determination of whether assets held by or related to an employee benefit plan of an educational institution are considered assets of the educational institution on whether the arrangement is considered to be a funded or nonfunded plan. An employer's obligation to pay an employee benefit generally is considered to be ''funded'' when the assets are set aside from the employer exclusively to provide for the employees' benefits in a manner that the assets are no longer subject to claims of the employer's general creditors and may not revert back to the employer's general assets for use by the employer. *See Sproull* v. *Commissioner,* 16 T.C. 244 (1951), *aff'd per curiam,* 194 F.2d 541 (6th Cir. 1952). For example, contributions to the section 501(a) trust of a section 401(a) qualified retirement plan are considered to fund the obligation to provide employees' future retirement benefits. Similarly, a section 403(b)(1) annuity contract or amounts held in a section 403(b)(7) custodial account are considered to ''fund'' the obligation to pay employees' section 403(b) retirement benefits. In each of these cases, the assets held in the trust, contract, or account are considered to be set aside to ''fund'' the employer's benefit obligation and are not treated as assets of the employer. Further, amounts held in a section 419(e) welfare benefit fund (including a VEBA) are set aside to provide welfare benefits for employees, are not subject to the claims of general creditors, and would not be treated as assets of the employer or as assets of a related organization.

In contrast, plans under section 457 are unfunded because funds are not set aside for the purpose of providing benefits to plan participants in a manner that would result in a ''funded'' obligation to provide benefits under the plan. Under section 457(b)(6), assets held pursuant to an eligible deferred compensation plan, including amounts held in a grantor trust, must remain solely the property and rights of the employer and would be subject to the claims of the employer's general creditors. See § 1.457–8(b)(2). Similarly, amounts set aside by an eligible employer intended to pay for benefits under an ineligible section 457(f) plan, including assets set aside in a grantor trust, are treated as assets of the employer and subject to the claims of the employer's general creditors. Accordingly, assets set aside and held by an educational institution, including in a grantor trust, to be used to pay the employees' benefits under an educational institution's section 457(b) or section 457(f) plan are considered assets of the educational institution. As a result, these final regulations provide that a grantor trust or other financing vehicle used in connection with these unfunded plans is a ''related organization'' for purposes of section 4968(d), and its assets will be treated as the assets of the educational institution. The Treasury Department and the IRS note that, because assets in an unfunded plan are available to the employer just like any other assets, they are not considered ''used directly in carrying out the institution's exempt purpose'' for purposes of section 4968(b)(1)(D).

Other unfunded employee benefits, such as a typical health flexible spending arrangement (health FSA) or accrued leave cashout program, have no related grantor trust or other financing vehicle but instead use the employer's general assets as a source of payment. Any general assets that are used to satisfy benefit obligations are

considered assets of the employer. Thus, if the employer is an educational institution or is a related organization with regard to an educational institution, such assets are considered to be assets of the educational institution, and no special rule is needed in the regulations.

Solely for purposes of determining the status of an employee benefit plan as a funded or unfunded arrangement, an educational institution and all of its related organizations are treated as a single sponsor and payor of the benefits.

v. Decedents' Estates

A few commenters asked that the final regulations clarify that decedents' estates are not ''related organizations'' under section 4968(d). Commenters stated that, because a decedent's estate is a separate legal entity created at a person's death, it should not be considered a related organization under section 4968(d), and, in any case, an educational institution would not be in a position to control a decedent's estate. The Treasury Department and the IRS agree, and to eliminate any question for purposes of section 4968, these final regulations provide that a decedent's estate is not a related organization. However, the Treasury Department and the IRS note that any assets of an estate that ultimately are transferred to an educational institution will be considered the educational institution's assets upon receipt by the institution.

b. Control

As stated in part 7.a of this Summary of Comments and Explanation of Revisions, the first three categories of related organizations described in section 4968(d)(2) require the presence of an element of control to exist for an organization to be considered to be ''related'' to an educational organization, but the statute does not define the term ''control.'' The proposed regulations provided a definition of control based on section 512(b)(13)(D) and the regulations thereunder and requested comments on whether there are any circumstances in which this definition of control should be modified in the context of section 4968.

Commenters asserted that the proposed definition of control would lead to unintended and undesirable results. For example, commenters stated that the downward attribution rules of section 318 would cause all brother/sister organizations of an educational institution to be considered to be controlling each other and that an educational institution controlled by a church could be deemed to own all the assets of the church or the assets of another, unrelated church just because the two churches were invested in the same investment partnership.

The proposed regulation's definition of control did not differentiate between an educational institution's control of another organization or another organization's control of an educational institution. The Treasury Department and the IRS recognize that the types of entities that would be deemed to control an educational institution under the proposed rule are likely to be very different from those that would be controlled by an educational institution. In addition, the direction of control matters for purposes of determining whether all the assets and net investment income of a related organization are attributable to the educational institution or whether only the assets and net investment income that are intended or available for the use or benefit of the educational institution are attributable to the educational institution. Accordingly, these final regulations provide separate rules for the different relationships that may exist. Specifically, these final regulations, among other things, separately define control for organizations that control an educational institution, that are controlled by an educational institution, and that are controlled by one or more persons that also control an educational institution, and do not apply the downward attribution rules of section 318.

i. Controls Such Institution

The Treasury Department and the IRS anticipate that most applicable educational institutions are set up as nonstock organizations, but to cover all circumstances, these final regulations set out rules for control of various types of organizational forms.

Generally, an organization will be considered to control an educational institution if the organization owns (by vote or value) more than 50 percent of the stock or membership interest of the educational institution.

In the case of any educational institution that does not have stock or membership interests, the other organization will be considered to control an educational organization if the other organization (or one or more of its managers, directors, officers, trustees, or employees, acting only in their capacities as representatives of the organization) can (1) appoint or elect (which must include the power to remove and replace) more than 50 percent of the members of the educational institution's governing body (such as directors, officers, or trustees), or otherwise has an ongoing power to appoint or elect more than 50 percent of such members with reasonable frequency; (2) require the educational institution to make an expenditure (or prevent the educational institution from making an expenditure); or (3) require the educational institution to perform any act that significantly affects its operations (or prevent it from performing such an act). Such control includes control by aggregating votes or positions of authority (including by veto power) but applies regardless of the method by which the control is exercised or exercisable.

As discussed in part 7.d of this Summary of Comments and Explanation of Revisions, an educational institution generally does not take into account assets and net investment income of a related organization that controls the educational institution unless the assets and net investment income of the related organization are intended or available for the use or benefit of the educational institution. However, if a related organization both controls the educational institution as described in this paragraph and is also a supporting organization described in section 509(a)(3) during the taxable year with respect to the educational institution, as described in part 7.b.iv of this Summary of Comments and Explanation of Revisions, then the rule that attributes the largest amount of assets and net investment income of the related organization to the educational institution must be applied.

ii. Is Controlled by Such Institution

The Treasury Department and the IRS have determined that only tax-exempt corporations, certain trusts, and nonstock organizations controlled by an educational institution should be considered controlled related organizations with respect to an educational institution for purposes of determining an educational institution's assets and net investment income under section 4968(d)(1).

As discussed in part 7.d of this Summary of Comments and Explanation of Revisions, if an educational institution controls an organization under this definition, then it must take into account all the assets and net investment income of the controlled related organization, except as provided in parts 7.b.ii.B (relating to certain controlled trusts), 7.c (relating to no amount being taken into account with respect to more than one educational institution), 7.d.iii (relating to certain organizations that were Type III supporting organizations with respect to an educational institution on December

31, 2017), and 7.d.iv (relating to when assets used directly in carrying out a related organization's exempt purpose are considered to be used directly in carrying out the educational institution's exempt purpose) of this Summary of Comments and Explanation of Revisions.

A. Tax-Exempt Corporations

No comments were received relating to the proposed rule for control of tax-exempt corporations. Thus, these final regulations retain the proposed rule and provide that a tax-exempt corporation is controlled by an educational institution if the educational institution owns (by vote or value) more than 50 percent of the voting and nonvoting stock or membership interest of the tax-exempt corporation.

B. Trusts

As discussed in part 7.a.iii of this Summary of Comments and Explanation of Revisions, several commenters stated that the proposed rule for control of trusts, which provided that control of a trust with beneficial interests means ownership of more than 50 percent of the beneficial interests in the trust, would not appropriately capture trusts that are controlled by the educational institution within the generally accepted meaning of that term. Commenters stated that the trustee of a trust does not control a trust in a way that is relevant for purposes of section 4968, because the trustee is required to administer the trust in accordance with, and to the extent of the trustee's duties and powers as determined by, the terms of the trust and applicable law. One commenter suggested that, given the limited roles of the trustee and the beneficiary, an educational institution should be considered to control a trust only if the educational institution is both a beneficiary and a trustee with the discretionary power to make current distributions of the trust's income and/or principal to itself, pursuant to the terms of the trust.

The Treasury Department and the IRS agree with commenters that a control rule for trusts based on an educational institution having a more than 50 percent beneficial interest leads to unintended results. However, the Treasury Department and the IRS believe that the commenter's recommended rule is too narrow and could allow an educational institution to transfer endowment assets into a trust that it would not be considered to control under the recommended rule, but that it did control in substance.

The Treasury Department and the IRS acknowledge that the concept of control does not comport well with trusts. Possibly the only person with control over a trust is a person with the power to revoke the trust; even the trustee's ''control'' is limited by the provisions of the trust instrument and applicable law. In attempting to construct a replacement for the control rule for trusts to be used in the context of section 4968, the Treasury Department and IRS identified the four specific circumstances under which a trust should be deemed to have a relationship with the educational institution that is sufficiently similar to that generally intended by the concept of control. However, in two of these circumstances, these final regulations recognize that the deemed control is only with regard to some of the assets of the trust; consequently, in the third and fourth circumstances explained in the subsequent paragraphs, only a portion of the trust is considered to be a related organization and only some of the assets and net investment income are attributed to the educational institution.

The first circumstance is where the educational institution is the sole permissible trust beneficiary. In this circumstance, several factors would be irrelevant, such as the identity of the trustee, the timing and standards for making trust distributions, and the donors to the trust. To prevent the existence of another trust beneficiary, whether purely discretionary or with only a minimal interest in the trust, from being used to avoid this rule, the test refers to the educational institution being ''substantially'' the sole trust beneficiary.

A second circumstance is where the trust is a pooled income fund described in sections 642(c)(3) and 642(c)(5). Although a certain portion of the net income of the fund is payable on a current basis to the donors to the fund, the fund is managed by the educational institution, the educational institution is the sole remainderman of the fund, and a portion of the fund becomes payable to the educational institution as each donor's interest expires. Given the different times (generally based on the date of death of individual donors) when portions of the trust principal will become payable to the educational institution, and the control of the fund by the educational institution, the Treasury Department and the IRS have determined that it is appropriate to deem a pooled income fund described in sections 642(c)(3) and 642(c)(5) to be controlled by that institution.

A third circumstance is where the trust has been funded with assets of the educational institution. If, and only to the extent that, the trust's funding consisted of assets contributed to the trust by the educational institution (or by a person controlled by the educational institution), the Treasury Department and the IRS concluded that the trust's assets and net income should be attributed to the educational institution.

Finally, the Treasury Department and the IRS concluded that any portion of a trust that the educational institution (or a person controlled by the educational institution) can demand or cause to be distributed to the educational institution (or a person controlled by the educational institution) should be attributed to the educational institution.

Therefore, these final regulations provide that a trust is a related organization, and an educational institution is deemed to control that trust, only: (1) If the educational institution is substantially the sole permissible trust beneficiary or appointee of both income and principal, whether or not the timing of distributions is subject to the trustee's discretion; (2) if the trust is a pooled income fund described in section 642(c)(3) and (5); (3) if, but only to the extent that, the assets of the trust were contributed to the trust by the educational institution (or by a person controlled by the educational institution, as determined under these regulations); or (4) if, but only to the extent that, the educational institution (or a person controlled by the educational institution, as determined under these regulations) has the right to demand (or can otherwise cause) a distribution of principal from the trust to the educational institution (or a person controlled by the educational institution).

For purposes of this definition, a person is controlled by an educational institution if the educational institution has the power to remove and replace such person or otherwise controls the person under one of the tests in § 53.4968–3(b)(2)(i), (ii), or (iii), with similar principles applying for purposes of determining control of any other form of entity.

C. Nonstock Organizations

One commenter objected to the proposed rule for control of nonstock organizations, stating that the portion of the rule that is based on directors or trustees of the educational institution being representatives of the other organization often incorrectly determines which entity controls the other, as the presence of common directors or trustees alone is not determinative of control. The commenter stated that the

representatives test from the proposed regulations could be especially devastating to hierarchical religious organizations using corporation sole or similar structures, which have neither directors nor trustees. If one made a natural extension of the proposed rule by treating the incumbent officer of a ''corporation sole'' as a sole director or trustee, hierarchical religious organizations could be affected because an ecclesiastical officeholder could not be on the board of any educational institution without causing that religious organization to be deemed to be controlled by that educational institution. The commenter stated that control tests found in other sections of the Code relating to tax-exempt organizations, such as the control tests found in sections 507, 509, 4911, 4941, 4942, and 4943, would be more relevant and appropriate for purposes of section 4968. For example, these tests include the power to cause a certain act, often acting solely in the capacity of foundation manager.

The Treasury Department and the IRS agree that a modified version of control for nonstock organizations that is based on the power of the educational institution (or one or more of its managers, directors, officers, trustees, or employees acting only in the capacity as a representative of the educational institution) to cause (or prevent) a certain act would also appropriately reflect control by the educational institution over the nonstock organization.

Thus, these final regulations provide that an educational institution controls a nonstock organization if the educational institution (or one or more of its managers, directors, officers, trustees, or employees acting only in those capacities) can (1) appoint or elect (which must include the power to remove and replace) more than 50 percent of the members of the nonstock organization's governing body (such as directors, officers, or trustees), or otherwise has the ongoing power to appoint or elect more than 50 percent of such members with reasonable frequency; (2) require the nonstock organization to make an expenditure (or prevent the organization from making an expenditure); or (3) require the nonstock organization to perform any act that significantly affects its operations (or prevent it from performing such an act). Such control includes control by aggregating votes or positions of authority (including by veto power) but applies regardless of the method by which the control is exercised or exercisable.

iii. Is Controlled by One or More Persons That Also Control Such Institution

The proposed regulations provided a rule relating to control of a nonstock organization by one or more persons that also control an educational institution, finding control if more than 50 percent of the directors or trustees of the nonstock organization are directly or indirectly controlled by one or more persons that control the educational institution.

In recognition that the other organization might be other than a nonstock organization, these final regulations provide a separate rule for organizations that are controlled by one or more persons that also control such institution. Under these final regulations, an organization is controlled by one or more persons that also control the educational institution if more than 50 percent of the members of the governing body of the other organization is directly or indirectly controlled by persons that comprise more than 50 percent of the members of the governing body of the educational institution.

As discussed in part 7.d of this Summary of Comments and Explanation of Revisions, an educational institution does not take into account assets and net investment income of a related organization that is controlled by one or more persons that also control the educational institution unless the assets and net investment income are intended or available for the use or benefit of the educational institution. However, if a related organization is both (1) controlled by one or more persons that also control the educational institution, as described in this part 7.b.iii, and also is (2) controlled by the educational organization, as described in part 7.b.ii of this Summary of Comments and Explanation of Revisions or is also a supporting organization described in section 509(a)(3) during the taxable year with respect to the educational institution, as described in part 7.b.iv of this Summary of Comments and Explanation of Revisions, then the rule that attributes the largest amount of assets and net investment income of the related organization to the educational institution must be applied.

Nevertheless, the exceptions allowing certain assets and net investment income to not be taken into account described in parts 7.b.ii.B (relating to certain controlled trusts), 7.c (relating to no amount being taken into account with respect to more than one educational institution), 7.d.iii (relating to certain organizations that were Type III supporting organizations with respect to an educational institution on December 31, 2017), and 7.d.iv (relating to when assets used directly in carrying out a related organization's exempt purpose are considered to be used directly in carrying out the educational institution's exempt purpose) of this Summary of Comments and Explanation of Revisions, continue to apply.

iv. Supporting Organizations Described in Section 509(a)(3)

Section 4968(d)(2)(C) includes within the definition of related organization any supporting organization (as described in section 509(a)(3)) during the taxable year with respect to the educational institution.

One commenter noted that a Type I supporting organization [7] controlled by a community foundation that supports a class of entities that includes an educational institution within the class should be considered to be a Type I supporting organization only ''with respect to'' the controlling community foundation and not ''with respect to'' an educational institution. The commenter suggested that an organization be considered a supporting organization with respect to the educational institution only if the supporting organization meets the organizational, operational, and relationship tests with respect to the educational institution, considered in isolation. The Treasury Department and the IRS agree that a section 509(a)(3) organization is a supporting organization ''with respect to'' an educational institution only if the supporting organization meets the organizational, operational, and relationship tests with respect to the educational institution, and have clarified this point in these final regulations.

The commenter further suggested that an organization be deemed to be described in section 509(a)(3) with respect to an educational institution only if (1) it is described in section

[7] Organizations described in section 509(a)(3) are known as ''supporting organizations.'' Supporting organizations achieve their public charity status by providing support to one or more organizations described in section 509(a)(1) or (2), which, in this context, are referred to as ''supported organizations.'' To be described in section 509(a)(3), an organization must satisfy several tests, including having one of three ''relationships'' with one or more supported organizations. A supporting organization that is operated, supervised or controlled by one or more supported organizations is known as a ''Type I'' supporting organization. A supporting organization that is supervised or controlled in connection with one or more supported organizations is known as a ''Type II'' supporting organization. A supporting organization that is operated in connection with one or more supported organizations is known as a ''Type III'' supporting organization.

509(a)(3); (2) it bears a Type I, Type II, or Type III relationship to the educational institution; and (3) substantially all, or at least a majority, of its activities are for the benefit of, perform the functions of, or carry out the purposes of the educational institution or other public charities controlled by the educational institution. The Treasury Department and the IRS disagree with this reading because a supporting organization may be a supporting organization (as described in section 509(a)(3) and the regulations under section 509(a)(3)) with respect to the educational institution, despite the fact that less than a majority of its activities are for the benefit of, perform the functions of, or carry out the purposes of the educational institution or other public charities controlled by the educational institution. Thus, these final regulations do not adopt this recommendation.

The commenter noted that a supporting organization that is not a supporting organization ''with respect to'' an educational institution may still be related to the institution under one of the other tests, and that a Type I or Type II supporting organization with respect to the educational institution may be considered both a supporting organization with respect to the educational institution described in section 4968(d)(2)(C) and an organization controlled by the educational institution described in section 4968(d)(2)(A) or an organization controlled by one or more persons that also control the educational institution described in section 4968(d)(2)(B). The Treasury Department and the IRS agree, but in cases in which an organization is a related organization with respect to an educational institution on more than one basis, if one of the bases is that the organization is either controlled by the educational institution as described in part 7.b.ii of this Summary of Comments and Explanation of Revisions, or is a supporting organization (as described in section 509(a)(3)) with respect to the educational institution during the taxable year, then the rule that attributes the largest amount of assets and net investment income of the related organization to the educational institution must be applied.

v. Constructive Ownership

The proposed regulations provided that the principles of section 318 apply for purposes of determining ownership of stock in a corporation and that similar principles apply for purposes of determining ownership in any other entity.

Commenters noted that section 318 provides rules for attribution from entities under section 318(a)(2) (upward attribution) and to entities under section 318(a)(3) (downward attribution). In general, under upward attribution, (1) partners in a partnership are each considered to own a proportionate share of stock owned by or for the partnership; (2) beneficiaries of a trust are each considered to own a proportionate share of stock owned by or for the trust based on their actuarial interests in the trust; and (3) a person that owns stock representing 50 percent or more of the value of a corporation is considered to own a proportionate share of the stock owned by or for such corporation. In general, under downward attribution, partnerships and trusts are considered to own stock owned by or for their partners and beneficiaries, respectively, and corporations are considered to own stock owned by or for a person that owns stock representing 50 percent or more of the value of the corporation. Commenters noted that application of the downward attribution rules can lead to an institution being deemed to control an organization that it does not actually control.

The Treasury Department and the IRS agree with commenters that application of the principles of section 318(a)(3) may lead to unintended results. Thus, these final regulations provide that the principles of section 318(a)(2) apply for purposes of determining ownership of stock in a corporation, and similar principles apply for purposes of determining ownership of interests in any other entity.

c. Assets and Net Income Treated as Assets and Net Income of Only One Educational Institution

As noted at the beginning of this part 7, section 4968(d)(1) provides, in part, that for purposes of determining the aggregate fair market value of an institution's assets and its net investment income, the assets and net investment income of all related organizations with respect to the educational institution are treated as assets and net investment income, respectively, of the educational institution. However, section 4968(d)(1)(A) provides an exception under which no such amount is taken into account with respect to more than one educational institution.

In order to effectuate the exception contained in section 4968(d)(1)(A), the proposed regulations provided that, in any case in which an organization is a related organization with respect to more than one educational institution, the assets and net investment income of the related organization must be allocated among the educational institutions as to which the organization is a related organization. The proposed regulations provided that such allocation must be made in a reasonable manner, taking into account all facts and circumstances, and must be consistently applied across all related organizations. The Treasury Department and the IRS requested comments on whether more specific guidance is required concerning the allocation of a related organization's assets and net investment income among multiple educational institutions being supported by the same related organization, and if so, what such additional guidance should be provided. One commenter agreed with the proposed regulation, saying that any reasonable methodology that takes into account all facts and circumstances and is applied consistently across all related organizations is appropriate for purposes of avoiding double-counting of related organizations' assets and income. Thus, these final regulations adopt the proposed rule and add that the allocation must be consistently applied.

d. Assets and Net Investment Income of Related Organizations

For purposes of attributing assets and net investment income of related organizations to educational institutions, section 4968(d)(1)(B) provides that, unless a related organization is controlled by the educational institution or is a supporting organization described in section 509(a)(3) with respect to such institution for the taxable year, assets and net investment income of the related organization that are not intended or available for the use or benefit of the educational institution are not taken into account.

Put another way, if a related organization (1) controls the educational institution (but is not described in section 509(a)(3) with respect to the educational institution for the taxable year as described in part 7.b.iv of this Summary of Comments and Explanation of Revisions), (2) is controlled by one or more persons that also control such institution (but is neither controlled by the educational institution as described in part 7.b.ii of this Summary of Comments and Explanation of Revisions nor is described in section 509(a)(3) with respect to the educational institution), or (3) is a supported organization (as defined in section 509(f)(3)) with respect to the educational institution during the

taxable year, then the related organization's assets and net investment income are taken into account as assets and net investment income of the educational institution only to the extent the assets and net investment income are intended or available for the use and benefit of the educational institution.

However, if a related organization either (1) is controlled by the educational institution or (2) is a supporting organization described in section 509(a)(3) with respect to such institution for the taxable year, then all the assets and net investment income of the related organization are considered assets and net investment income of the educational institution, except as provided in parts 7.b.ii.B (relating to certain controlled trusts), 7.c (relating to an exception under which no such amount is taken into account with respect to more than one educational institution), 7.d.iii (relating to certain organizations that were Type III supporting organizations with respect to an educational institution on December 31, 2017), and 7.d.iv (relating to when assets used directly in carrying out a related organization's exempt purpose are considered to be used directly in carrying out the institution's exempt purpose) of this Summary of Comments and Explanation of Revisions.

i. Related Organizations That Control the Educational Institution, Are Controlled by One or More Persons That Also Control the Educational Institution, or Are Supported Organizations (as Defined in Section 509(f)(3)) With Respect to the Educational Institution During the Taxable Year

As discussed in part 7.d of this Summary of Comments and Explanation of Revisions, the assets and net investment income of certain related organizations are taken into account only to the extent that they are intended or available for the use and benefit of the educational institution. In determining which assets and net investment income are considered ''intended or available for the use and benefit of'' the educational institution, the Conference Report states, ''[f]or example, assets of a related organization that are earmarked or restricted for (or fairly attributable to) the educational institution would be treated as assets of the educational institution, whereas assets of a related organization that are held for unrelated purposes (and are not fairly attributable to the educational institution) would be disregarded.'' H. Rept. 115–466, 115th Cong., 1st sess., at 555 (December 15, 2017).

The proposed regulations provided that when an educational institution is determining which assets and net investment income are ''intended or available for the use or benefit of'' the educational institution, the educational institution must make an allocation between those assets and net investment income that are intended or available for the use and benefit of the educational institution and those not intended or not available for the use and benefit of that educational institution. Such allocation must be made in a reasonable manner, taking into account all facts and circumstances, and must be consistently applied across all related organizations.

One commenter agreed with this approach, stating that it is reasonable to permit an educational institution to take into account its own unique facts and circumstances and use any reasonable method to allocate the assets and net investment income.

The preamble to the proposed regulations further explained that assets and net investment income of such a related organization are intended or available for the use and benefit of an educational institution if such assets and net investment income are specifically earmarked or restricted for the benefit of, or are otherwise fairly attributable to, the educational institution. Conversely, assets and net investment income of a related organization are not intended or available for the use and benefit of an educational institution if such assets and net investment income are specifically earmarked or restricted for another entity or for unrelated purposes or otherwise are not fairly attributable to that educational institution.

The preamble to the proposed regulations requested comments on situations in which an organization's assets or net investment income is not specifically earmarked or restricted for the benefit of any particular organization but otherwise is fairly attributable to the educational institution or to another organization. For example, the proposed regulations asked whether, absent any earmarking or restriction, total distributions from a related organization to an educational institution in one taxable year should establish a presumption for section 4968 purposes that at least an equal amount is fairly attributable to that educational institution for the following taxable year, absent demonstrated facts and circumstances supporting attribution of a lesser amount.

One commenter stated that, because earmarked and restricted funds are subject to legally binding requirements that the assets must be used solely for the designated recipient, such funds are a clear example of assets ''intended for'' a particular organization. In contrast, internal board decisions to allocate funds to certain purposes do not typically convert funds into restricted funds because the board still has authority to reverse its previous decision without obtaining any outside consent. However, the commenter noted that certain assets that have been affirmatively designated for use by an educational institution could be ''intended for'' the institution, and thus ''fairly attributable,'' even if not subject to a binding restriction. This commenter recommended that the unrestricted, undesignated assets of a related organization will not be treated as intended or available for the educational institution unless they have been affirmatively designated or appropriated for the educational institution or made available for the educational institution to draw upon at will; in other words, if they have been approved and directed by the related organization for use by the educational institution. These final regulations adopt this recommendation.

A few commenters said that total distributions from a related organization to an educational institution in one taxable year should not establish a presumption for section 4968 purposes that at least an equal amount is fairly attributable to the educational institution for the following taxable year. One commenter recommended creating a rebuttable presumption based upon an average of distributions from the related organization over a number of years. Another commenter noted that there is no need to estimate possible future distributions because the excise tax under section 4968 is based on data that is known at the time the annual return is being prepared, so the exact amount of distributions do not have to be estimated. This commenter stated that if such a presumption did apply, it should be rebuttable based on facts showing that the previous year's amounts distributed were for special projects and not ''intended or available for'' the educational institution the following year. In response to the comments, these final regulations do not include a presumption based on previous distributions.

ii. Related Organizations That Are Controlled by the Educational Institution or That Are Supporting Organizations (as Described in Section 509(a)(3)) With Respect to the Educational Institution During the Taxable Year

If a related organization (1) is controlled by an educational institution, as described in part 7.b.ii of this Summary of Comments and Explanation of Revisions, or (2) is a supporting organization (as defined in section 509(a)(3) and described in part 7.b.iv of this Summary of Comments and Explanation of Revisions) with respect to the educational institution during the taxable year, then the assets and net investment income of the related organization must be taken into account as assets and net investment income of the educational institution, regardless of whether the assets and net investment income are earmarked, restricted for the benefit of, or otherwise are fairly attributable to that educational institution, and even if they are specifically earmarked or restricted for another entity or for unrelated purposes or otherwise are not fairly attributable to that educational institution. However, the special rule in section 4968(d)(1)(A) continues to apply, preventing the assets and net investment income of the related organization from being taken into account by more than one educational institution. See part 7.c of this Summary of Comments and Explanation of Revisions. In addition, assets that are used directly for the related organization's exempt purpose are considered used directly in carrying out the educational institution's exempt purpose for purposes of section 4968(b)(1)(D), as described in parts 5.e and 7.d.iv of this Summary of Comments and Explanation of Revisions. There also is a special rule for related organizations that were Type III supporting organizations with respect to the educational institution on December 31, 2017, as described in part 7.d.iii of this Summary of Comments and Explanation of Revisions.

iii. Special Rule for Related Organizations That Were Type III Supporting Organizations With Respect to an Educational Institution on December 31, 2017

In recognition that section 509(a)(3) Type III supporting organizations, unlike section 509(a)(3) Type I and Type II supporting organizations, are not directly or indirectly controlled by their supported organizations,[8] and because educational institutions may not be able to get the needed information from their Type III supporting organizations on a timely basis, the proposed regulations provided a special rule for related organizations of an educational institution that were Type III supporting organizations with respect to an educational institution on December 31, 2017.

That special rule allowed an educational institution with a related organization that was a Type III supporting organization with respect to the educational institution on December 31, 2017, to take into account only the assets and net investment income of the related Type III supporting organization that are intended or available for the use and benefit of the educational institution, rather than the value of all of that organization's assets or amount of net investment income. The proposed regulations provided that an educational institution can determine whether the assets and net investment income of such a Type III supporting organization are intended or available for the use and benefit of the educational institution using any reasonable method. The proposed regulations set out one method for determining the amount of net investment income available to the educational institution that would be considered to be reasonable (*i.e.,* using all the distributions received from a Type III supporting organization subject to this special rule as net investment income of the educational institution each year) and one method for determining assets available to the educational institution that would be considered to be reasonable (*i.e.,* using the distributions received from a Type III supporting organization to calculate the percentage of the Type III supporting organization's total net income that was distributed to the educational institution, and using the same percentage to calculate the value of the underlying assets of the Type III supporting organization that are intended or available for the use and benefit of the educational institution each year). The proposed regulations requested comments on whether additional guidance pertaining to Type III supporting organizations was needed.

One commenter stated that the safe harbor methods in the proposed regulations would in many cases lead to strange results, stating that the fact that a particular subsidiary makes a distribution to an educational institution in one year in no way implies that the educational institution has similar amounts available to it in future years, let alone to a corresponding portion of the related organization's entire asset base. The commenter suggested that only the amounts actually distributed or appropriated to the educational institution should be treated as intended or available for the educational institution.

For consistency with the general rule for determining which assets and net investment income are considered ''intended or available for the use and benefit of'' an educational institution, and in response to the comment, these final regulations do not include the safe harbor method in the proposed regulations. Instead, these final regulations provide that a method using assets and net investment income of the Type III supporting organization (with respect to the educational institution as of December 31, 2017), that are specifically earmarked for an educational institution, are restricted for the benefit of an educational institution, and are otherwise fairly attributable to an educational institution (such as those that have been affirmatively designated or appropriated for the educational institution or made available for the educational institution to draw upon at will) will be deemed to be reasonable.

Several commenters asked that the special rule for related organizations that were Type III supporting organizations with respect to the educational institution on December 31, 2017, be extended to cover all Type III supporting organizations. One asked that the special rule be extended to Type I and Type II supporting organizations, one asked that it be extended to split-interest trusts, and one asked that it cover all related organizations for which the educational institution lacks ''effective control.''

Although the Treasury Department and the IRS have concluded that a transition rule with respect to entities that were Type III supporting organizations with respect to an educational institution on December 31, 2017, is appropriate, extending this rule to other organizations would be contrary to the statute. In addition, the Treasury Department and the IRS have concluded that excluding certain categories of organizations from the definition of related organization, as described in part 7.a of this Summary of Comments and Explanation of Revisions, and explaining that a supporting organization must be described in section 509(a)(3) ''with respect to'' an educational institution during the

[8] As mentioned in footnote 9 of this preamble, there are three types of supporting organizations: Type I, Type II, and Type III. The relationship of a Type III supporting organization with its supported organization(s) is much more attenuated than the other two types.

taxable year, as described in part 7.b.iv of this Summary of Comments and Explanation of Revisions, address most of the commenters' concerns.

iv. Interaction With Section 4968(b)(1)(D)

As described in part 5.f of this Summary of Comments and Explanation of Revisions, these final regulations provide that an asset of a related organization that is treated as an asset of an educational institution by section 4968(d) and that is used directly in carrying out an educational institution's exempt purpose is considered to be used directly by the educational institution in carrying out its exempt purpose for purposes of section 4968(b)(1)(D). In addition, an asset of a related organization described in section 501(c)(3) that is treated as an asset of an educational institution by section 4968(d) and that is used directly in carrying out the related organization's exempt purpose is considered to be used directly by the educational institution in carrying out its exempt purpose for purposes of section 4968(b)(1)(D).

8. Penalty Waiver

One commenter asked that any penalties arising from underpayment of the excise tax for tax years prior to and including tax years in which final guidance is issued be waived. A waiver of penalties is beyond the scope of these regulations. In addition, these final regulations are not effective until the taxable year beginning after publication of the final regulations. Thus, applicable educational institutions will have up to a year to comply with the final regulations, and for prior taxable years applicable educational institutions can comply with the statute using a reasonable good faith interpretation.

Applicability Date

These final regulations apply to taxable years of an educational institution beginning after October 15, 2020.

Special Analyses

Executive Orders 12866, 13563, and 13771 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Executive Order 13771 designation for this regulation is regulatory.

The final regulations have been designated by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and OMB regarding review of tax regulations. OIRA has determined that the final rulemaking is significant and subject to review under Executive Order 12866 and section 1(b) of the Memorandum of Agreement. Accordingly, the final regulations have been reviewed by OMB.

I. Need for Regulation

The Conference Report, at 555, states that Congress intended that the Secretary promulgate regulations to carry out the intent of section 4968. These final regulations are in response to this congressional intent. The final regulations provide guidance for determining the excise tax applicable to the net investment income of certain private colleges and universities, as provided by the TCJA. The regulations are intended to clarify which educational institutions are subject to the excise tax under section 4968 (excise tax) and how net investment income is calculated for purposes of this excise tax.

The Treasury Department and the IRS received 18 formal comments regarding these proposed definitions and rules, and there was a degree of taxpayer uncertainty as to whether the definitions of the various terms and whether the rules for computing net investment income would remain the same as those provided in the notice of proposed rulemaking.

Pursuant to section 6(a)(3)(B) of Executive Order 12866, the following qualitative analysis provides further details regarding the anticipated impacts of the final regulations. The statute and the final regulations are briefly described in Part II of this Special Analyses section. The baseline used for the analysis is described in Part III. Part IV describes the types of entities affected by the proposed regulations. Part V provides a qualitative assessment of the potential economic effects, including the benefits and costs, of the proposed regulations compared to the baseline.

II. The Statute and the Final Regulations

Section 4968 imposes a 1.4 percent excise tax on the net investment income of applicable educational institutions. Under the statute, an ''applicable educational institution'' is an eligible educational institution (which is described in section 25A(f)(2)) that has at least 500 tuition-paying students during the preceding taxable year, more than 50 percent of whom are located in the United States, that is not a state college or university, and the fair market value of the assets of which (other than those assets that are used directly in carrying out the institution's exempt purpose) is at least $500,000 per student at the end of the preceding taxable year. Under section 4968, net investment income is determined under rules ''similar to'' the rules of section 4940(c) (the rules for the calculation of the net investment income of private foundations). In addition, the statute contains a rule under which the assets and net investment income of related organizations generally are treated as the assets and net investment income of the educational institution.

Section 4968 does not define the terms ''student,'' ''tuition-paying student,'' or ''assets used directly in carrying out the institution's exempt purpose.'' Section 4968(c) states that, for the purposes of the excise tax in section 4968, net investment income is determined under rules ''similar to'' the rules of section 4940(c) but does not define what is meant by ''similar to.'' Section 4968 does not define the term ''control'' as it relates to the definition of a ''related organization with respect to an educational institution.'' The final regulations provide general definitional guidance with respect to these and other terms and rules relevant to the implementation of the statute.

III. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the final regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these final regulations.

IV. Affected Entities

One researcher used data from the Integrated Post-Secondary Education Data System (IPEDS) on endowment values at the end of the 2015–2016 academic year and enrollment data to estimate the number of institutions at risk of having liability under this excise tax.[9] Under the assumption that none of the assets in the endowment are for

[9] Levine, Phillip. ''The University Endowment Income Tax: Who Will Pay it and Why Was it Implemented?'', Econofact, January 25, 2018, available at *https://econofact.org/the-university-endowment-tax-who-will-pay-it-and-why-was-it-implemented,* accessed April 29, 2019.

exempt purposes, he estimates that 23 institutions are likely to be currently subject to tax. Using the same IPEDS data, another researcher estimated that in 2016, among four-year public and not-for-profit private institutions located in the United States with at least 500 full-time equivalent students, and excluding endowments held at the university system level, there were 27 endowments worth at least $500,000 per student.[10] These estimates do not take into account all of the provisions of the statute and regulations. For example, limiting this set of institutions to the not-for-profit private institutions subject to tax and excluding assets that are used for the institutions' exempt purpose would reduce the number of affected institutions. On the other hand, as both authors note, because the $500,000 per student threshold for the aggregate fair market value of assets (other than those assets which are used directly in carrying out the institution's exempt purpose) that in part determines whether the excise tax in section 4968 applies to an educational institution is not indexed for inflation, the number of institutions to which the excise tax in section 4968 applies is expected to increase over time. In addition, these studies did not consider assets held by related organizations; including such assets could increase the number of affected institutions.

V. Economic Effects of the Final Regulations

The Treasury Department and the IRS anticipate that the issuance of guidance pertaining to section 4968 will provide a marginal net economic benefit to the overall U.S. economy.

The final regulations clarify a number of definitions related to the excise tax in section 4968. In the absence of guidance, affected taxpayers would have to calculate their tax liability without the definitions and clarifications provided by the final regulations, a situation that is generally considered more burdensome and could lead to greater conflicts with tax administrators. The final regulations make use of a number of existing statutory and regulatory provisions in defining students, tuition, exempt purpose, fair market value, net investment income and related organizations. Many taxpayers already will be familiar with these definitions. Thus, the Treasury Department and the IRS project that the final regulations will reduce taxpayer compliance burden relative to the no-action baseline, including in determining whether the excise tax applies to the institution and the computation of the excise tax. However, it is possible that the final regulations will have other economic effects based on the time needed to file the return as well as the costs of tax administration, including monitoring the compliance of taxpayers with the excise tax.

The guidance provided in the final regulations also ensures that the excise tax liability is calculated similarly across taxpayers, avoiding situations where one taxpayer receives preferential treatment over another taxpayer for fundamentally similar economic activity. For example, in the absence of these final regulations, an educational institution may have uncertainty over whether it is subject to the excise tax under section 4968 and what assets are used in determining the net investment income for purposes of the excise tax under section 4968. As a result, in the absence of guidance, similar institutions might take different positions and pay different amounts of tax, introducing economic inefficiency and inequity.

Based on this analysis, the Treasury Department and the IRS anticipate the net economic contribution of the final regulations will be modest and will be positive relative to not issuing any such guidance and conditional on the relevant statutes. In the proposed regulations, the Treasury Department and the IRS requested comments on a number of aspects of the proposed regulations, which included comments on the economic effects, any behavioral changes caused, or the unintended costs and benefits of the regulations. The Treasury Department and the IRS did not receive any comments on these issues.

VI. Economic Analysis of Specific Provisions

The regulations embody certain regulatory decisions that reflect the necessary exercise of regulatory discretion. These decisions specify more fully how section 4968 is to be implemented.

A. Clarifications of Definitions

Consistent with the statute, the final regulations provide that the term ''applicable educational institution'' means any eligible educational institution: (1) That had at least 500 tuition-paying students attending the institution during the preceding taxable year; (2) with more than 50 percent of whose tuition-paying students are located in the United States; (3) that is not described in the first sentence of section 511(a)(2)(B) (relating to state colleges and universities); and (4) the aggregate fair market value of the assets of which at the end of such preceding taxable year (other than those assets that are used directly in carrying out the institution's exempt purpose) is at least $500,000 per student attending the institution.

Many provisions of the final regulations clarify definitions related to the tax imposed by section 4968, minimizing the burdens entities bear to comply with the tax, and have little other economic impact. Clarifications reduce uncertainty, lower the effort required to infer which institutions are subject to the section 4968 tax and the potential for conflict if entities and tax administrators interpret provisions differently. Examples of clarifications include the definition of ''applicable educational institution,'' ''student,'' ''tuition-paying,'' ''located in the United States,'' and ''assets.''

i. Definition of ''Student''

The definition of ''applicable education institution'' relies on the definition of ''student.'' In section 25A(b)(3) and the Higher Education Act, a ''student'' is defined as a person enrolled in a degree, certification, or other program (including a program of study abroad approved for credit by the eligible educational institution at which such student is enrolled) leading to a recognized educational credential at an eligible educational institution, and who is not enrolled in an elementary or secondary school.

The proposed regulations provided that the number of students of an educational institution (including for purposes of determining the number of students at a particular location) is based on the daily average number of full-time students attending such institution (with part-time students taken into account on a full-time student equivalent basis). Under the proposed regulations, the standards for determining part-time students, full-time students, full-time equivalents, and daily average are generally determined by each educational institution.

Two commenters recommended that the definition of ''student'' be expanded to include all students attending the institution even if not enrolled in a degree, certification, or other program leading to a recognized educational credential. One concern was that the term ''recognized educational credential'' was ambiguous.

The final regulations define the term ''student'' as a person who is enrolled and attending a course for academic credit from the institution and who is being charged tuition at a rate that is

[10] Hinrichs, Peter. ''College Endowments.'' Economic Commentary 2018–04 (May 17, 2018), Federal Reserve Bank of Cleveland, Table 1.

commensurate with the tuition rate charged to students enrolled for a degree.

ii. Definition of ''Tuition-Paying''

The proposed regulations provided that the term ''tuition-paying'' means the payment of any tuition or fees required for the enrollment or attendance of a student for a course of instruction at an eligible educational institution. The proposed regulations stated that this does not include any separate payment for supplies or equipment required during a specific course once a student is enrolled in and attending the course, or the payment of room and board or other personal living expenses. In addition, the proposed regulations provided that whether a student is ''tuition-paying'' is determined after taking into account any scholarships provided directly by the educational institution and any work study programs operated directly by the educational institution; however, scholarship payments provided by third parties, even if administered by the institution, are considered payments of tuition on behalf of the student.

Commenters sought clarification on how scholarships from different sources counted toward tuition, given that the proposed regulations considered tuition after taking into account scholarships and work-study programs offered directly from the institution. One commenter was specifically concerned with Federal and state financial aid and non-governmental scholarships not paid by the institution. The final regulations do not count Federal, state, and local grants or financial aid as ''tuition,'' but do count grants and scholarships provided by a non-governmental party other than the particular educational institution as ''tuition.''

In summary, ''tuition'' excludes payments made by or on behalf of the student by the institution or from any Federal, state, and local governmental sources. These clarifications in the final regulations will more easily allow institutions to determine the applicability of the statute.

iii. Definition of ''Located in the United States''

The proposed regulations provided that the term ''located in the United States'' refers to the location of a student, and that a student is considered to have been located in the United States if the student resided in the United States for at least a portion of the time the student attended the institution during the educational institution's preceding taxable year.

One commenter sought clarification on this definition, recommending that each institution be able to use any reasonable approach to consider which students are located in the United States, as long as it is consistently applied. The final regulations make explicit the commenter's suggestion.

iv. Clarifications of ''Assets Used Directly in Carrying Out an Institution's Exempt Purpose''

The final regulations also provide clarification of ''assets used directly in carrying out an institution's exempt purpose.'' The definition of an asset counted for purposes of section 4968 rests on whether the asset is used for an exempt purpose. If an asset is used for both an exempt purpose and for other purposes, and the exempt use represents 95 percent or more of the total use, the property is considered to be used exclusively for an exempt purpose. If the exempt use of such property represents less than 95 percent of the total use, the institution must make a reasonable allocation between exempt and nonexempt uses. Non-exempt assets generally include assets held for the production of income or for investment and property used to manage the institution's endowment.

A commenter recommended expanding the definition of exempt assets to include intangible assets and non-financial assets used in a functionally related business. Such functionally related businesses would be things like a school newspaper that generated ad revenue. The Treasury Department and IRS agreed that in certain circumstances these types of assets may be included in exempt assets.

Another aspect of what is considered as assets held directly for an exempt purpose is a reasonable cash balance to carry out the institution's purpose. The proposed regulations recognized that an amount equal to 1.5 percent of the fair market value of the educational institution's non-charitable use assets (*i.e.,* assets not actually used by an institution in carrying out its exempt purpose), determined without regard to the reduction for the reasonable cash balance, is deemed to be a ''reasonable cash balance'' that is excluded from the educational institution's asset base. These final regulations provide that a reasonable cash balance may be determined by any reasonable method and provide one example that would be deemed to be reasonable. The final regulations therefore increase the flexibility of educational institutions in establishing an appropriate reasonable cash balance.

Commenters also requested clarification of the treatment of assets of organizations related to the educational institution. The final regulations provide that an asset of a related organization that is treated as an asset of the educational institution (in accordance with section 4968(d) and § 53.4968–3(c)) and is used directly in carrying out the educational institution's exempt purpose is considered used directly by the institution in carrying out its exempt purpose. These final regulations further provide that an asset of a related organization that is treated as an asset of the educational institution is considered to be used directly in carrying out the educational institution's exempt purpose as long as (1) the related organization is described in section 501(c)(3) and (2) the asset is being used directly in carrying out the related organization's exempt purpose. Further discussion of ''related'' organizations is below.

B. Differences in Definition of ''Net Investment Income'' for Educational Institutions Versus Private Foundations

Section 4968(a) imposes a 1.4 percent excise tax on the net investment income of an applicable educational institution and on certain amounts of net investment income of certain related organizations. Section 4968(c) provides that net investment income is determined under rules similar to the rules of section 4940(c). Section 4940(c) defines net investment income for an excise tax on private foundations' net investment income.

Several commenters requested that the Treasury Department and IRS further tailor these rules to take into account differences between a private foundation subject to section 4940 and an educational institution subject to section 4968, including differences in funding sources, use of funds, structure, governance, and oversight. The Treasury Department and IRS responded by tailoring the final regulations to define net investment income more specifically for educational institutions.

Following the regulations under section 4940(c), the final 4968 regulations provide that net investment income generally is the amount by which the sum of the gross investment income and the capital gain net income exceeds the allowable deductions. Commenters sought clarification and modification of what is included as ''gross investment income'' and ''capital gain net income.''

i. Gross Investment Income

Commenters recommended clarifications and modification to what is included in gross investment income for purposes of section 4968. The final regulations specify that, consistent with section 4940(c), gross investment income generally means the gross amounts of income from interest, dividends, rents, payments with respect to securities loans, and royalties, but not including any such income to the extent it is included in computing the tax imposed by section 511.

In response to commenters, the final regulations exclude from the definition of gross investment income interest income from a student loan made by an educational institution (or a related organization) to a student of the institution in connection with the student's attendance at the institution. Section 4940(c) specifically includes student loan interest as gross investment income. Commenters noted that loans made by colleges and universities to students are not offered with the intent of earning investment income for the institution.

The final regulations also exclude from the definition of gross investment income rental income from the provision of housing to current students of the educational institution and from housing for faculty and staff if the housing is provided contingent on their roles as faculty or staff of the educational institution. The final regulations exclude from the definition of gross investment income royalty income that is derived from patents, copyrights, and other intellectual property and intangible property to the extent those assets were created by the institution's current students or faculty in their capacities as such. Commenters represented that it would be a significant administrative burden to capture all expenses and costs allocable to such royalty income. The Treasury Department and the IRS agree that applicable educational institutions produce intellectual property as part of the pursuit of knowledge by faculty and students. However, royalties from trademarks on the institution's logo or name, as well as royalties on property donated or sold to the educational institution, are not excluded from gross investment income under this rule.

ii. Capital Gains and Losses

Commenters addressed several aspects of the proposed rules for capital gain net income, including the taxation of capital gain net income on the sale of exempt use property; capital gain net income on the sale of donated property; the step-up rule for assets held in a partnership on December 31, 2017; and whether capital loss carryovers should be allowed.

a. Capital Gain Net Income on Sale of Exempt Use Property

In response to public comments, these final regulations provide that capital gain net income from the sale or exchange of property used by an institution for its exempt purpose is disregarded for the portion of the property that is used for the exempt purpose.

b. Capital Gain Net Income From the Sale of Donated Property

Commenters recommended that any appreciation that occurred prior to an institution's receipt of the donated property be excluded from the calculation of capital gain net income from the sale of donated property. Private foundations subject to section 4940 are generally passive grant-making organizations that have the ability to dispose of appreciated property by making a grant of the property instead of selling the appreciated property and making a grant in cash. Educational institutions, on the other hand, nearly always immediately liquidate the gifts and use the proceeds to fund the institution's activities; they therefore cannot avoid the net investment income from the sale of appreciated property like private foundations. In response, these final regulations provide that any appreciation in the value of donated property that occurred prior to the date of donation to the applicable educational institution is disregarded in calculating gain for purposes of section 4968.

c. Basis for Purposes of Determining a Distributive Share of Gain From the Sale or Other Disposition of an Asset Held in a Partnership

Commenters expressed concern with the proposed section 4968 rules proposing calculation of the basis of assets held in partnerships in which an educational institution owns an interest. Four commenters noted that it would be extremely burdensome for institutions to obtain documentation to establish their share of the basis of a particular partnership asset and that an asset-by-asset determination of gain, therefore, might not be possible.

The Treasury Department and the IRS acknowledge the problem described by commenters. These final regulations provide a method, described in paragraph 6.e. of the Summary of Comments and Explanation of Revisions, which generally enables an applicable educational institution to offset its distributive share of capital gain net income from partnership asset dispositions by using the applicable educational institution's adjusted step-up for such partnership (described in paragraph 6.e of the Summary of Comments and Explanation of Revisions), if any, at the time of such partnership asset disposition.

Specifically, the proposed regulations provided that, if an applicable educational institution held an interest in a partnership on December 31, 2017, and continuously thereafter, and the partnership held an asset on December 31, 2017, and continuously thereafter to the date of its disposition by the partnership, the applicable educational institution's basis in such asset (for purposes of determining the applicable educational institution's share of gain upon sale or other disposition of that asset) is not less than the fair market value of such asset on December 31, 2017, subject to all adjustments provided in the proposed regulations after December 31, 2017, and before the date of disposition.

d. Reduction of Capital Gain Net Income From a Partnership

Commenters stated that it would be very difficult, if not impossible, for institutions to obtain the basis documentation that would have been required under the proposed regulations in order to apply the proposed partnership asset basis step-up rule. As an alternative, two commenters recommended a method that would use the difference between the fair market value and outside basis of an applicable educational institution's partnership interest on December 31, 2017, to approximate the difference between the fair market value and inside basis of, and thus the amount of built-in gain in, the applicable educational institution's share of partnership assets on such date. The commenters stated that the difference between fair market value and tax basis of an applicable educational institution's partnership interest on December 31, 2017, should generally reflect the amount of the applicable educational institution's built-in gain in its share of the partnership's assets on such date, and that, because educational institutions should know the fair market values and tax bases of their partnership interests on December 31, 2017, they should be able to calculate the built-in gain in their partnership interests as of December 31, 2017.

Specifically, the commenters recommended that an applicable educational institution should be

allowed to offset the distributive share of partnership capital gain net income after December 31, 2017, allocated by a partnership by the amount of the built-in gain the applicable educational institution had in its partnership interest, determined as of December 31, 2017. Under this approach, an applicable educational institution would determine its built-in gain in a partnership interest as of December 31, 2017, and then not report any capital gain allocated from that partnership after December 31, 2017, as being subject to section 4968 until the cumulative amount of such excluded gain exceeds the amount of built-in gain in the interest. The commenters recommended that this rule be applied on a partnership-by-partnership basis and be available to reduce the amount of an applicable educational institution's capital gain net income on a first-recognized basis.

These final regulations adopt an approach that is similar to the approach recommended by the commenters. These final regulations provide that, for each partnership interest an applicable educational institution held on December 31, 2017, the applicable educational institution may determine an unadjusted step-up amount that is equal to the excess, if any, of the fair market value of such partnership interest on December 31, 2017, over the adjusted basis of such partnership interest on December 31, 2017. For purposes of computing net investment income for taxable years beginning after December 31, 2017, an applicable educational institution will reduce its distributive share of capital gain net income from such partnership by the least of: (A) The applicable educational institution's share of applicable capital gain from such partnership (that is, both short-term and long-term capital gain for the first taxable year after December 31, 2017, but only long-term capital gain for subsequent years because short-term capital gains could not have been included in the amount of outside built-in gain as of December 31, 2017); (B) one-third of the applicable educational institution's unadjusted step-up for such partnership; or (C) the applicable educational institution's adjusted step-up for such partnership (which, in general, is its unadjusted step-up reduced by any capital gain that previously was excluded pursuant to either this rule or the partnership interest sale rule described in paragraph 6.d.iii. of the Summary of Comments and Explanation of Revisions).

e. Capital Loss Carryovers

A commenter represented that private foundations and educational institutions differ in their flexibility in regards to the treatment of sales of investments and operating budgets. Specifically, a private grant-making foundation, to the extent it has satisfied its minimum distribution requirements, can easily curtail its spending (and the realization of capital gains while converting investment assets to cash) by issuing fewer or smaller grant awards to manage its section 4940 tax liability. The commenter contrasted such a foundation with an educational institution that typically has a large operating budget with significant nondiscretionary expenses related to employees and infrastructure and must find ways to meet its ongoing cash needs, which may involve selling investments at particular times that may not be advantageous from an investment or tax perspective.

The Treasury Department and the IRS acknowledge the differences between private foundations subject to section 4940(c) and educational institutions in their missions, functions, and operating expenses. Based on these differences, these final regulations allow the use of capital loss carryovers consistent with the approach recommended by the commenter.

C. Related Organizations for Purposes of Net Investment Income and Assets

Section 4968(d)(1) provides that the assets and net investment income of any related organization with respect to an educational institution are to be treated as assets and net investment income, respectively, of the educational institution. The statute provides two exceptions: (1) No such amount is to be taken into account with respect to more than one educational institution, and (2) unless the related organization is controlled by the institution or is a supporting organization (as described in section 509(a)(3)) with respect to the institution for the taxable year, assets and net investment income that are not intended or available for the use or benefit of the institution are not to be taken into account by that educational institution.

Under section 4968(d)(2), the term ''related organization'' means, with respect to an educational institution, any organization that (1) Controls the educational institution; (2) is controlled by the educational institution; (3) is controlled by one or more persons that also control the educational institution; (4) is a supported organization (as defined in section 509(f)(3)) with respect to the educational institution during the taxable year; or (5) is a supporting organization (as described in section 509(a)(3)) with respect to the educational institution during the taxable year.

The first three categories of related organizations require control of an organization, but the statute does not define the term ''control.'' Furthermore, whether the educational institution is the controlling or controlled entity matters because, if the related organization controls the educational institution, or is controlled by one or more persons that also control the educational institution, then assets and net investment income of the related organization that are not intended or available for the use or benefit of the educational institution are not taken into account. In contrast, if a related organization is controlled by an educational institution, then all the assets and net investment income of the related organization are taken into account by the educational institution.

Specifically, the proposed regulations defined control as: (1) In the case of a corporation, ownership (by vote or value) of more than 50 percent of the stock of the corporation; (2) in the case of a partnership, ownership of more than 50 percent of the profits interests or capital interests in such partnership; (3) in the case of a trust with beneficial interests, ownership of more than 50 percent of the beneficial interests in the trust; or (4) in the case of a nonprofit organization or other organization without owners or persons having beneficial interests (nonstock organization), including a governmental entity, (a) more than 50 percent of the directors or trustees of the educational institution or nonstock organization are either representatives of, or are directly or indirectly controlled by, the other entity or (b) more than 50 percent of the directors or trustees of the nonstock organization are either representatives of, or are directly or indirectly controlled by, one or more persons that control the educational institution.

The commenters sought clarifications and modifications of how related organizations are treated based around three major issues: (1) Control, (2) potential double taxation of certain types of related organizations, and (3) treatment of the assets of certain related organizations.

a. Control

Commenters stated generally that use of the proposed definition of ''control'' would result in educational institutions' being required to take into account assets and net investment income that

the educational institutions do not actually control and that they will never receive because the assets and income actually belong to unrelated third parties. The commenters also stated that such a rule is inconsistent with Congressional intent, and would not address Congressional concerns that educational institutions might attempt to avoid the section 4968 excise tax by holding assets in structures that, as compared to direct ownership, represent a difference in form but not substance.

The final regulations provide separate rules for the different relationships that may exist and separately define control for organizations that (1) control an educational institution, (2) are controlled by an educational institution, and (3) are controlled by one or more persons that also control an educational institution.

b. Double Taxation of Certain Related Organizations

Even if an educational institution controls certain types of related organizations, subjecting the assets or net investment income of these organizations to the section 4968 tax might result in double or triple taxation. In applying the related organization provisions of section 4968(d), commenters recommended disregarding taxable corporations and trusts, partnerships and pass-through entities, and split-interest trusts.

Several types of entities that might be related organizations are taxed and then provide after-tax dollars to the educational institution. Counting these distributions toward the section 4968 tax might result in double taxation. The Treasury Department and the IRS do not consider it consistent with Congressional intent to tax the income again under section 4968. These final regulations exclude from the definition of ''related organization'' a taxable corporation and certain taxable trusts, in each case whether foreign or domestic.

To prevent double taxation of a partnership's net investment income and overcounting of its assets, these final regulations exclude from the definition of ''related organization'' a partnership, S corporation, or other pass-through entity a portion of whose income flows through to the educational institution.

c. Treatment of Assets of Certain Related Organizations

i. Trusts

With respect to trusts, commenters raised issues concerning ''control'' and whether charitable remainder trusts should be counted as an asset of the educational institution, even if the educational institution is deemed to control the trust. Several commenters stated that the proposed rule for control of trusts, which provided that control of a trust with beneficial interests means ownership of more than 50 percent of the beneficial interests in the trust, would not lead an educational institution to control the trust within the generally accepted meaning of that term. Commenters stated that the trustee of a trust does not control a trust in a way that is relevant for purposes of section 4968, because the trustee is required to administer the trust in accordance with, and to the extent of the trustee's duties and powers as determined by, the terms of the trust and applicable law.

The Treasury Department and the IRS acknowledge that the concept of control does not mesh well with trusts. In attempting to construct a replacement for the control rule for trusts to be used in the context of section 4968, the Treasury Department and IRS identified the circumstances under which a trust should be deemed to have a relationship with the educational institution that is sufficiently similar to that generally intended by the concept of control.

These final regulations provide that a trust is a related organization, and an educational institution is deemed to control that trust, only: (1) If the educational institution is substantially the sole permissible trust beneficiary or appointee of both income and principal, whether or not the timing of distributions is subject to the trustee's discretion; (2) if the trust is a pooled income fund described in sections 642(c)(3) and 642(c)(5); (3) to the extent that the assets of the trust were contributed to the trust by the educational institution (or by a person controlled by the educational institution, as determined under these regulations); or (4) to the extent that the educational institution (or a person controlled by the educational institution, as determined under these regulations) has the right to demand (or can otherwise cause) a distribution of principal from the trust to the educational institution (or a person controlled by the educational institution). The final regulations clarify how to determine whether a person is controlled by an educational institution.

With respect to split interest and charitable remainder trusts, commenters noted that an educational institution generally is not able to receive any benefit from, and cannot use assets in the trust, until the termination of the interests of the income beneficiaries (which may be decades into the future). This is true even if the value of the educational institution's interest in the trust exceeds 50 percent of the present value of all beneficial interests in the trust. Further, commenters noted it would be difficult for an educational institution to obtain information about the income of a split-interest trust, as there is currently no federal requirement for a split-interest trust to report this information to its remainder beneficiary(ies).

With regard to charitable remainder trusts and split-interest trusts, even those that are administered by an educational institution, the Treasury Department and the IRS concluded that the assets and net investment income of such trusts should be included in the educational institution's assets and net investment income only as they are received by the educational institution. Any income from such trusts already is included in the educational institution's net investment income as it is received. A remainder interest held by an educational institution is deferred for a sometimes lengthy and sometimes indeterminate amount of time and is subject to market fluctuations that will affect (or could eliminate) the amount of any eventual distribution of principal to the educational institution.

In addition, because there are only limited circumstances in which the educational institution would have sufficient control over a trust to justify treating the trust as a related organization, the final regulations also exclude all other taxable trusts from the definition of a related organization except to the extent the educational institution is deemed to control the trust.

ii. Employee Benefit Funds

Commenters stated that various retirement and benefit plans should be excluded from the definition of related organization for purposes of section 4968(d), stating that the beneficiaries of these plans are employees of the educational institutions and it was not the intent of Congress to tax the investment income of these entities. Accordingly, these final regulations provide that an employee benefit fund is not a related organization for purposes of section 4968(d).

iii. Nonstock Organizations

One commenter objected to the proposed rule for control of nonstock organizations, stating that the portion of the rule that is based on directors or trustees of the educational institution being representatives of the other organization often incorrectly determines which entity controls the

other, as the presence of common directors or trustees alone is not determinative of control.

The Treasury Department and the IRS agree that a modified version of control for nonstock organizations that is based on the power of the educational institution (or one or more of its managers, directors, officers, trustees, or employees, acting only in that capacity) to cause (or prevent) a certain act would more appropriately reflect control by the educational institution over the nonstock organization.

Thus, these final regulations provide that an educational institution controls a nonstock organization if the educational institution (or one or more of its managers, directors, officers, trustees, or employees acting only in that capacity) can (1) appoint or elect (which must include the power to remove and replace) more than 50 percent of the members of the nonstock organization's governing body (such as directors, officers, or trustees), or otherwise can appoint or elect that majority with reasonable frequency; (2) require the nonstock organization to make an expenditure (or prevent the organization from making an expenditure); or (3) require the nonstock organization to perform any act that significantly affects its operations (or prevent it from performing such an act). Such control includes control by aggregating votes or positions of authority (including by veto power) but applies regardless of the method by which the control is exercised or exercisable.

Paperwork Reduction Act

The collections of information contained in the final regulations will be submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of (1995) (44 U.S.C. 3507(d)). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

A. Collections of Information Imposed by the Regulations

The collection of information in these final regulations is in §§ 53.4968–1(b)(2), (3), (4), and (5); 53.4968–2(d)(2)(ii) and (iii); and 53.4968–3(c) and (d)(2). The collection of information for § 53.4968–1 is required to determine whether an educational institution is an applicable educational institution, as defined in section 4968(b). In particular, this collection of information includes definitions to enable educational institutions to determine what individuals constitute students of the educational institution, which students are tuition-paying, which students are located in the United States, and which assets of the educational institution are used directly in carrying out an institution's exempt purpose. The collection of information for § 53.4968–2 is required to calculate net investment income as defined in section 4968(c). In particular, this collection of information includes determining an applicable educational institution's share of gain upon the sale or other disposition of a partnership asset. The collection of information for § 53.4968–3 is required to determine the assets and net investment income of related organizations that are treated as assets and net investment income of applicable educational institutions, as defined in section 4968(d). In particular, this collection of information includes whether an organization is a supporting organization (as described in section 509(a)(3) of the Code) with respect to such institution (including whether the supporting organization is a Type I, Type II, or Type III), whether the related organization supports more than one educational institution, and determining the assets and net investment income of a related organization that are attributed to the educational institution.

The excise tax for section 4968 is reported by timely filing a Form 990, Return of Organization Exempt From Income Tax, and Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code, Schedule O, Excise Tax on Net Investment Income of Private Colleges and Universities. In 2016, the IRS released and invited comments on drafts of an earlier version of Form 4720 in order to give members of the public the opportunity to benefit from certain specific amendments made to the Code. The IRS received no comments on Form 4720 during the comment period. Consequently, the IRS made Form 4720 available on December 9, 2016, for use by the public. The IRS is contemplating making additional changes to Form 4720 to accommodate new provisions provided for in the final regulations, such as for the allowance of capital loss carryovers. The IRS intends that the burden of the collections of information will be reflected in the burden associated with Form 4720, OMB approval number 1545–0047.

B. Burden Estimates

The burden associated with Form 4720 is included in the aggregated burden estimates for OMB control number 1545–0047. The burden estimates in 1545–0047 relate to all filers associated with the Forms 990 and 4720, and will in the future include, but not isolate, the estimated burden of the information collections associated with these final regulations.

The expected burden estimates for this final rule are based on the information that is available to the IRS, and have been updated from the proposed regulations to include new provisions provided in the final regulations that reduce the record keeping burden for the private colleges and universities that are subject to the tax under section 4968. The final regulations clarify that an educational institution may use any reasonable method for determining whether a student is located in the United States as long as that method is consistently applied, and that the educational institution may use any reasonable method to determine the reasonable cash balance necessary to cover current operating expenses, providing an example of a reasonable method. The final regulations also exclude several items of income from the definition of gross investment income, such as interest income from certain student loans, rental income from the provision of certain housing to students, faculty, and staff, and certain royalty income. The final regulations further disregard from the calculation of capital gains any gain from the sale or exchange of the portion of property that is used by an applicable educational institution for its exempt purpose and any appreciation in the value of donated property that occurred prior to the date of its donation. The final regulations provide an easier method for applicable educational institutions to substantiate interests and assets in partnership holdings. Finally, the final regulations exclude several types of organizations from the definition of ''related'' and adjust the definition of control for purposes of determining when an organization is related for purposes of section 4968.

The expected burden for private colleges and universities that are subject to this rule as described in section 4968(b) is listed below:

Estimated number of respondents: 40.

Estimated average annual burden hours per response: 10 hours, 7 minutes.

Estimated total annual burden: $39,026 ($2017).

Estimated frequency of collection: Annual.

Accordingly, the new provisions in the final regulations reduced the estimated average annual burden hours per response by 22 hours, 20 min, and the estimated total annual burden by $84,310 from the burdens estimated in the proposed regulations, which provided for an estimated 40 number of participants, 32 hours and 27 minutes average burden hours per response, and $123,336 (2017) total annual burden.

In the proposed regulations, the Treasury Department and the IRS requested comments on all aspects of information collection burdens related to the regulations, including estimates for how much time it would take to comply with the paperwork burdens described above for each relevant form and ways for the IRS to minimize the paperwork burden. The Treasury Department and the IRS did not receive any comments on these issues. Proposed revisions (if any) to the forms that reflect the information collections contained in these final regulations will be made available for public comment at *https://apps.irs.gov/app/picklist/list/draftTaxForms.html* and will not be finalized until after these forms have been approved by OMB under the PRA. Comments on these forms can be submitted at *https://www.irs.gov/forms-pubs/comment-on-tax-forms-and-publications.*

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. In the proposed regulations, the Treasury Department and the IRS invited comments on the impact this rule may have on small entities. The Treasury Department and the IRS did not receive any comments on this issue. As discussed elsewhere in this preamble, this rule merely provides definitions regarding the applicability of the section 4968 excise tax to certain private colleges and universities and rules for calculating any tax that might be imposed. The requirements in this regulation fall only on educational institutions whose non-exempt assets have an aggregate fair market value of at least $500,000 per student of the institution and that have at least 500 tuition-paying students (for a minimum investment asset value of $250,000,000).

The threshold established by the Small Business Administration for an educational institution to be considered a small entity is income from all sources exceeding $27.5 million. This final rule will not affect a substantial number of small entities. Only about 1.7 percent of four-year colleges and universities (less than 40 out of over 2,400 institutions in the National Center for Education Statistics' Integrated Post-Secondary Education System Data for 2016) are expected to be affected by the tax. This is because at a modest 4 percent rate of return, the minimum endowment alone would generate income of $10 million. To generate another $17.5 million in income would require receipts of $35,000 per student if the institution had only the minimum number of students, compared to average tuition and fees at a four-year private college or university, which was $39,529 in 2015–16. Accordingly, the Secretary certifies that this rule will not affect a substantial number of small entities.

Pursuant to section 7805(f), the notice of proposed rulemaking was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business (84 FR 31795, July 3, 2019). No comments on the notice were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

Congressional Review Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the Congressional Review Act (5 U.S.C. 801, *et seq.*).

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The final regulations do not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The final regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Drafting Information

The principal authors of these regulations are Melinda Williams and Amber L. MacKenzie, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Tax). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 53 is amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 53 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805.

* * * * *

■ **Par. 2.** Sections 53.4968–1 through 53.4968–4 are added to subpart K to read as follows:

Sec.
53.4968–1 Excise tax based on investment income of certain private colleges and universities.
53.4968–2 Net investment income.
53.4968–3 Related organizations.
53.4968–4 Applicability date.

§ 53.4968–1 Excise tax based on investment income of certain private colleges and universities.

(a) *Excise tax on the investment income of certain private colleges and universities.* For taxable years beginning after December 31, 2017, section 4968 of the Internal Revenue Code (Code) imposes a tax equal to 1.4 percent of the net investment income (as defined in

section 4968(c) and § 53.4968–2) of an applicable educational institution (as defined in section 4968(b)(1) and paragraph (b)(1) of this section).

(b) *Definitions.* The definitions in this paragraph (b) apply for purposes of section 4968 and §§ 53.4968–1 through 53.4968–4.

(1) *Applicable educational institution.* The term *applicable educational institution* means any eligible educational institution (as defined in section 25A(f)(2) of the Code and § 1.25A–2(b) of this chapter)—

(i) That had at least 500 tuition-paying students during the preceding taxable year;

(ii) More than 50 percent of whose tuition-paying students are located in the United States;

(iii) That is not described in the first sentence of section 511(a)(2)(B) of the Code (relating to state colleges and universities); and

(iv) The aggregate fair market value of the assets of which at the end of such preceding taxable year (other than those assets that are used directly in carrying out the institution's exempt purpose) is at least $500,000 per student.

(2) *Student.* The term *student* means a person who is enrolled and attending a course for academic credit from the institution and who is being charged tuition at a rate that is commensurate with the tuition rate charged to students enrolled for a degree. The number of students of an educational institution (including for purposes of determining the number of students at a particular location) is based on the daily average number of full-time students (with part-time students taken into account on a full-time student equivalent basis). The standards for determining part-time students, full-time students, full-time equivalents, and daily average are determined by each educational institution. However, the standards may not be lower than the minimum applicable standards established by the Department of Education under the Higher Education Act of 1965 (20 U.S.C. 1088), as amended.

(3) *Tuition-paying*—(i) *In general.* The term *tuition-paying* means the payment of any tuition or fees required for the enrollment or attendance of a student for a course of instruction at an educational institution. Tuition and fees do not include payment for supplies or equipment required during a specific course once a student is enrolled in and attending the course, or payment for room and board or other personal living expenses.

(ii) *Treatment of a comprehensive or bundled fee.* If a student is required to pay a fee (such as a comprehensive fee or a bundled fee) to an educational institution that combines charges for tuition with charges for personal expenses such as room and board, the student is a tuition-paying student.

(iii) *Scholarships, grants, and work study programs.* Whether a student is tuition-paying is determined after taking into account any scholarships and grants provided directly by the educational institution or by the Federal government or any state or local government, and after application of any work study programs operated directly by the institution. Scholarships and grants provided by non-governmental third parties, even if administered by the institution, are considered payments of tuition on behalf of the student. Accordingly, a student will be considered a tuition-paying student if payment of tuition or a fee is required for the enrollment or attendance of the student for courses of instruction after the application of any scholarships offered directly by the institution, any work study program operated directly by the institution, and any grants and scholarships provided by the Federal government or any state or local government.

(4) *Located in the United States.* A student is *located in the United States* if the student resided in the United States for at least a portion of the time the student attended the educational institution during the institution's preceding taxable year. Whether a student resided in the United States in any given year can be determined using any reasonable method, as long as that method is consistently applied.

(5) *Assets used directly in carrying out an institution's exempt purpose*—(i) *In general.* Except as provided in paragraph (b)(5)(iv) of this section, an asset is *used directly in carrying out an educational institution's exempt purpose* only if the asset is actually used directly by the institution in carrying out its exempt purpose. Whether an asset is used directly by the institution to carry out its exempt purpose is determined based on all the facts and circumstances. If property is used for an exempt purpose and for other purposes, and the exempt use represents 95 percent or more of the total use, the property is considered to be used exclusively for an exempt purpose. If the exempt use of such property represents less than 95 percent of the total use, the institution must make a reasonable allocation between such exempt and nonexempt uses.

(ii) *Illustrations.* Examples of assets that are used directly in carrying out an institution's exempt purpose include, but are not limited to, the following—

(A) Administrative assets, such as office equipment and supplies used by the institution directly in the administration of its exempt activities;

(B) Real estate or the portion of any building used by the institution directly in its exempt activities;

(C) Physical property such as paintings or other works of art owned by the institution that are on public display (or held for public display), fixtures and equipment in classrooms, research facilities and related equipment that under the facts and circumstances serve a useful purpose in the conduct of the institution's exempt activities;

(D) The reasonable cash balance, determined using any reasonable method, necessary to cover current operating and administrative expenses and other normal and current disbursements directly connected with the educational institution's exempt activities. For this purpose, a reasonable method would include calculating an amount equal to three months of operating expenses allocable to program services, calculated by dividing annual functional expenses allocable to program services by four. A larger amount may be a reasonable cash balance for this purpose if, under the facts and circumstances, a larger amount is established to be necessary to cover administrative expenses and other normal disbursements directly connected with the institution's exempt activity.

(E) Any property the educational institution leases to other persons at no cost (or at a nominal rent) to the lessee in furtherance of the institution's exempt purposes; and

(F) Patents, copyrights, and other intellectual property and intangible property to the extent that income from those assets is excluded from net investment income by § 53.4968–2(b)(2)(iii).

(iii) *Assets not used directly.* The following assets are examples of assets not used directly in carrying out an institution's exempt purpose—

(A) Assets that are held for the production of income or for investment (for example, stocks, bonds, interest-bearing notes, endowment funds, or leased real estate not described in paragraph (b)(5)(ii)(E) of this section), even if the income from such assets is used to carry out such exempt purpose; and

(B) Property (such as offices and equipment) used for the purpose of managing the institution's endowment funds.

(iv) *Assets of related organizations.* An asset of a related organization that is treated as an asset of an educational

institution by section 4968(d) and § 53.4968–3(c) and that is used directly in carrying out an educational institution's exempt purpose, or that is used directly in carrying out the exempt purpose of a related organization that is described in section 501(c)(3), is considered used directly by the educational institution in carrying out its exempt purpose.

(v) *Valuation of assets not used directly in carrying out an institution's exempt purpose*—(A) *In general.* The values of assets not used directly in carrying out an educational institution's exempt purpose are determined under the rules of section 4942(e) and § 53.4942(a)–2(c)(4), as modified by paragraph (b)(5)(v)(B) of this section.

(B) *Modifications.* In applying the rules of § 53.4942(a)–2(c)(4), an educational institution must—

(*1*) Substitute ''educational institution'' for ''private foundation'' or ''foundation'' every place they appear; and

(*2*) Make such adjustments as are reasonable and necessary to obtain the fair market value of any and all assets as of the last day of the preceding taxable year, rather than as of any other times permitted or required by § 53.4942(a)–2(c)(4).

§ 53.4968–2 Net investment income.

(a) *Net investment income*—(1) *In general.* For taxable years beginning after December 31, 2017, section 4968(a) of the Internal Revenue Code (Code) imposes a 1.4 percent excise tax on the net investment income (as defined in section 4968(c) and this section) of an applicable educational institution and on certain amounts of net investment income of certain related organizations, as described in section 4968(d) and § 53.4968–3. For purposes of this section, net investment income is determined under rules similar to the rules of section 4940(c) of the Code. Thus, net investment income generally is the amount by which the sum of the gross investment income (as defined in paragraph (b) of this section) and the capital gain net income (as defined in paragraph (d) of this section) exceeds the deductions allowed by paragraph (c) of this section. Except to the extent inconsistent with the provisions of this section, net investment income is determined under the principles of subtitle A of the Code.

(2) *Tax-exempt income.* For purposes of this section, net investment income is determined by applying section 103 of the Code (relating to State and local bonds) and section 265 of the Code (relating to expenses and interest relating to tax-exempt income).

(b) *Gross investment income*—(1) *In general.* For purposes of this section and except as provided in paragraph (b)(2) of this section, the term *gross investment income* means the gross amounts of income from interest, dividends, rents, payments with respect to securities loans (as defined in section 512(a)(5) of the Code), and royalties, but not including any such income to the extent included in computing the tax imposed by section 511 of the Code. Such term also includes income from sources similar to those in the preceding sentence. In general, gross investment income includes the items of investment income described in § 1.512(b)–1(a) of this chapter.

(2) *Exceptions.* The following items of income are excluded from the definition of gross investment income:

(i) Interest income from a student loan that was made by the applicable educational institution or a related organization to a student of the applicable educational institution in connection with the student's attendance at the institution;

(ii) Rental income from the provision of housing by the applicable educational institution or a related organization to students of the applicable educational institution and from housing for faculty and staff if the housing is provided contingent on their roles as faculty or staff of the applicable educational institution; and

(iii) Royalty income that is derived from patents, copyrights, and other intellectual property and intangible property to the extent those assets resulted from the work of student(s) or faculty member(s) in their capacities as such with the applicable educational institution. However, neither royalty income from trademarks on the institution's logo or name nor royalty income from intellectual property donated or sold to the institution is excluded from gross investment income under this rule.

(c) *Deductions*—(1) *In general.* For purposes of computing net investment income—

(i) There is allowed as a deduction from gross investment income all the ordinary and necessary expenses paid or incurred for the production or collection of gross investment income or for the management, conservation, or maintenance of property held for the production of such income, determined with the modifications set forth in paragraph (c)(2) of this section. Taxes paid or incurred under section 4968 are not paid or incurred for the production or collection of gross investment income. Allowable expenses include that portion of an applicable educational institution's operating expenses that is paid or incurred for the production or collection of gross investment income. An applicable educational institution's operating expenses include compensation of officers, other salaries and wages of employees, outside professional fees, interest, and rent and taxes on property used in the applicable educational institution's operations. Where an applicable educational institution's officers or employees engage in activities on behalf of the institution for both activities that generate net investment income and for activities that do not generate net investment income, compensation and salaries paid to such officers or employees must be allocated between the activities that generate net investment income and for activities that do not generate net investment income.

(ii) Where only a portion of property produces, or is held for the production of, income subject to the section 4968 excise tax, and the remainder of the property is used for other purposes, the deductions allowed by this paragraph must be apportioned between the taxable and other uses.

(iii) No amount is allowable as a deduction under this section to the extent it is paid or incurred for purposes other than those described in paragraph (c)(1)(i) of this section. Thus, for example, the charitable deductions prescribed under sections 170 and 642(c) of the Code; the net operating loss deduction prescribed under section 172; and the special deductions prescribed under part VIII of subchapter B of chapter 1 of the Code are not allowable.

(2) *Deduction modifications.* The following modifications must be made in determining deductions otherwise allowable under this paragraph (c):

(i) The depreciation deduction is allowed, but only on the basis of the straight-line method provided in section 168(b)(3) and without regard to section 168(b)(1) and (2).

(ii) The depletion deduction is allowed, but such deduction is determined without regard to sections 613 and 613A of the Code, relating to percentage depletion.

(iii) The basis to be used for purposes of the deduction allowed for depreciation or depletion is the basis determined under the rules of part II of subchapter O of chapter 1 of the Code (part II of subchapter O), subject to the modifications found in paragraphs (c)(2)(i) and (ii) of this section (relating to depreciation and depletion), and without regard to § 53.4968–2(d)(2) (relating to the basis for determining

gain for property held on December 31, 2017, and continuously thereafter to the date of disposition), or section 362(c) of the Code (relating to certain special basis rules regarding contributions of capital to corporations). Thus, an applicable educational institution must reduce the cost or other substituted or transferred basis by an amount equal to the straight-line depreciation or cost depletion, without regard to whether the applicable educational institution deducted such depreciation or depletion during the period prior to its first taxable year beginning after December 31, 2017. However, where an applicable educational institution has previously taken depreciation or depletion deductions in excess of the amount which would have been taken had the straight-line or cost method been employed, such excess depreciation or depletion also is taken into account to reduce basis. If the facts necessary to determine the basis of property in the hands of the donor or the last preceding owner by whom it was not acquired by gift are unknown to the applicable educational institution, then the original basis to the applicable educational institution of such property is determined under the rules of § 1.1015–1(a)(3) of this chapter.

(iv) The deduction for expenses paid or incurred in any taxable year for the production of gross investment income earned as an incident to a charitable function can be no greater than the income earned from such function which is includible as gross investment income for such year. For example, where rental income incidentally is realized in a year from historic buildings held open to the public, deductions for amounts paid or incurred in that year for the production of such income is limited to the amount of rental income includible as gross investment income for the year.

(d) *Capital gains and losses*—(1) *In general.* In determining capital gain net income for purposes of the tax imposed by section 4968—

(i) *Interaction with section 511.* No gain or loss from the sale or other disposition of property is taken into account to the extent that such gain or loss is taken into account for purposes of computing the tax imposed by section 511.

(ii) *Sales or other dispositions of exempt use property.* To the extent that property is used by the educational institution for its exempt purposes, capital gain from the sale or exchange of the portion of that property that is used by the educational institution for its exempt purposes is disregarded;

(iii) *Sales of donated property*—(A) *In general.* Any appreciation in the value of donated property that occurred prior to the date of its donation to the institution is disregarded.

(B) *Date of donation.* The date of donation is determined under the timing rules of § 1.170A–1(b) of this chapter.

(C) *Value on the date of donation.* The value of the donated property on the date of donation is determined under the valuation rules of § 1.170A–1(c) of this chapter; and

(iv) *Capital losses.* Net losses from sales or other dispositions of property by one related organization (or by the applicable educational institution) reduce (but not below zero) net gains from such sales or other dispositions by other related organizations (or by the applicable educational institution). Should overall net losses from sales or other dispositions of property exceed gains from sales or other dispositions of such property during the same taxable year, such excess may not be deducted from gross investment income in any taxable year, nor may such excess be used to reduce gains in prior taxable years. However, capital loss carryovers are allowed and may be deducted from capital gains in a future year.

(2) *Basis*—(i) *For purposes of calculating gain from the sale or other disposition of property other than a partnership interest.* Subject to the modifications of paragraphs (c)(2)(i) and (ii) of this section (referring to the modifications relating to deductions against gross investment income) and without regard to section 362(c), the basis for purposes of determining gain from the sale or other disposition of property (other than a partnership interest) for purposes of determining capital gain net income for purposes of the tax imposed by section 4968 is the greater of—

(A) Fair market value on December 31, 2017, plus or minus all adjustments after December 31, 2017, and before the date of disposition under the rules of part II of subchapter O, provided that the property was held by the applicable educational institution on December 31, 2017, and continuously thereafter to the date of disposition, or

(B) Basis as determined under the rules of part II of subchapter O.

(ii) *For purposes of determining a distributive share of gain from the sale or other disposition of a partnership asset.* For purposes of determining an applicable educational institution's share of gain upon the sale or other disposition of a partnership asset, the applicable educational institution's basis in each such partnership asset generally is determined under the rules of subchapter K of chapter 1 of the Code (subchapter K). However, see paragraph (d)(3) of this section.

(iii) *For purposes of determining gain on the sale or other disposition of a partnership interest.* For purposes of determining an applicable educational institution's gain upon the sale or other disposition of all or a portion of a partnership interest, the applicable educational institution's basis in such partnership interest is generally determined under the rules of subchapter K, subject to the special rules in paragraph (d)(3) of this section.

(iv) *For purposes of calculating loss.* Subject to the modifications of paragraphs (c)(2)(i) and (ii) of this section (referring to the modifications relating to deductions against gross investment income) and without regard to section 362(c), basis as determined in paragraph (d)(2)(i)(B) of this section applies for purposes of determining loss. For purposes of determining loss from the sale or other disposition of a partnership interest, basis is determined under the rules of subchapter K.

(3) *Special rules regarding partnership interests and partnership assets*—(i) *Reduction of distributive share of capital gain net income from a partnership.* For purposes of computing net investment income, an applicable educational institution reduces the amount of its distributive share of capital gain net income from a partnership by the least of—

(A) The applicable educational institution's share of applicable capital gain (as defined in paragraph (d)(3)(iii)(A) of this section) from such partnership;

(B) One-third of the applicable educational institution's unadjusted step-up (as defined in paragraph (d)(3)(iii)(B) of this section) for such partnership; or

(C) The applicable educational institution's adjusted step-up (as defined in paragraph (d)(3)(iii)(C) of this section) for such partnership.

(ii) *Reduction of capital gain net income from a sale or other disposition of all or a portion of a partnership interest.* For purposes of computing net investment income, an applicable educational institution reduces the amount of its capital gain net income upon the sale or other disposition of all or a portion of a partnership interest by an amount that bears the same relation to the applicable educational institution's adjusted step-up (as defined in paragraph (d)(3)(iii)(C) of this section) for such partnership as the fair market value of the transferred portion of the interest bears to the fair market

value of the applicable educational institution's entire interest in such partnership before the sale or other disposition.

(iii) *Definitions.* For purposes of this section—

(A) *Applicable capital gain.* For an applicable educational institution's first taxable year beginning after December 31, 2017, the term *applicable capital gain* means an applicable educational institution's share of both short-term and long-term capital gains and losses subject to section 4968 from a partnership. For subsequent taxable years, applicable capital gain does not include an applicable educational institution's share of short-term capital gains and losses subject to section 4968 from a partnership. For purposes of this paragraph, applicable capital gain is not less than zero.

(B) *Unadjusted step-up.* An applicable educational institution computes an *unadjusted step-up* for each partnership interest it held on December 31, 2017. The unadjusted step-up for a partnership interest equals the excess, if any, of the fair market value of such partnership interest on December 31, 2017, over the adjusted basis of such partnership interest on December 31, 2017.

(C) *Adjusted step-up.* An applicable educational institution computes an *adjusted step-up* for each partnership interest it held on December 31, 2017. The adjusted step-up for a partnership interest equals the unadjusted step-up for such partnership, reduced by the amount of any capital gain net income reduction pursuant to paragraphs (d)(3)(i) and (ii) of this section for such partnership.

(4) *Examples.* The following examples illustrate paragraph (d)(3) of this section. Unless stated otherwise in the examples, partners have no tax items other than those listed in the example. With respect to partnerships, all allocations are in accordance with section 704(b) and the regulations under section 704(b) in part 1 of this chapter (Income Tax Regulations).

(i) *Example 1*—(A) *Facts.* University (U), an applicable educational institution, is a partner in partnership PRS. On December 31, 2017, U's PRS interest had a fair market value of $130 and tax basis of $100. In 2018, U's share of capital gain net income from PRS is $5, which is comprised of $20 of gain from the sale of capital asset X and ($15) of loss from the sale of capital asset Y. Further, such $5 of capital gain net income is applicable capital gain (as defined in paragraph (d)(3)(iii)(A) of this section).

(B) *Analysis.* U has an unadjusted step-up (as defined in paragraph (d)(3)(iii)(B) of this section) for PRS of $30 ($130 fair market value − $100 tax basis on December 31, 2017). Pursuant to paragraph (d)(3)(i) of this section, for purposes of computing its net investment income, U reduces the amount of its capital gain net income from PRS by $5, which is the least of: U's share of applicable capital gain from PRS ($5); or one-third of U's unadjusted step-up for PRS ($10); or U's adjusted step-up for PRS ($30). Thus, U reduces its $5 of capital gain net income allocated from PRS by $5, resulting in U having $0 of capital gain net income in 2018 for purposes of section 4968. As a result, U's adjusted step-up for PRS for subsequent taxable years is reduced to $25 ($30 − $5) pursuant to paragraph (d)(4)(iii)(C) of this section. Pursuant to section 705, the $5 of gain allocated to U increases U's tax basis in its PRS interest to $105.

(ii) *Example 2*—(A) *Facts.* The facts are the same as in paragraph (d)(4)(i)(A) of this section (Example 1). In 2019, U sells its entire interest in PRS for $130, which, immediately prior to the sale, had a tax basis of $105. As a result, U has $25 of capital gain from the sale of its PRS interest.

(B) *Analysis.* Pursuant to paragraph (d)(3)(iii) of this section, for purposes of computing its net investment income, U reduces its capital gain net income resulting from the sale of its entire PRS interest by $25, which is the amount that bears the same relation to U's adjusted step-up for PRS ($25) as the fair market value of the transferred portion of PRS ($130) bears to the fair market value of the U's entire interest in PRS before the sale or other disposition ($130). Thus, U reduces its $25 of capital gain net income from the sale of its PRS interest by $25, resulting in U having $0 of capital gain net income in 2019 for purposes of section 4968.

(iii) *Example 3*—(A) *Facts.* The facts are the same as in paragraph (d)(4)(i)(A) of this section (Example 1). In 2019, U's share of capital gain net income from PRS is $15, which is comprised of $15 of gain from the sale of capital asset Z. Further, such $15 of capital gain net income is applicable capital gain (as defined in paragraph (d)(3)(iii)(A) of this section).

(B) *Analysis.* Pursuant to paragraph (d)(3)(i) of this section, for purposes of computing its net investment income, U reduces the amount of its capital gain net income from PRS by $10, which is the least of: U's share of applicable capital gain from PRS ($15); or one-third of U's unadjusted step-up for PRS ($10); or U's adjusted step-up for PRS ($25, computed as $30 of unadjusted step-up, less $5 of capital gain net income reduced in 2018 pursuant to paragraph (d)(3)(i) of this section). Thus, U reduces its $15 of capital gain net income allocated from PRS by $10, resulting in U having $5 of capital gain net income in 2019 for purposes of section 4968. As a result, U's adjusted step-up for PRS is reduced for subsequent taxable years to $15 ($25 − $10) pursuant to paragraph (d)(3)(iii)(C) of this section. Pursuant to section 705, the $15 of gain allocated to U increases U's tax basis in its PRS interest to $120.

§ 53.4968–3 Related organizations.

(a) *Definition of related organization*—(1) *In general.* For purposes of section 4968(d) of the Internal Revenue Code (Code) and §§ 53.4968–1 through 53.4968–4, except as provided in paragraph (a)(2) of this section, the term *related organization* means, with respect to an educational institution, any organization that—

(i) Controls such institution;

(ii) Is controlled by such institution;

(iii) Is controlled by one or more persons that also control such institution;

(iv) Is a supported organization (as defined in section 509(f)(3) of the Code) with respect to such institution during the taxable year; or

(v) Is a supporting organization (as described in section 509(a)(3)) with respect to such institution during the taxable year.

(2) *Organizations not considered related organizations.* For purposes of section 4968(d) and §§ 53.4968–1 through 53.4968–4, the term *related organization* does not include any organization that is—

(i) A taxable corporation;

(ii) A taxable trust, including a non-grantor charitable lead trust (except to the extent the trust is controlled by the educational institution as described in paragraph (b)(2)(ii) of this section);

(iii) A grantor charitable lead trust;

(iv) A charitable remainder trust;

(v) A partnership, S corporation (as defined in section 1361(a)(1) of the Code), or other pass-through entity that is generally not subject to Federal income tax, the income of which is taxable to its partners or other interest holders; or

(vi) A decedent's estate.

(3) *Employee benefit plans or arrangements.* A trust or similar funding vehicle of an employee benefit plan or arrangement, such as a section 501(a) trust funding a section 401(a) qualified retirement plan, or an annuity contract funding a section 403(b) plan, or a section 419(e) welfare benefit fund

(including a voluntary employees' beneficiary association under section 501(c)(9)) funding a welfare benefit plan, will not be treated as a related organization and its assets will not be treated as the assets of the educational institution or of a related organization. A trust or other funding vehicle of an unfunded employee benefit plan of an educational institution or a related organization, such as a grantor trust described in section 671 *et seq.,* used in connection with a section 457(b) plan or an arrangement subject to section 457(f), will be treated as a related organization for purposes of section 4968(d) and its assets will be treated as the assets of the educational institution or of a related organization, but the assets are not considered ''used directly in carrying out the institution's exempt purpose'' for purposes of section 4968(b)(1)(D). For purposes of determining whether the employee benefit plan of an educational institution is funded or unfunded, the educational institution and all of its related organizations are treated as a single sponsor and payor of the benefits.

(b) *Control*—(1) *Controls such institution.* For purposes of section 4968(d) and §§ 53.4968–1 through 53.4968–4, an organization controls an educational institution if—

(i) The organization owns (by vote or value) more than 50 percent of the voting and non-voting stock or membership interest of the educational institution; or

(ii) The organization (or one or more of its managers, directors, officers, trustees, or employees, acting only in those capacities) can—

(A) Appoint or elect (which must include the power to remove and replace) more than 50 percent of the members of the educational institution's governing body (such as directors, officers, or trustees), or otherwise has the ongoing power to appoint or elect more than 50 percent of such members with reasonable frequency;

(B) Require the educational institution to make an expenditure (or prevent the educational institution from making an expenditure); or

(C) Require the educational institution to perform any act that significantly affects its operations (or prevent it from performing such an act).

(2) *Is controlled by such institution.* For purposes of section 4968(d) and §§ 53.4968–1 through 53.4968–4, an organization is controlled by an educational institution:

(i) *Tax-exempt corporation.* In the case of a corporation recognized as exempt from income tax under section 501(a), if the educational institution owns (by vote or value) more than 50 percent of the voting and nonvoting stock or membership interest of the corporation.

(ii) *Trust*—(A) *In general.* In the case of a trust—

(*1*) If the educational institution is substantially the sole permissible trust beneficiary or appointee of both income and principal, whether or not the timing of the distribution is subject to the trustee's discretion;

(*2*) If the trust is a pooled income fund described in sections 642(c)(3) and 642(c)(5);

(*3*) If, but only to the extent that, the assets of the trust were contributed to the trust by the educational institution (or by a person controlled by the educational institution); or

(*4*) If, but only to the extent that, the educational institution (or person controlled by the educational institution) has the right to demand (or can otherwise cause) a distribution of principal from the trust to the educational institution (or a person controlled by the educational institution).

(B) *Person controlled by the educational organization.* For purposes of this paragraph (b)(2)(ii), a person is controlled by an educational institution if the educational institution has the power to remove and replace such person or otherwise controls the person under one of the tests described in § 53.4968–3(b)(2)(i), (ii), or (iii), with similar principles applying for purposes of determining control of any other form of entity.

(iii) *Nonstock organization.* In the case of a nonstock organization, if the educational institution (or one or more of its managers, directors, officers, trustees, or employees, acting only in those capacities) can—

(A) Appoint or elect (which must include the power to remove and replace) more than 50 percent of the members of the organization's governing body (such as directors, officers, or trustees), or otherwise has an ongoing power to appoint or elect more than 50 percent of such members with reasonable frequency);

(B) Require the organization to make an expenditure (or prevent the organization from making an expenditure); or

(C) Require the organization to perform any act that significantly affects its operations (or prevent it from performing such an act).

(3) *Is controlled by one or more persons that also control such institution.* For purposes of section 4968(d) and this section, an organization (other than one described in paragraph (a)(2) of this section) is controlled by one or more persons that also control the educational institution if more than 50 percent of the members of the governing body of the other organization are directly or indirectly controlled by persons that comprise more than 50 percent of the members of the governing body of the educational institution.

(4) *Constructive ownership.* The principles of section 318(a)(2) (relating to ownership attribution from partnerships, estates, trusts, and corporations) apply for purposes of determining ownership of stock in a corporation, and similar principles apply for purposes of determining ownership of an interest in any other entity.

(5) *Method of control.* Control includes control by aggregating votes or positions of authority (including by veto power), but applies regardless of the method by which the control is exercised or exercisable.

(c) *Organization described in section 509(a)(3) during the taxable year with respect to the educational institution.* A section 509(a)(3) organization is a supporting organization with respect to an educational institution only if the supporting organization meets the organizational, operational, and relationship tests of section 509(a)(3)(B) and § 1.509(a)–4 of this chapter with respect to the educational institution.

(d) *Assets and net investment income of related organizations*—(1) *In general.* A related organization's assets and net investment income are taken into account both in determining whether an institution is an applicable educational institution and in computing the net investment income of an applicable educational institution. For purposes of determining the aggregate fair market value of the assets and net investment income of an educational institution, the assets and net investment income of all related organizations are treated as the assets and net investment income, respectively, of the institution, unless an exception provided in paragraph (d)(2) of this section or the exception provided in § 53.4968–1(b)(5)(iv) (relating to assets used directly in carrying out an exempt purpose) applies. In cases in which an organization is a related organization with respect to an educational institution under more than one definition of this § 53.4968–3, then the rule that attributes the largest amount of assets and net investment income of the related organization to the educational institution must be applied.

(2) *Exceptions.* For purposes of section 4968 and this paragraph (d)(2)—

(i) *No amount is taken into account with respect to more than one educational institution.* In determining the aggregate fair market value of the assets and net investment income of an educational institution, assets and net investment income of a related organization are not taken into account with respect to more than one educational institution. Thus, in any case in which an organization is a related organization with respect to more than one educational institution, the assets and net investment income of the related organization must be allocated between or among the educational institutions as to which the organization is a related organization, subject to paragraph (d)(2)(ii) of this section. The educational institution must make such allocation in a reasonable manner, taking into account all facts and circumstances, that is consistent across all related organizations.

(ii) *Assets and net investment income that are not intended or available for the use or benefit of the educational institution*—(A) *In general.* Unless a related organization is controlled by the educational institution or is a supporting organization described in section 509(a)(3) with respect to such institution for the taxable year, assets and net investment income of a related organization that are not intended or available for the use or benefit of the educational institution are not taken into account by that educational institution.

(B) *Determining whether assets and net investment income of a related organization are intended or available for the use or benefit of an educational institution.* If a related organization controls the educational institution, is controlled by one or more persons that also control such institution (but is not described in section 509(a)(3) with respect to the educational institution for the taxable year), or is a supported organization (as defined in section 509(f)(3)) during the taxable year with respect to the educational institution, then the related organization's assets and net investment income are taken into account as assets and net investment income of the educational institution only to the extent the assets and net investment income are intended or available for the use or benefit of that educational institution. Assets and net investment income of a related organization are intended or available for the use or benefit of an educational institution if such assets and net investment income are specifically earmarked or restricted for the benefit of, or otherwise are fairly attributable to, the educational institution. For example, assets are fairly attributable to the educational institution if they have been affirmatively designated or appropriated for the educational institution or made available for the educational institution to draw upon at will. Conversely, assets and net investment income of a related organization are not intended or available for the use or benefit of an educational institution if such assets and net investment income are specifically earmarked or restricted for another entity or for unrelated purposes or otherwise are not fairly attributable to the educational institution. The assets and net investment income of a related organization must be allocated between those intended or available for the use or benefit of an educational institution and those not intended or not available for the use or benefit of that same educational institution. The educational institution must make such allocation in a reasonable manner, taking into account all facts and circumstances, that is consistent across all related organizations.

(C) *Related organizations that are controlled by the educational institution or that are supporting organizations (as described in section 509(a)(3)) with respect to the educational institution during the taxable year*—(*1*) *In general.* If a related organization is controlled, as defined in paragraph (b)(2) of this section, by an educational institution, or is a supporting organization with respect to the educational institution during the taxable year, as defined in paragraph (c) of this section, the assets and net investment income of the related organization are taken into account as assets and net investment income of the educational institution regardless of whether those assets and net investment income are earmarked or restricted for the benefit of, or otherwise are fairly attributable to, the educational institution and even if they are specifically earmarked or restricted for another entity or for unrelated purposes or otherwise are not fairly attributable to the educational institution, subject to paragraph (d)(2)(ii)(C)(*2*) of this section. However, see §§ 53.4968–1(b)(2)(ii)(A)(*3*) and (*4*) regarding trusts that are controlled related organizations only to the extent assets of the trust were contributed to the trust by the educational institution (or by a person controlled by the educational institution), or only to the extent the educational institution (or person controlled by the educational institution) has the right to demand (or can otherwise cause) a distribution of principal from the trust to the educational institution (or a person controlled by the educational institution). *See also* § 53.4968–1(b)(5)(iv) for rules relating to when assets of a related organization are deemed to be used directly in carrying out the institution's exempt purpose.

(*2*) *Special rule for Type III supporting organizations with respect to an educational institution as of December 31, 2017.* An educational institution with a related organization that was a Type III supporting organization with respect to the educational institution on December 31, 2017, takes into account only the assets and net investment income of such Type III supporting organization that are intended or available for the use or benefit of, or otherwise are fairly attributable to, the educational institution, as described in paragraph (d)(2)(ii)(B) of this section. An educational institution may determine whether the assets and net investment income of such a Type III supporting organization are intended or available for the use or benefit of, or otherwise are fairly attributable to, the educational institution using any reasonable method. A method that attributes to an educational institution assets and net investment income of a supporting organization that specifically are earmarked for the educational institution, are restricted for the benefit of the educational institution, or otherwise are fairly attributable to the educational institution (such as those that have been affirmatively designated or appropriated for the educational institution or made available for the educational institution to draw upon at will) will be deemed to be reasonable.

(3) *Determining assets of related organizations.* To determine which assets of a related organization are included by an educational institution under section 4968(b)(1)(D) for a particular year, an educational institution determines which organizations are related organizations, as defined in section 4968(d)(2) and § 53.4968–3, as of the end of the educational institution's preceding taxable year, and values the relevant assets on that date.

(4) *Determining net investment income of related organizations.* To determine the amount of net investment income of a related organization that is included by the applicable educational institution in calculating the tax imposed by section 4968(a) for a particular taxable year, an applicable educational institution determines which organizations are related organizations, as defined in section 4968(d)(2) and § 53.4968–3, as of the

end of that taxable year of the applicable educational institution and includes the net investment income from each related organization's taxable year that ends with or within that same taxable year of the applicable educational institution. If an organization became a related organization after the beginning of the applicable educational institution's taxable year, then the applicable educational institution includes the organization's net investment income for the portion of the year that the organization was a related organization, using any reasonable method.

§ 53.4968–4 Applicability date.

The rules of §§ 53.4968–1 through 53.4968–3 apply to taxable years of an educational institution beginning after October 15, 2020.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: September 4, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

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Part V

Federal Communications Commission

47 CFR Part 1

Schedule of Application Fees; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 20–270; FCC 20–116; FRS 17098]

Schedule of Application Fees

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on new application fee rates.

DATES: Comments due on or before November 16, 2020; and reply comments due on or before November 30, 2020.

ADDRESSES: You may submit comments, identified by MD Docket No. 20–270, by any of the following methods:

• *Federal Communications Commission's Website: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.

• *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking,* FCC 20–116, MD Docket No. 20–270, adopted on August 12, 2020 and released on August 26, 2020. The full text of this document is available for public inspection at *https://docs.fcc.gov/public/attachments/FCC-20-116A1.pdf.* The full text of this document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*) and in alternative formats (computer diskette, large print, audio record, and braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

I. Procedural Matters

1. *Ex Parte Information.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

2. *Initial Regulatory Flexibility Analysis.* An initial regulatory flexibility analysis (IRFA) is contained in this summary. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the *Notice of Proposed Rulemaking.* The Commission will send a copy of the *Notice of Proposed Rulemaking,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

3. *Initial Paperwork Reduction Act of 1995 Analysis.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

A. A Streamlined Application Fee Schedule

4. We propose to streamline our schedule of application fees, consolidating the eight separate categories of fees currently in our rules down to five functional categories: Wireless Licensing Fees, Media Licensing Fees, Equipment Approval Fees, Domestic Service Fees, and International Service Fees. In conjunction with this consolidation, we propose to consolidate our approach to listing application fees, reducing the total number of application fees from 450 to 167, while still including new fees for services that were not listed previously in section 8 of the Act. We seek comment on this approach.

5. We propose specific application fees based on estimates of the direct labor costs to process a typical application, including all labor costs for identifiable tasks up through the first level of supervision. These estimates are based on a large number of applications processed by Commission staff and found to be typical in terms of the amount of time spent on processing. For the cost-based data, we estimate the direct labor costs to process a particular application by multiplying (1) an estimate of the number of hours needed for each identifiable task, up to first-level supervisory tasks required to process the application; by (2) an estimate of the labor cost per hour for the employee that performs the task; by (3) an estimate of the probability that the task needs to be performed; and (4) summing the products of this multiplication for each task. We estimate labor cost per hour for the various general schedule pay grades of the employees that process applications based on the 2020 federal government pay table for Washington DC, at the step 5 level, as we currently do under our Freedom Of Information Act rules; we estimate overhead costs at 20% of the salary level also per that rule, and we estimate each employee works 2,087 hours in one year. We also round each fee to the nearest $5 increment, as required by section 8, as amended. We seek comment on this approach. More broadly, we seek comment on the changes to application fees and whether they reasonably reflect current costs of application processing.

1. Wireless Licensing Fees

6. The Wireless Telecommunications Bureau processes applications for

almost all wireless services, from fixed microwave links to amateur radio to mobile broadband services. The Office of Engineering and Technology administers the experimental radio service under Part 5 of the FCC rules.

7. The current application fee schedule consists of separate application fees for 19 different categories of wireless licenses as well as a separate category for experimental radio services, with each category containing multiple fees.

8. We propose to consolidate the fees into four categories so that we charge the same fees for similar types of application processing work: Site-based, personal, geographic-based, and experimental.

9. We seek comment on our approach and on the following schedule for wireless licensing fees. We note that a reference table of wireless radio service codes is contained in Appendix C of the *Notice of Proposed Rulemaking.*

a. Site-Based Licenses

10. Site-based licensed services include land mobile systems (one or more base stations communicating with mobile devices, or mobile-only systems), point-to-point systems (two stations using a spectrum band to form a data communications path), point-to-multipoint systems (one or more base stations that communicate with fixed remote units), as well as radiolocation and radionavigation systems.

11. We propose and seek comment on adopting the following cost-based fees for site-based license applications—and we give as an example the current fees for one type of site-based license, common carrier point-to-point microwave service. All fees are per call sign unless otherwise noted.

Type of site-based licensing application	Current fee for common carrier microwave	Cost-based fee
New license, major modification	$305	$190
Minor modification	n/a	50
Special temporary authority	140	135
Assignment/transfer of control	*110	50
Rule waiver	n/a	380
Renewal	305	50
Construction Extension	110	50
Spectrum leasing	*110	50

(* first call sign); $70 each additional.

12. We estimate that the Commission's resources in processing an application for a new site-based license or a major modification of an existing license consist of program analyst review and engineer technical review. Our estimate is that this process involves $190 in costs. We estimate that the Commission's resources in processing an application for special temporary authority (STA) consist of program analyst review and processing, engineer technical review, and supervisor coordinate with management. Our estimate is that this process involves $135 in costs. We estimate that the Commission's resources in processing an application for assignment/transfer of control consist of the following: Program analyst review and processing. Our estimate is that this process involves $50 in costs. We estimate that the Commission's resources in processing an application for rule waiver consist of the following: Program analyst review and processing, engineer technical review, attorney legal review, and supervisor coordinate with management. Our estimate is that this process involves $380 in costs.

13. The applications for minor modifications, site-based renewals, construction extensions, and spectrum leasing, are all mostly automated and do not have specific staff costs for data input or review. We propose a nominal application fee of $50 due to the routine system maintenance required in ULS and for system monitoring.

14. We propose no application fee for administrative updates. For administrative updates we find that it is in the public interest to encourage licensees to update their information and thus propose no application fee is charged. In addition, we seek comment on whether certain types of minor modifications that are largely automated, such as minor modifications to remove facilities (*e.g.,* frequencies, sites, paths) should have no application fee because they have no identifiable direct costs and are in the public interest. In this regard, we note that cancelling a license in its entirety does not require a fee. Eliminating fees for removal of unused portions of a license could encourage licensees to return unused spectrum so that it would be available for other potential users.

15. In instances where an applicant elects to receive a physical license by mail (including requests for a duplicate authorization), the Commission incurs costs for printing and mailing the duplicate authorization. We propose a fee of $50 to cover the costs of these services.

16. We seek comment on these proposals.

b. Personal Licenses

17. Personal license services include Amateur Radio Service (used for recreational, non-commercial radio services), Ship licenses (used to operate all manner of ships), Aircraft licenses (used to operate all manner of aircraft), Commercial Radio Operator (permits for ship and aircraft station operators, where required), and General Mobile Radio Service (used for short-distance, two-way voice communications using hand-held radios, as well as for short data messaging applications). With personal radio services, an applicant's initial application for authorization seeks shared use of certain spectrum bands, or a permit required for operation of certain radio equipment. In either case, these applications focus only on eligibility and do not require technical review. For these reasons, applications in these services are highly automated and should be subject to the same assessment of fees.

18. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for one type of personal license, General Mobile Radio Service, or GMRS. All fees are per call sign unless otherwise noted.

Type of personal licensing application	Current fee for general mobile radio service	Cost-based fee
New license, modification	$70	$50
Minor modification	n/a	50
Special temporary authority	70	135
Rule waiver	210	50
Renewal	70	50

19. We estimate that the Commission's resources in processing an application for STA consist of program analyst review and processing, engineer technical review, and supervisor coordinate action with management. Our estimate is that this process involves $135 in costs. We estimate that the Commission's resources in processing an application for rule waiver consist of program analyst review and processing. Our estimate is that this process involves $50 in costs.

20. Other applications for personal licenses are mostly automated and do not have individualized staff costs for data input or review. For these automated processes—new/major modifications, renewal, and minor modifications—we propose a nominal application fee of $50 due to automating the processes, routine ULS maintenance, and limited instances where staff input is required. Although there is currently no fee for vanity call signs in the Amateur Radio Service, we find that such applications impose similar costs in aggregate on Commission resources as new applications and therefore propose a $50 fee.

21. For administrative updates modifications, which also are highly automated, we find that it is in the public interest to encourage licensees to update their information without a charge. We thus propose no application fee for administrative updates modifications.

22. In instances where an applicant elects to receive a physical license by mail (including requests for a duplicate license), the Commission incurs costs for printing and mailing the duplicate authorization. We propose a fee of $50 to cover the costs of these services.

23. We seek comment on these proposals.

c. Geographic-Based Licenses

24. Geographic-based licenses authorize an applicant to construct anywhere within a particular geographic area's boundary (subject to certain technical requirements, including interference protection) and generally do not require applicants to submit additional applications for prior Commission approval of specific transmitter locations. With these services, an applicant's initial application is generally accepted as a result of an auction and focuses on the area and spectrum of interest, as well as the applicant's eligibility and qualifications.

25. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for one type of geographic-based license, Paging and Radiotelephone. All fees are per call sign unless otherwise noted.

Type of geographic-based licensing application	Current fee for paging and radiotelephone	Cost-based fee
New License (other than Post-Auction Long Form Application), Major Modification	$450	$305
New License (Pre-Auction Short Form Application) (per application; NOT per call sign)	n/a	575
New License (Post-Auction Long Form Application) (per application; NOT per call sign)	n/a	2,600
Renewal	70	50
Minor Modification	70	200
Construction Notification/Extensions	70	290
Special Temporary Authority	395	335
Assignment/Transfer of Control	450	195
Spectrum Leasing	450	165
Rule Waiver	n/a	380
Designated Entity Licensee Reportable Eligibility Event	n/a	50

26. We estimate that the Commission's resources in processing an application for a new license or a major modification consist of program analyst review and processing, engineer technical review, map review, and attorney supervisor legal review. Our estimate is that this process involves $305 in costs. We estimate that the Commission's resources in processing an application for a renewal consist of analyst review and engineer technical review, exhibit review. Our estimate is that this process involves $50 in costs. We estimate that the Commission's resources in processing an application for a minor modification consist of engineer technical review and map review. Our estimate is that this process involves $200 in costs. We estimate that the Commission's resources in processing an application for construction notification or extension consist of program analyst review and processing, engineer technical review, analysis, validation of coverage, attorney legal review, and supervisor coordination with management. Our estimate is that this process involves $290 in costs. We estimate that the Commission's resources in processing an application for STA consist of a contractor entering data in the ULS, a program analyst preparing public notice accepting the application for filing, program analyst review, supervisor coordination with management, and a program analyst preparing the public notice granting or denying the application. Our estimate is that this process involves $335 in costs.

27. To apply for a license in a spectrum auction, a party must first submit an application to demonstrate its qualifications in order to participate in competitive bidding. Such an

application is commonly referred to as a short-form application. We estimate that the Commission's costs in processing a short-form application to participate in an auction for spectrum licenses consist of attorney review and attorney supervisor legal review. Our estimate is that this process involves $575 in costs. We estimate that the Commission's resources in processing a post-auction long-form application consist of program analyst review; initial attorney review; secondary attorney review; supervisor legal review. Our estimate is that this process involves $2,600 in costs. We note that each applicant would be charged one fee per short-form application and one fee per long-form application, regardless of the number of licenses involved.

28. We estimate that the Commission's resources in processing an application for assignment/transfer of control consist of program analyst review, engineer technical and map review, and supervisor legal review. Our estimate is that this process involves $195 in costs. We estimate that the Commission's costs in processing an application for spectrum leasing consist of program analyst review and processing, engineer technical review and map review, and attorney supervisor legal review. Our estimate is that this process involves $165 in costs.

29. We estimate that the Commission's resources in processing an application for waiver consist of program analyst review and processing, engineer technical review, attorney review, and supervisor coordinate with management. Our estimate is that this process involves $380 in costs. We estimate that the Commission's resources in processing an application for a designated entity reportable eligibility event consist of attorney-supervisor legal review. Our estimate is that this process involves $50 in costs.

30. We seek comment on these proposals. We also seek comment on whether we should consolidate the short-form and long-form application fees so that only winning bidders would be required to pay a combined application fee of $3,175. Would a consolidated fee be consistent with amended section 8? Would such an approach alleviate the possibility that establishing a fee for filing an auction application—regardless of whether licenses are ultimately won—might discourage auction participation, particularly by small businesses, rural telephone companies, and minority-owned businesses. Fewer applications may result in reduced competition in an auction, undermining the Commission's ability to promote the various objectives of spectrum auctions enumerated in section 309(j). Would a consolidated fee mitigate such potential harm?

31. Under such a consolidation there would be no short-form application fee at the time of filing; the fee would be due when the long-form application fee is due. Commenters should discuss whether this process, in which no fees would be assessed for short-form applications when the applicant is not a winning bidder, would be consistent with the requirement in section 8(a) that the fees ''recover the costs of the Commission to process applications.''

d. Experimental Radio Services

32. The experimental radio service permits broad experimentation, including assessing equipment intended to operate in existing Commission services, proof of concept testing and evaluation of new radio technologies, equipment designs, radio wave propagation characteristics, and service concepts related to the use of the radio spectrum.

33. The Commission also offers three additional types of licenses—the program license, the medical testing license, and the compliance testing license—collectively referred to as program licenses. These licenses offer an alternative streamlined process to the conventional experimental license procedures for entities that meet certain eligibility criteria.

34. Regardless of the complexity of any application, each must undergo a similar review process to determine if all required information is provided, to review the experimental description and analyze the technical data to ensure it is consistent with that description and to determine what coordination, if any, is required. The same process must also be followed for program experimental licenses.

35. Additionally, applicants seeking confidential treatment can request that designated information be considered confidential and such request is reviewed and processed by staff.

We propose and seek comment on adopting the following cost-based fee for these applications—and we give as an example the current fee for these services. All fees are per call sign unless otherwise noted.

Experimental licensing application	Current fee	Cost-based fee
a. New Station Authorization	$70	$125
b. Modification of Authorization	70	125
c. Renewal of Station Authorization	70	125
d. Assignment of License or Transfer of Control	70	125
e. Special Temporary Authority	70	125
f. Confidentiality	70	50

36. The Experimental Radio Service application fee is currently $70 for all applications, including new station authorizations, modifications, renewals, transfers of control and assignments, STA requests, and program licenses. Applicants requesting confidential treatment currently pay an additional $70 fee.

37. The Commission's costs in processing all Experimental Radio Service applications, including new station authorizations, modifications, renewals, transfers of control and assignments, STA requests, and program licenses, consist of program analyst review, engineer technical review, and engineer supervisory review. We estimate the cost of this process is $125 for all such applications. We estimate that the Commission's resources in processing quests for confidential treatment consist of program analyst review and processing. We estimate this process involves $50 in costs. We seek comment on these proposed cost-based fees.

e. Amendments to Pending Applications

38. Applicants often seek to amend pending applications in order to correct errors, provide additional information requested by the Commission's staff, expand the scope of the request (*e.g.,* to include new licenses, spectrum, geographic areas), or narrow the scope of the request. Particularly in cases where the scope of the request is

increased, Commission staff may need to completely re-review the application because of new licenses, spectrum, geography, or technical issues that were not in the original application. In that light, we seek comment on whether to charge a fee for amendments to applications that require staff to re-review those applications. We seek comment on whether and in what instances we should charge an additional fee for amendments to pending applications and how to structure that fee.

2. Media Service Fees

39. The Media Bureau processes applications for licensing broadcast television and radio spectrum for commercial and noncommercial users, and those related to the provision of cable service. Certain construction permits issued by the Media Bureau are assigned through competitive bidding. Application fees for services are currently organized according to whether they are for TV service or AM and FM radio service. We propose to retain this organization, and propose new cost-based fees for all services for which the Media Bureau processes applications.

a. Commercial Full Power TV Services and Class A TV Stations

40. Full Power TV stations include all stations in the television broadcast band transmitting a vestigial sideband signal intended to be received by the general public, except for low power TV and TV translator stations. Class A TV stations are low power television stations that meet the programming and operational standards set forth in the Community Broadcasters Protection Act of 1999 and are broadcasting a minimum of 18 hours per week and an average of at least three hours per week of locally produced programming each quarter.

41. The Media Bureau staff tasks involved in processing Full Power TV applications and Class A TV Station applications are the same. A party must apply for a construction permit before building a new TV station. Once its application has been granted, the applicant is issued a construction permit authorizing it to build the station within a specified period, usually three years. After the applicant, or permittee, builds the station, it must file a license application, in which it certifies that it has constructed the station consistent with the technical and other terms specified in its construction permit.

42. Because the processing of Full Power TV applications and Class A TV Station applications are the same, we propose to adopt identical cost-based fees for Full Power TV and Class A TV applications. Below is a table showing the current application fees and the proposed cost-based fee estimates for typical Full Power and Class A television applications.

43. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based fee
Full Power TV, Class A TV, new and major change construction permit (including Post-Auction Long Form Application)	$4,960	$4,260
Full Power TV, minor modification	1,110	1,335
Main Studio Request	1,110	Remove
Full Power TV, Class A TV, new license	355	380
Full Power TV, Class A TV, license renewal	200	330
Full Power TV, Class A TV, license assignment, long form	1,110	1,245
Full Power TV, Class A TV, license assignment, short form	160	405
Full Power TV, Class A TV, transfer of control, long form	1,110	1,245
Full Power TV, Class A TV, transfer of control, short form	160	405
Full Power TV, Class A TV, call sign	110	170
Full Power TV, Class A TV, STA	200	270
Full Power TV, petition for rulemaking	3,065	3,395
Full Power TV, ownership report	70	85

44. We estimate that the Commission's resources in processing applications for new and major change construction permits consist of significant engineering and legal analysis, as the applications tend to be highly complex. We estimate that the Commission's cost of processing applications for permits, encompassing engineer technical review, engineer supervisory review, attorney legal review, attorney pleadings review, and attorney written disposition review is $4,260.

45. Applications for new licenses, long-form license assignments, long-form transfers of control, and Full Power TV minor modifications are complex matters that require significant engineering review and legal analysis. We estimate that the Commission's cost in processing an application for a new license, which consist of engineer application review, engineer supervisory review, attorney pleading review, and attorney written disposition review, is $380. Applications for long-form license assignment and long-form transfers of control often involve petitions or objections after the application is filed. We estimate that the Commission's cost of processing long-form license assignment and transfers of control, including attorney application review, attorney supervisory review, attorney pleading review, and attorney written disposition review is $1,245. Commission review of minor modification construction permit applications for Full Power TV involves engineer application review, engineer supervisory review, attorney pleading review, and attorney written disposition review at an estimated cost of $1,335.

46. Other applications are of lesser complexity and therefore impose fewer costs on the Commission staff, including license renewals, short-form license assignments, short-form transfers of control and STA. The processing of these applications may involve petitions or objections after the application is filed and typically involve attorney application review, attorney supervisory review, attorney pleading review, and attorney written disposition review. We estimate that the Commission's cost of processing an application for license renewal is $330. For short-form license assignments and transfers of control, we estimate that the cost of processing is $405. We estimate that the Commission's cost of processing an STA application is $270.

47. For applications for call signs, which involves some legal analysis, we estimate that the Commission's resources in processing a TV call sign consist of analyst application review at

the cost of $170. For ownership report applications, which involve minimal review by Commission staff, we estimate that the Commission's resources in processing a TV Ownership Report consist of analyst application review and that the cost of this process is $85.

48. A petition for a rulemaking to amend the DTV Table of Allotments for a new community of license has a high level of complexity and involves significant legal analysis and engineering review. We estimate that the Commission's resources in processing a Full Power TV petition for rulemaking consist of engineer application review, engineer supervisory review, attorney legal review, attorney pleading review, and attorney written disposition review. Our estimate is that the cost of this process is $3,395.

49. We seek comment on these proposed cost-based fees. We also seek comment on whether we should consolidate and streamline these proposed fees to ease the burden of administration and simplify compliance.

b. TV Translators and Low Power Television (LPTV) Stations

50. A TV translator is a transmitter device which repeats, or transponds, the signal of the television station to an area not covered by the signal of the originating station. The following table summarizes the current application fees and the proposed cost-based fees. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based fee
TV translator and LPTV, new or major change construction permit (including Post-Auction Long Form Application)	$835	$775
TV translator and LPTV, new license	170	215
TV translator and LPTV, license renewal	70	145
TV translator and LPTV, STA	200	270
TV translator and LPTV, license assignment	160	335
TV translator and LPTV, transfer of control	160	335
TV translator and LPTV, call sign	110	170

51. TV translator and LPTV applications for new and major change construction permits have the highest level of complexity and significant engineering and legal analysis is needed in processing these applications. We estimate that the Commission's resources in processing these applications consist of engineer technical review, engineer supervisory review, attorney pleadings review, and attorney written disposition review. Our estimate is that the cost of this process is $775. We estimate that the Commission's resources in processing a TV Translator and LPTV application for a new license, which involves some legal analysis and significant engineering review, consist of engineer application review, engineer supervisory review, attorney pleading review, and attorney written disposition review. Our estimate is that the cost of this process is $215. License assignments, which require significant legal analysis, may involve petitions or objections, after the application is filed. We estimate that the Commission's resources in processing a TV translator and LPTV license assignment application consist of attorney application review, attorney supervisory review, attorney pleading review, and attorney written disposition review. Our estimate is that the cost of this process is $335.

52. Other applications require only some legal or engineering analysis. License renewals and transfers of control each involve attorney application review, application supervisory review, attorney pleading review, and attorney written disposition review. Some applications for transfer of control subsequently involve petitions or objections after the application is filed. For license renewals, our estimate is that the cost of this process is $145. For transfers of control, our estimate is that the cost of this process is $335.

53. Applications for STA are less complex and involve some engineering and legal analysis. We estimate that the Commission's resources in processing a TV translator and LPTV STA consist of engineer application review, engineer supervisory review, attorney pleading review, and attorney written disposition review. Our estimate is that the cost of this process is $270. Call sign applications have a low level of complexity and involve some legal analysis. We estimate that the Commission's resources in processing a TV translator and LPTV call sign consist of analyst application review. Our estimate is that the cost of this process is $170.

54. We seek comment on these proposed cost-based fees. We also seek comment on whether we should consolidate and streamline these proposed fees to ease the burden of administration and simplify compliance.

c. TV Booster Stations

55. We propose removing TV Booster Stations from the application fee schedule because we no longer have applications for this analog service as a result of the digital television transition. We seek comment on this proposal.

d. Cable Television Services

56. Cable television is a system of delivering television programming to consumers via radio frequency signals transmitted through coaxial or fiber-optic cables. The Media Bureau processes cable system registration, cable television relay service (CARS) applications, special relief and show cause petitions involving technical matters, requests for rulings on technical matters, and requests for waivers of the rules. The below table summarizes the current application fees and the proposed cost-based fees.

57. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services. We also seek comment on whether we should consolidate and streamline these proposed fees to ease the burden of administration and simplify compliance.

Application	Current fee	Cost-based fee
Cable television, CARS license	$305	$450
Cable television, CARS license modification, major	305	345
Cable television, CARS license modification, minor	n/a	50
Cable television, CARS license renewal	305	260
Cable television, CARS, license assignment	305	365
Cable television, CARS, transfer of control	305	465
Cable television, CARS, STA	200	225
Cable television, special relief petition	1,550	1,615
Cable television, CARS license, registration statement	70	105
Cable television, multichannel video programming distributor (MVPD) aeronautical frequency usage notification	70	90

58. We estimate that the Commission's resources in processing an application for a new CARS license consist of analyst application review, engineer application evaluation, and engineer application approval. Our estimate is that the cost of this process is $450. For major license modifications, we estimate that the Commission's resources in processing an application consist of analyst application review, engineer application evaluation, and engineer application approval. Our estimate is that the cost of this process is $345. We estimate that the Commission's processing of an application for a CARS license minor modification consists of analyst application review, analyst application evaluation, and engineer application approval. Our estimate is that the cost of this process is $50.

59. The Commission's processing of an application for a CARS license renewal consists of analyst application review, engineer application evaluation, and engineer application approval. Our estimate is that the cost of this process is $260. The processing of license assignments involves an analyst reviewing the application, an engineer evaluating the application, and an attorney approving the application. Our estimate is that the cost of this process is $365. The Commission's processing an application for a CARS transfer of control application consists of an analyst reviewing the application, an engineer evaluating the application, and an attorney approving the application. Our estimate is that the cost of this process is $465. The Commission processes applications for STA by having an analyst review the application and an engineer evaluate and approve it. Our estimate is that the cost of this process is $225. We estimate that the Commission's resources in processing an application for a special relief petition consist of an analyst reviewing the application, an engineer evaluating it, a supervisory engineer evaluating it, and an attorney approving the application. Our estimate is that the cost of this process is $1,615. We estimate that the Commission's resources in processing an application for a registration statement consist of an analyst reviewing the application, an analyst evaluating the application, and an engineer approving the application. Our estimate is that the cost of this process is $105. We estimate that the Commission's resources in processing an application for an MVPD aeronautical frequency usage notification consist of an analyst reviewing the application, an analyst evaluating the application, and an engineer approving the application. Our estimate is that the cost of this process is $90.

e. Commercial AM and FM Radio Stations

60. The radio broadcast service includes the commercial and noncommercial educational AM and FM radio services, and also the noncommercial educational low power FM radio service. A party must apply for a construction permit before building a new AM or FM radio station. The applicant must demonstrate that it is legally, technically, and financially qualified to construct and operate the station as specified in its application and that the proposed facility will not cause objectionable interference to any other station. Once its application has been granted, the applicant is issued a construction permit, which authorizes the applicant to build the station within a specified period of time, usually three years. After the applicant, now a permittee, builds the station, it must file a license application, in which it certifies that it has constructed the station consistent with the technical and other terms specified in its construction permit. Upon grant of that license application, the FCC issues the new license to operate to the permittee, now a licensee, which authorizes the new licensee to operate for a stated period of time, up to eight years. At the close of this period, the licensee must seek renewal of its license.

61. *Commercial AM Stations.* The following table summarizes the current application fees and the proposed cost-based fees. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based fee
AM radio new construction permit (including Post-Auction Long Form Application)	$4,415	$3,980
AM radio, minor modification	1,110	1,625
AM radio, Main Studio Request	1,110	Remove
AM radio, new license	725	645
AM radio, directional antenna	835	1,260
AM Remote Control	70	Remove
AM radio, license renewal	200	325
AM radio, license assignment, long-form	1,110	1,005
AM radio, license assignment, short-form	160	425
AM radio, transfer of control, long-form	1,110	1,005
AM radio, transfer of control, short-form	160	425
AM radio, call sign	110	170
AM radio, STA	200	290

Application	Current fee	Cost-based fee
AM radio, ownership report	70	85

62. Applications for new construction permits have the highest level of complexity and significant engineering and legal analysis is needed in processing these applications. Many of these applications result in petitions or objections after the application is filed. We estimate that the Commission's resources in processing an application for a new AM construction permit consist of engineering technical review, an attorney reviewing multiple ownership, an attorney reviewing pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process is $3,980. We estimate that the Commission's resources in processing an application for an AM minor change construction permit consist of engineer technical review, engineer supervisory review, an attorney reviewing multiple ownership, an attorney reviewing pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process is $1,625.

63. We estimate that the Commission's resources in processing an application for an AM license consist of a legal analyst reviewing application, an attorney reviewing pleadings, and an attorney reviewing written disposition. Some of the applications involve petitions or objections. Our estimate is that the cost of this process is $645. An AM directional antenna application involves some legal analysis and significant engineering review. Some of the applications result in petitions or objections after the application is filed. We estimate that the Commission's resources in processing an application for an AM directional antenna consist of engineer technical review, engineer supervisory review, an attorney reviewing multiple ownership, an attorney reviewing pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process is $1,260. AM license renewal applications have a medium level of complexity and involve some legal analysis and significant engineering review. Some of the applications result in petitions or objections after the application is filed. We estimate that the Commission's resources in processing an application for renewal consist of a legal analyst reviewing the application, an attorney reviewing pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process is $325.

64. Long-form applications for AM license assignments involve significant legal analysis, with some assignments involving petitions or objections, after the application is filed. We estimate that the Commission's resources in processing a long-form application for an AM license assignment consist of a legal analyst reviewing the application, an attorney reviewing multiple ownership, an attorney reviewing pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process is $1,005. Short-form license applications have a lower level of complexity and require some, though less, legal analysis than long form applications. We estimate that the Commission's resources in processing a short-form application for an AM license assignment consist of a legal analyst reviewing the application, an attorney reviewing the pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process is $425. Long-form applications for AM transfers of control involve significant legal analysis. Some applications for transfer of control involve petitions or objections, after the application is filed. We estimate that the Commission's resources in processing a long-form application for AM transfer of control consist of legal a analyst reviewing the application, an attorney reviewing multiple ownership, an attorney reviewing pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process is $1,005. Short-form applications for transfer of control involve some legal analysis. We estimate that the Commission's resources in processing a short-form application for transfer of control consist of a legal analyst reviewing the application, an attorney reviewing the pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process is $410.

65. AM radio call sign applications involve some legal analysis, and we estimate that the Commission's resources in processing an AM call sign application consist of analyst application review. Our estimate is that the cost of this process is $170. Applications for STA involve some engineering and legal analysis. We estimate that the Commission's resources in processing an AM STA application consist of engineer technical review, attorney pleading review, and supervisory attorney written disposition review. Our estimate is that the cost of this process is $290. AM ownership report applications involve minimal review by Media Bureau staff. We estimate that the Commission's resources in processing an AM ownership report consist of analyst application review. Our estimate is that the cost of this process is $85.

66. We seek comment on these proposed cost-based fees. We also seek comment on whether we should consolidate and streamline these proposed fees to ease the burden of administration and simplify compliance.

67. *Commercial FM Stations.* The following table summarizes the current application fees and the proposed cost-based fees for commercial FM stations. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based fee
FM radio new construction permit (including Post-Auction Long-Form Application)	$3,975	$3,295
FM radio, minor modification	1,110	1,265
FM radio, Main Studio Request	1,110	Remove
FM radio, new license	225	235
FM radio, directional antenna	695	630
FM radio, license renewal	200	325
FM radio, license assignment, long-form	1,110	1,005
FM radio, license assignment, short-form	160	425
FM radio, transfer of control, long-form	1,110	1,005

Application	Current fee	Cost-based fee
FM radio, transfer of control, short-form	160	425
FM radio, call sign	110	170
FM radio, STA	200	210
FM radio, petition for rulemaking	3,065	3,180
FM radio, ownership report	70	85

68. Applications for new construction permits have the highest level of complexity and significant engineering and legal analysis is needed in processing these applications. Many of these applications result in petitions or objections after the application is filed. We estimate that the Commission's resources in processing an application for a new FM construction permit consist of engineering technical review, supervisory engineer review, an attorney reviewing multiple ownership, an attorney reviewing pleadings, and a supervisory attorney reviewing written disposition. Our estimate is that the cost of this process is $3,295. We estimate that the Commission's resources in processing an application for an FM minor modification construction permit consist of engineer review, engineer supervisory review, an attorney reviewing multiple ownership, an attorney reviewing pleadings, and a supervisory attorney reviewing written disposition. Our estimate is that the cost of this process is $1,265.

69. We estimate that the Commission's resources in processing an application for an FM license consist of an analyst reviewing the application, an engineering review, an attorney reviewing pleadings, and a supervisory attorney reviewing written disposition. Some of the applications involve petitions or objections. Our estimate is that the cost of this process is $235. An application for an FM directional antenna involves some legal analysis and significant engineering review. Some of the applications result in petitions or objections after the application is filed. We estimate that the Commission's resources in processing an application for an FM directional antenna consist of engineer review, engineer supervisory review, an attorney reviewing multiple ownership, an attorney reviewing pleadings, and a supervisory attorney reviewing written disposition. Our estimate is that the cost of this process is $630.

70. An application for an FM license involves some legal analysis and significant engineering review. Some of the applications result in petitions or objections after the application is filed. We estimate that the Commission's resources in processing an application for FM license renewal consist of a legal analyst reviewing the application, an attorney reviewing pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process is $325. Long-form applications for FM license assignment involve significant legal analysis. Some of these applications involve petitions or objections, after the application is filed. We estimate that the Commission's resources in processing a long-form application for an FM assignment consist of a legal analyst reviewing the application, an attorney reviewing multiple ownership, an attorney reviewing pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process is $1,005. Short-form applications for FM license assignment involve some legal analysis. We estimate that the Commission's resources in processing a short-form application for an FM license assignment consist of a legal analyst reviewing the application, an attorney reviewing pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process is $425. Long-form applications for FM transfers of control involve significant legal analysis. Some applications for transfer of control involve petitions or objections after the application is filed. We estimate that the Commission's resources in processing a long-form application for FM transfer of control consist of a legal analyst reviewing application, an attorney reviewing multiple ownership, an attorney reviewing pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process is $1,005. Short-form applications for FM transfers involve some legal analysis. We estimate that the Commission's resources in processing a short form application for FM transfer of control consist of a legal analyst reviewing the application, an attorney reviewing pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process is $425.

71. Applications for FM call signs involve some legal analysis. We estimate that the Commission's resources in processing an FM call sign consist of analyst application review. Our estimate is that the cost of this process is $170. Applications for STA involve some engineering and legal analysis. We estimate that the Commission's resources in processing an FM STA application consist of engineer technical review, supervisory engineer review, attorney pleading review, and supervisory attorney written disposition review. Our estimate is that the cost of this process is $210. Applications for FM ownership report involve minimal review by Media Bureau staff. We estimate that the Commission's resources in processing an application for FM ownership report consist of analyst application review. Our estimate is that the cost of this process is $85.

72. A petition for rulemaking to amend the FM Table of Allotments for a new community of license has a high level of complexity and involves significant legal analysis and engineering review. We estimate that the Commission's resources in processing an FM petition for rulemaking consist of an engineering technical review, an attorney reviewing multiple ownership, an attorney reviewing pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process is $3,180.

73. We seek comment on these proposed cost-based fees. We also seek comment on whether we should consolidate and streamline these proposed fees to ease the burden of administration and simplify compliance.

74. *FM Translators and Boosters.* FM translators and FM boosters comprise a low power service on the FM broadcast band (88 to 108 MHz) that complement the primary FM service. Translator stations simultaneously re-broadcast the signal of a primary station on a different frequency. Those translator stations that provide service within the primary station's protected service area are classified as fill-in stations. FM booster stations are essentially fill-in translator stations on the same frequency as the main station, and must be owned by the licensee of the primary FM station.

75. The following table summarizes the current application fees and the proposed cost-based fees. We propose

and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based fee
FM translator new construction permit (including Post-Auction Long-Form Application)	$835	$705
FM translator, minor modification	None	210
FM translator, new license	170	180
FM translator, license renewal	70	175
FM translator, STA	200	170
FM translator, license assignment	160	290
FM translator, transfer of control	160	290
FM booster, new or major change construction permit	835	705
FM booster, new license fee	170	180
FM booster, STA	200	170

76. An application for either a new FM translator or an FM booster construction permit involves legal analysis and significant engineering review. Some applications may involve petitions or objections after the application is filed. We estimate that the Commission's resources in processing either an application for a new FM translator or an FM booster construction permit consist of engineering technical review, an attorney reviewing pleadings, and a supervisory attorney reviewing written disposition. Our estimate is that the cost of this process is $705 for either a new FM translator or an FM booster construction permit.

77. There is no current fee for an application for a minor change FM translator construction permit. Originally, the definition of minor change was so narrow that very few such applications could be submitted, and therefore the engineering analysis required to review them was minimal. The rule has since been revised so that chances for filing a minor change have increased. These FM translator minor change applications involve some legal analysis and significant engineering review. Some applications will involve petitions or objections, after the application is filed. We estimate that the Commission's resources in processing an FM translator minor modification application consist of engineer technical review, supervisory engineer review, attorney pleading review, and supervisory attorney written disposition review. Our estimate is that the cost of this process is $210.

78. Applications for either new FM translator or FM booster licenses involve some engineering analysis. Some applications may involve petitions or objections, after the application is filed. We estimate that the Commission's resources in processing an application for either a new FM translator license or a new FM booster license consist of an analyst reviewing the application, an engineer supervising, an attorney reviewing pleadings, and a supervisory attorney reviewing written disposition. Our estimate is that the cost of this process is $180 for either a new FM translator or a new FM booster license. Applications for renewal of existing FM translator or FM booster licenses have a low level of complexity. We estimate that the Commission's resources in processing either type of application consist of a legal analyst reviewing the application, an attorney supervising, an attorney reviewing pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process for renewal of either an FM translator or an FM booster is $175.

79. Applications for either FM translator or FM booster STA involve some engineering and legal analysis. We estimate that the Commission's resources in processing either type of STA application consist of engineering technical review, attorney pleading review, and supervisory attorney written disposition review. Our estimate is that the cost of this process is $170 for either an FM translator STA or an FM booster STA.

80. Applications for FM translator license assignments involve some legal analysis. Some assignments involve petitions or objections, after the application is filed. We estimate that the Commission's resources in processing an application for FM translator assignment consist of a legal analyst reviewing the application, an attorney supervising, an attorney reviewing pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process is $290. Applications for FM translator transfers of control involve some legal analysis. Some assignments involve petitions or objections, after the application is filed. We estimate that the Commission's resources in processing an application for an FM translator transfer of control consist of a legal analyst reviewing the application, an attorney supervising, an attorney reviewing pleadings, and an attorney reviewing written disposition. Our estimate is that the cost of this process is $290.

81. We seek comment on these proposed cost-based fees. We also seek comment on whether we should consolidate and streamline these proposed fees to ease the burden of administration and simplify compliance.

f. Broadcast Services Auction Short Form Fees

82. A party must submit an application in order to participate in an auction for broadcast services construction permits. We propose to adopt a cost-based application fee for all short-form applications for such auctions. We estimate that the Commission's costs in processing a short-form application to participate in an auction consist primarily of attorney review and attorney supervisor legal review. Our estimate is that this process involves $575 in costs. We seek comment on a cost-based fee of $575 for broadcast services short-form auction applications.

Application	Current fee	Cost-based fee
Broadcast Services Auction Short-Form Application	n/a	$575

83. Each winning bidder in an auction of construction permits for broadcast services must also file a long-form application that is specific to the permit that is won at auction. For example, winners of a Full Power TV Construction Permit auction would then pay the proposed Full Power TV, Class A TV, new and major change construction permit application fee of $4,260. We seek comment on whether we should consolidate the Media Bureau short-form and long-form auction application fees such that only winning bidders would be required to pay a combined application fee of the total of the short form application fee plus the applicable long form application fee. Would a consolidated fee be consistent with amended section 8? Would such an approach alleviate the possibility that establishing a fee for filing an auction application might discourage auction participation, particularly by small or minority-owned businesses? Fewer applications may result in reduced competition in an auction, undermining the Commission's ability to promote the various objectives of spectrum auctions enumerated in section 309(j). Would a consolidated fee mitigate such potential harm?

84. Under such a consolidation there would be no short-form auction application fee due at the time of filing; the fee would be due when the long-form application fee is due. Commenters should discuss whether this process, in which no fees would be assessed for short-form auction applications when the applicant is not a winning bidder, would be consistent with the requirement in section 8(a) that the fees ''recover the costs of the Commission to process applications.''

g. Media Services Foreign Ownership Petitions

85. We propose adding a new category for foreign ownership petitions for declaratory ruling filed pursuant to section 310(b)(4) of the Act. This proposed fee is a separate fee in addition to the fee required for the underlying application, if any.

Application	Current fee	Cost-based fee
Media Services 310(b) petitions for declaratory ruling	n/a	$2,485

86. Currently, there is no fee for a section 310(b)(4) petition for declaratory ruling. Typically, the petition includes complex ownership structures and requires substantial review by staff. We estimate the Commission's resources in processing a section 310(b) petition for declaratory ruling consist of attorney legal review, attorney coordination with other agencies, attorney pleading review, and attorney written disposition review. Our estimate is that the cost of this process is $2,485.

3. Equipment Approval Fees

87. The Office of Engineering and Technology processes applications for the approval of equipment through the equipment authorization program under part 2 of the FCC rules. The equipment authorization program is one of the principal ways the Commission ensures that radiofrequency (RF) devices operate effectively without causing harmful interference and otherwise comply with the Commission's rules.

88. We propose to begin charging a cost-based fee for applications for the assignment of a grantee code and to eliminate the fee associated with the certification of subscription TV systems, as that service is no longer performed by the Commission.

a. Certification and Advance Approval of Subscription TV Systems

89. The equipment certification functions were mostly shifted from the Commission to Telecommunications Certification Bodies (TCB) in 1999 and fully shifted to the TCBs in 2014. Since that time, certification services have been provided by accredited TCBs which are approved by the Commission and the Commission retains oversight of the program through routine guidance to the TCBs and test labs as well as participation in regular teleconferences as well as TCB workshops. Additionally, the Commission no longer performs advance approval of subscription TV systems, and so we propose to remove these categories from the Commission's schedule of application fees. We seek comment on this proposal.

b. Assignment of Grantee Code

Application	Current fee	Cost-based fee
Assignment of Grantee Code	n/a	$50

90. The fee for an assignment of grantee code is assessed automatically after an applicant (or their authorized agent) files for a grantee code on the FCC Equipment Authorization Electronic Filing System (EAS) website. Approximately 4,000 new grantee codes are assigned each year. This process generally does not require intervention by Commission staff, but staff must intervene if an applicant encounters a payment issue or if special action is necessary after a grantee code is assigned, such as a grantee name change or a transfer of control transaction. Such issues arise approximately 500 to700 times per year and staff time to address these issues, when required, is nominal. For this largely automated process, we propose a nominal application fee of $50, which will cover staff costs associated with name change requests, transfers of control issues, and payment problems that arise. We seek comment on this proposal.

4. Domestic Service Fees

91. The Commission processes a wide range of applications not directly related to the issuance of licenses. In this section, we propose to update the application fees for matters overseen by the Wireline Competition Bureau, Enforcement Bureau, and Public Safety and Homeland Security Bureau. Where appropriate, we propose to add, in accordance with the new law, cost-based fees for services the Commission performs but are not included within the current fee schedule. We also propose to eliminate fees for services as appropriate.

a. Wireline Competition Services

92. The Wireline Competition Bureau processes applications for the services currently listed in § 1.1105 of the Commission's rules. Specifically, it

processes domestic 214 applications, tariff filings, applications for special permission for waiver of tariff rules, long-form applications for Universal Service Fund (USF) auction winners, and accounting applications. In addition to proposing adjustments to existing application fees based on costs, we propose to add fees for applications that were established after the current schedule was put in place and recommend elimination of fees that have become obsolete.

93. *Transfers of Control.* Under §§ 63.03–63.04 of the Commission's rules, a carrier seeking domestic section 214 authorization for a transfer of control must file an application providing certain information about the parties and the transaction. Referring to § 1.1105 of the Commission's rules, we propose to rename ''Domestic 214 Applications'' as ''Domestic 214 Applications-Part 63 Transfers of Control'' to more clearly specify the applications subject to the fee. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based fee
Domestic 214 Applications-Part 63 Transfers of Control	$1,195	$1,230
Domestic 214 Applications-Special Temporary Authority	n/a	675

94. Applicants submit applications to transfer control of domestic section 214 authorizations into the Electronic Comment Filing System (ECFS), and staff then undertakes a manual review of the application. An applicant may submit an application to transfer only a domestic authorization or may file a joint application to transfer both domestic and international section 214 authorizations, as permitted in § 63.04 of the Commission's rules. An applicant submits copies of a joint application in both ECFS and in the International Bureau Filing System (IBFS) and pays separate fees applicable to each filing. In addition, all applications are reviewed for compliance with specific domestic section 214 requirements, and routinely coordinated with the International Bureau and Wireline Competition Bureau. We estimate that this process involves approximately $1,230 in costs for all domestic section 214 transfer of control applications, whether filed as a single domestic application or as a joint domestic/international application.

95. A domestic section 214 authorization holder or applicant may request an STA in certain situations, such as to provide service prior to Commission action on an underlying domestic section 214 transfer of control application. Domestic wireline carriers typically file STA requests with their underlying applications in pleading or letter form, using ECFS. While STA requests associated with international section 214 applications have a filing fee, there is currently no filing fee for STA requests associated with domestic section 214 transfer of control applications. We estimate the Commission's resources for processing a typical domestic STA to consist of the following: industry analyst processing and review, staff attorney review, and supervisory review with an estimated cost of $675.

96. We seek comment on these proposals.

97. *Discontinuance of Service.* Under § 63.71 of the Commission's rules, any domestic carrier that seeks to discontinue, reduce, or impair service must provide notice, as specified in § 63.71(a), and file an application with the Commission. We propose to add ''Domestic 214 Applications-Part 63 Discontinuances'' as a service requiring an application fee in § 1.1105 of our rules and set that application fee based on our cost estimates. We seek comment on whether adding this fee could act as a disincentive to filers to provide timely notice of service discontinuances to their end user customers, and if so, whether we have authority to consider such a disincentive in making our fee determination. We propose and seek comment on adopting the following cost-based fee for these applications.

Application	Current fee	Cost-based fee
Domestic 214 Applications-Part 63 Discontinuances (Non-Standard Review)	n/a	$1,230
Domestic 214 Applications-Part 63 Discontinuances (Standard Streamlined Review)	n/a	335

98. Similar to the processing of the other domestic section 214 applications required by Part 63 of our rules, processing section 214 discontinuance applications includes industry analyst processing and review, staff attorney review, and supervisory review. We estimate that this process involves $1,230 in costs for review and coordination on section 214 discontinuance filings that address technology transitions subject to the adequate replacement test under § 63.71(f)(2)(i), for section 214 discontinuance filings that address technology transitions that are not subject to any streamlined processing, and for section 214 discontinuance filings from dominant carriers. We estimate that this process involves $335 in costs for review of all other domestic 214 discontinuance filings including streamlined filings from non-dominant carriers and interconnected VoIP service providers, filings for the emergency discontinuance of service under § 63.63, filings that meet the alternative options test for streamlined processing under § 63.71(f)(2)(ii), filings subject to copper retirement auto grant under § 63.71(i), and filings for the discontinuance or grandfathering of voice or data services under §§ 63.71(k) or 63.71(l).

99. *Voice over internet Protocol Numbering.* Interconnected Voice over internet Protocol (VoIP) providers seeking to obtain numbering resources directly from the North American Numbering Plan Administrator (or the Pooling Administrator) must first receive authorization from the Commission. This nationwide authorization is designed to assess the eligibility of an interconnected VoIP provider to obtain numbers directly and will fulfill the requirement under the Commission's rules to provide evidence of authorization to provide service. Under § 52.15(g)(2) and (3), a VoIP provider must file an application for

numbering resources. We propose to add ''Interconnected VoIP Numbering Authorization Applications-Part 51'' as a service requiring an application fee in § 1.1105 of our rules and set that application fee based on our cost estimates.

Application	Current fee	Cost-based fee
Interconnected VoIP Numbering Authorization Applications-Part 51	n/a	$1,330

100. We estimate that the Commission's resources in processing a typical VoIP numbering application consist of the following: Program analyst assisting applicants with filing, application input, application intake, draft initial accepted for filing public notice, legal analysis and application review by staff attorney, staff attorney coordinating with counsel and other Bureaus/Offices, reviewing supplemental filing, and editing accepted for filing public notice, program analyst releasing and posting the accepted for filing public notice, and supervision of this process by a first level supervisor. Our estimate is that this process involves $1,330 in costs. We seek comment on this proposal.

101. *Tariffs.* Tariffs contain the rates, terms, and conditions of certain services provided by telecommunications carriers. Tariffs for interstate local access service are filed by local exchange carriers, or LECs. The access services include end user access, switched access, and special access. Tariffs must be just and reasonable and may not be unjustly or unreasonably discriminatory under sections 201(b) and 202(a) of the Communications Act. Tariffs are typically filed under a process that gives the public 15 days' notice on proposed price increases and changes in terms and conditions; and seven days' notice on proposed price reductions. Carriers file tariffs using the Commission's Electronic Tariff Filing System. Tariff filings are reviewed by staff and by industry. If staff takes no action, filings become effective and may be deemed lawful. Staff can suspend or reject tariffs.

102. The following table summarizes the current application fees and the proposed cost-based fees. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based fee
Tariff Filing	$960	$930
Complex Tariff Filing (Large)	n/a	6,540
Complex Tariff Filing (Small)	n/a	3,270
Application for Special Permission for Waiver of Tariff Rules	960	375

103. We estimate that the Commission's resources in processing a typical tariff filing consist of the following: Public utility specialist assisting applicants with filing, public utility specialist reviewing the record, and supervision of this entire process by an attorney. Our estimate is that the cost of this process for a tariff filing is $930.

104. Carriers also file tariffs that are more complex and require more review by Bureau staff than a typical tariff filing. One such category would include the filing of the annual access charge tariffs by incumbent LECs. Other types of more complex filings could include the introduction of new rate plans or the restructuring of existing rate plans. We estimate that the Commission's resources in processing a more complex filing consist of the following: Public utility specialist assisting applicants with filing, public utility specialist/attorney reviewing the record, and supervision of this entire process by an attorney. The cost for these filings will vary based on the size of the carrier or the number of entities included in a tariff filing. We propose to create two categories of complex tariff filers: One composed of price cap LECs and complex tariff filings by entities involving more than 100 LECs (Complex Large), and a second category for other entities filing a complex tariff (Complex Small). Our estimate is that the cost of this process for a Complex Large tariff filing is $6,540, and that for a Complex Small filing is $3,270.

105. Parties can also file an application for special permission to request a waiver of the tariff filing rules. We estimate that the Commission's resources in processing a typical special permission request consist of the following: Public utility specialist assisting applicants with filing, public utility specialist reviewing and acting on the request, and attorney supervising the process. Our estimate is that the cost of this process for a special permission request is $375. We seek comment on these proposals.

106. *Waivers.* Parties may file petitions seeking waivers of the Commission's rules in parts 61 and 69. Because parties may generally seek waiver of many Commission rules without paying a fee, we propose to eliminate the fees associated with the general Part 61 and Part 69 waiver requests as follows.

Application	Current fee	Cost-based fee
Waivers, Part 61 and Part 69	$960	Remove

107. We seek comment on this proposal.

108. *Universal Service Fund Auctions.* A party must submit an application in order to participate in competitive bidding for universal service support. The Commission's rules require that each universal service auction applicant submit specific information on its legal, financial, and technical qualifications to participate in an auction. Such applications are commonly referred to

as a short-form application. The Commission does not currently apply a fee to universal service auction short-form applications. We propose to add a cost-based short-form application fee.

109. We estimate that the Commission's costs in processing a short-form application to participate in an auction for universal service support consist of attorney review, engineer technical review, and attorney supervisor legal review. Our estimate is that this process involves approximately $1,030 in costs.

110. Universal service auction winners are required to be authorized to receive universal service support through an application commonly referred to as a long-form application. The Commission reviews this application to determine if a winning bidder should be authorized to receive universal service support for its winning bids. The Commission does not currently apply a fee to USF long form applications. We propose to add a cost-based long form application fee.

111. We estimate that the Commission's resources in processing a long-form application of a winning bidder after the auction to consist of the following: Attorney review, engineer technical review, and attorney supervisor legal review. Our estimated cost for this process is approximately $1,935.

Application	Current fee	Cost-based fee
Universal Service Short-Form Auction Application	n/a	$1,030
Universal Service Long Form Auction Application	n/a	1,935

112. We seek comment on this proposal. As with auctions for spectrum licenses, should we consider consolidating the short-form and long-form application fees so that only winning bidders would be required to pay a combined application fee? Would such an approach alleviate the possibility that establishing a fee for filing an auction application—regardless of whether support is ultimately won—might suppress competition in an auction and reduce the cost-efficiencies and other benefits that would otherwise be achieved by using competitive bidding? Could this approach reduce the likelihood that the amendment of section 8 would have the unintended consequence of raising additional funds for the U.S. Treasury at the expense of a less efficient distribution of universal service support funds?

113. *Accounting.* Currently, the fee for review of a depreciation update study for a single state is $40,465. The fee for each additional state is $1,335. We have not had an application for a depreciation update study in many years and we propose to eliminate these application fees from the fee schedule.

114. Parties may petition for a waiver of part 69 accounting rules, part 32 accounting rules, part 43 reporting requirements, part 64 allocation of costs rules, part 65 rate of return rules, or part 36 of the separation rules. The Commission has a complex set of accounting requirements and proposes assessment of a fee for requests for deviation from such requirements. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based fee
Accounting studies-Depreciation Update Study	$40,465	Remove
Waiver of Accounting Rules	9,120	$4,415

115. Petitions for waiver are reviewed by staff who draft a bureau or Commission level order addressing the petition. We estimate that the Commission's resources in processing a typical waiver application for one of these categories consist of the following: Attorney/accountant assisting applicants with filing, application input, application intake, attorney/accountant drafting and releasing a public notice, reviewing the record, and drafting an order, attorney/accountant coordinating order, program specialist releasing order and posting on website, and supervision of this entire process by an attorney/accountant. Our estimate is that the cost of this process is $4,415. We seek comment on these proposals.

b. Enforcement Services

116. The Enforcement Bureau processes applications for the services listed in § 1.1106 of the Commission's rules, specifically, Formal Complaints, Accounting and Audits, Development and Review of Agreed upon Procedures Engagement, and Pole Attachment Complaints.

117. The Commission also processes informal consumer complaints through the Consumer and Governmental Affairs Bureau's Consumer Complaint Center. The informal consumer complaint process provides consumers with an efficient and effective way to file complaints involving various telecommunications issues. Informal consumer complaints involving billing and service issues are served on the consumer's provider. The provider is required to respond to the consumer and the Commission within 30 days. We find that such informal consumer complaints are not applications as contemplated under section 8 of the Act. Moreover, we believe that the public interest would be served best by assessing no fee whatsoever for the submission of informal consumer complaints.

118. *Formal Complaints and Pole Attachment Complaints.* Section 208 of the Act provides for the filing of formal complaints against common carriers. Section 224 of the Act states that the Commission has a duty to ensure that the rates, terms, and conditions for pole attachments are just and reasonable, and that cable television systems and telecommunications carriers have non-discriminatory access to utility poles, ducts, conduits, and rights-of-way. Sections 1.720–1.740 and 1.1401–1.1414 of the Commission's rules govern formal section 208 and section 224 complaints. The rules require the filing of a complaint, an answer, a reply, and often discovery, motions, and briefs. The following table summarizes the current application fees and the proposed cost-based fees. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based fee
Section 208 Formal Complaint	$235	$540
Section 224 Pole Attachment Complaint	295	540

119. Filing of the application for a formal section 208 complaint or a section 224 pole attachment complaint is automated using the Commission's ECFS's Non-Docketed Filing portal. Staff then reviews the complaint for general conformance with the Commission's complaint rules to determine if it is accepted for adjudication. If the formal complaint or pole attachment complaint is accepted, staff arranges for its placement in a case-specific ECFS docket. Staff drafts a letter to the parties indicating that the filing has been accepted or rejected and posts that letter in ECFS.

120. We propose to consolidate the section 208 formal complaints and section 224 pole attachment complaints in the new section 8 application fee schedule. We seek comment on this proposal.

121. We estimate that the Commission's resources in processing a formal complaint or a pole attachment complaint consist of the following: Analyst review, attorney review and attorney supervisory review. Based on staff analysis, we estimate this cost to be $540 for either formal complaints or pole attachment complaints. We seek comment on this proposal.

122. *Accounting and Audits and Agreed upon Procedures Engagement.* Currently, the application fee for a field audit is $121,845 and for review of an attest audit is $66,510. The application fee for the development and review of an agreed upon procedures engagement is $66,510. We propose to eliminate these applications from the application fee schedule because no applications have been filed in many years. We seek comment on this proposal.

c. Petitions Regarding Law Enforcement Assistance Capability

123. The Communications Assistance for Law Enforcement Act (CALEA) imposes law-enforcement-assistance capability requirements on common carriers as the Commission has interpreted that term under CALEA. Any person may petition the Commission to issue technical standards for capability assistance that the person believes are deficient and telecommunications carriers and other interested persons may petition for a determination of whether an assistance capability is ''reasonably achievable,'' and the Commission must reach a determination on such petitions within one year. We propose and seek comment on adopting the following cost-based fees for this application—and we give as an example the current fee for this service.

Application	Current fee	Cost-based fee
Petition regarding law enforcement assistance capability (CALEA)	$6,945	$3,875

124. We estimate that the Commission's resources in processing a typical petition regarding law enforcement assistance capability consist of the following: Analyst review petition, process, and distribute petition; economist evaluate financial information submitted; engineer review; attorney determining rule compliance and conducting a preliminary evaluation of the scope and nature of the request for understanding of rules and issues implicated; attorney evaluating the nature and scope of the request and identifying issues presented; and review by supervisor. We estimate that this process will cost $3,875. We seek comment on this proposal.

5. International Service Fees

125. The International Bureau administers international telecommunications and satellite programs and policies, including licensing and regulatory functions. We seek comment on cost-based application fees for international services, including our proposals to create a separate fee category for applications related to cable landing licenses, a new category for section 310(b) foreign ownership review, and to adopt fees for international services that now do not currently have an application fee such as foreign carrier affiliation notifications and requests to become a recognized operating agency (ROA). We also propose to eliminate some fees and consolidate fees for earth stations and space stations. With respect to earth stations, we propose to create a new application fee for typical applications for initial authority for earth stations with multiple sites, per call sign, including fixed and temporary fixed and transmit and transmit/receive earth stations. We also seek comment on the elimination of some current filing fees and the creation of new cost-based filing fees. For space stations, we seek comment on a new fee category: Application for authority to operate, per satellite, a space station that is already in orbit as a U.S. licensed space station. We propose to remove the separate application fee for extension of launch authority, which is already covered as a space station modification. In addition, we seek comment on adopting a new application fee for petitions for declaratory ruling to access the U.S. market by foreign-licensed space stations. We propose new cost-based rules for satellites that may be licensed under the Commission's small satellite rules. Finally, we propose to create separate fee categories for all amendments and all modifications, regardless whether the space station involved is a geostationary orbit satellite or a nongeostationary orbit satellite.

a. Cable Landing License

126. To land or operate a submarine cable in the United States, submarine cable operators must obtain a cable landing license from the Commission pursuant to the Cable Landing Licensing Act of 1921 and Executive Order No. 10530. The Commission also authorizes assignments or transfers of existing cable landing licenses and modifications of licenses. The Commission coordinates the applications with the Department of State and any other federal agencies, as necessary. The requirements for filing an application for a new cable landing license, assignments or transfers or modifications of existing cable landing licenses are set out in § 1.767 of the Commission's rules. Currently, there are

different application fees for new licenses based on whether the license is for a common carrier or non-common carrier license. There are also fees for substantive assignments or transfers of control of a license, and requests for STA.

127. *New Cable Landing License Category.* We propose to create a new cable landing license category for all cable landing license applications. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based fee
Single cable landing, new license	$19,855	$3,835
Assignment/transfer of control, substantive	1,195	1,230
Assignment/transfer of control, pro forma	n/a	675
Foreign Carrier Affiliation Notification	n/a	495
Modification	n/a	1,230
Renewal	n/a	2,440
Special Temporary Authority	1,195	675
Waiver	n/a	335

128. We propose to have a single fee that applies to any new application to construct, land, and operate a submarine cable. Application fees for new cable landing licenses are currently based on whether the application is for a common or non-common carrier license. Currently, the fee for a non-common carrier cable landing license is $19,855. The fee for a common carrier cable landing license is $2,005 but the applicant must also pay for an overseas cable construction authorization, which has a fee of $17,805. The combined total fees for a common carrier application equal the fee for a non-common carrier application, $19,855. The processing of applications for common carrier and non-common carrier cable landing license applications is the same. We see no reason to continue to separate application fees by common carrier or non-common carrier going forward.

129. New cable landing license applications are filed online using the International Bureau Filing System (IBFS) and involve International Bureau staff review. Staff must review the application for compliance with our rules and the technical aspects of the proposed submarine cable system, including information regarding cable landing stations and ownership of the applicants. As noted above, the Commission coordinates the application with the State Department and other federal agencies, as necessary. We estimate that the Commission's resources to process a typical new cable landing license application consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $3,835 in costs for a typical cable landing license application.

130. Applications regarding assignment or transfer of control of a cable landing license can be for either substantive or pro forma transactions. We propose to charge a fee for pro forma assignment or transfer of control applications. Applications to assign or transfer control of a cable landing license are filed online using IBFS and involve International Bureau staff review. The Commission must also coordinate the application with the State Department and other federal agencies, as necessary. Based on our experience, staff conduct a similar review of the pro forma and substantive assignment or transfer of control applications by ensuring compliance with our rules. However, the review of substantive assignment or transfer of control applications takes staff more time than review of pro forma assignments.

131. We estimate the Commission's resources in processing a substantive application to assign or transfer control of a cable landing license consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $1,230 in costs for an application for assignment or transfer of control of a cable landing license. We propose and seek comment on adopting a cost-based filing fee for this application based on this estimate. We estimate the Commission's resources in processing a pro forma application to assign or transfer control of a cable landing license consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $675 in costs for an application for assignment or transfer of control of a cable landing license.

132. A cable landing licensee may request to modify its existing license to make changes such as adding new landing points or to add an additional licensee. We propose to charge a fee for a modification to a cable landing license application. Modifications to a cable landing license application are filed online using IBFS and involve staff review. The Commission also coordinates the modification with the State Department and other federal agencies, as necessary. Currently, there is no fee for a modification. However, staff time is required for processing and reviewing the modification for compliance with our rules. We estimate the Commission's resources in processing a modification to a cable landing license consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $1,230 in costs for a typical modification to a cable landing license application. We propose and seek comment on adopting a cost-based filing fee for this application based on this estimate.

133. We propose to charge fees for additional license applications related to cable landing for which there currently are no fees: Renewals, foreign carrier affiliation notifications, and waivers. A cable landing license is issued for a 25-year term from the date when the cable goes into service. A licensee may apply to renew the cable landing license. An application to renew or extend an existing cable landing license is filed online using IBFS, involves International Bureau staff review, and coordination with the State Department and other federal agencies, as necessary. Many cables are reaching their 25-year expiration and recently we received requests for renewal of licenses. Staff time is required for processing and reviewing the renewal application. We estimate the Commission's resources of processing a renewal application consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that

this process involves $2,440 in costs for a renewal of a cable landing license application. Section 1.768 requires a cable landing licensee to file a foreign carrier affiliation notification if it becomes, or seeks to become, affiliated with a foreign carrier that is authorized to operate in the destination market of the submarine cable system. Applicants submit foreign carrier affiliation notification applications electronically through IBFS. We estimate that the Commission's resources in processing a foreign carrier affiliation notification application consist of the following: Program analyst review and processing, attorney legal review, and attorney supervisor legal review. Our estimate is that this process involves $495 in costs. For waivers sought under § 1.767 or 1.768, staff must process the request and review the request under our rules. A standalone waiver request related to the cable landing license rules is filed online using IBFS, involves International Bureau staff review, and coordination with the State Department and other federal agencies, as necessary. We estimate the Commission's resources in processing a waiver request filed separately from another application consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $335 in costs for a typical request to waive the cable landing license rules that is filed separately from an application.

134. For STA applications, an applicant may request such authority in certain situations, such as to construct and land the submarine cable prior to Commission action on the underlying cable landing license application. STA requests are filed online using IBFS and involve staff review. The Commission may also need to coordinate the STA request with the State Department and other federal agencies, as necessary. We estimate the Commission's resources of processing an STA consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $675 in costs for a typical request for an STA related to a cable landing license. We propose and seek comment on adopting a cost-based filing fee for this application based on this estimate.

135. We seek comment on these proposals.

b. International Section 214 Applications

136. Any entity that seeks to provide U.S.-international common carrier service must obtain prior Commission approval pursuant to section 214 of the Communications Act by filing an international section 214 application. The requirements for filing an application for an international section 214 authorization are set out in § 63.18 of the Commission's rules. The requirements for an assignment or transfer of control of such an authorization, in turn, are set out in § 63.24. Currently, there is a fee for new international section 214 authorizations, for substantive assignments and transfers of control of the authorization, and requests for STA.

137. The following table summarizes the current application fees where they exist and the cost-based fees. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based fee
International section 214 application, new authorization	$1,195	$785
Assignment/transfer of control, substantive	1,195	1,230
Assignment/transfer of control, pro forma	n/a	675
Foreign Carrier Affiliation Notification	n/a	495
Modification	n/a	675
Special Temporary Authority	1,195	675
Waiver	n/a	335
Discontinuance of services	n/a	335

138. Applications to obtain an international section 214 authorization are filed online using IBFS and involve staff review. The Commission may also need to coordinate applications with other federal agencies. We estimate the Commission's resources in processing an application for an international section 214 authorization consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $785 in costs for an application for an international section 214 authorization.

139. Applications regarding assignment or transfer of control of an international section 214 authorization can be for either substantive or pro forma transactions. Currently, there is a $1,230 fee for substantive assignment or transfer applications. We propose to charge a fee for pro forma assignment or transfer of control applications. Applications to assign or transfer control of an international section 214 authorization are filed online using IBFS and involve staff review. The Commission may also need to coordinate the application with other bureaus and offices within the Commission as well as with other federal agencies, as necessary. Based on our experience, staff conduct a similar review for both pro forma and substantive assignment or transfer of control applications by ensuring compliance with our rules. However, the review of substantive assignment or transfer of control applications typically take staff additional time compared to pro forma assignments. We estimate the Commission's resources in processing an application for a substantive assignment or transfer control of an international section 214 authorization consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $1,230 in costs. We estimate the Commission's resources in processing a typical pro forma assignment or transfer control of an international section 214 authorization consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $675 in costs for an application for pro forma assignment or transfer of control of an international section 214 authorization.

140. A carrier may request to modify its international section 214 authorization, for example to change its classification from dominant to non-dominant. We propose to charge fees for a modification to an international section 214 application. Modifications to an international section 214 authorization are filed online using

IBFS and involve staff review. The Commission may need to coordinate the modification with other federal agencies, as necessary. We estimate the Commission's resources in processing a modification to an international section 214 application consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $675 in costs for a modification to an international section 214 application.

141. An international section 214 authorization holder or applicant may request an STA in certain situations, such as to provide service prior to Commission action on the underlying application. STA requests are filed online using IBFS and involve staff review. The Commission may also need to coordinate the STA request with other federal agencies, as necessary. We estimate the Commission's resources in processing an STA related to an international section 214 authorization consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $675 in costs.

142. We also propose to charge fees for foreign carrier affiliation notification, waiver requests, and discontinuances of international service. As set forth in § 63.11 of the Commission's rules, if a carrier is authorized by the Commission to provide service between the United States and a particular foreign destination market (*i.e.,* a holder of an international 214 authorization) and it becomes, or seeks to become, affiliated with a foreign carrier that is authorized to operate in that market, then its authorization to provide that international service is conditioned upon notifying the Commission of that affiliation. Applicants submit foreign carrier affiliation notification applications electronically through IBFS. We estimate that the Commission's resources in processing a foreign carrier affiliation notification application consist of the following: Program analyst review and processing, attorney legal review, and attorney supervisor legal review. Our estimate is that this process involves $495 in costs. An individual or entity may request a waiver of the requirements under part 63 of the Commission's rules. A standalone waiver request related to the international section 214 authorization rules is filed online using IBFS and involves International Bureau staff review. We estimate the Commission's resources processing a waiver request filed separately from another application consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $335 in costs for a typical request to waive the international section 214 authorization rules that is filed separately from an application. Any international carrier that seeks to discontinue, reduce, or impair service, including the retiring of international facilities, dismantling or removing of international trunk lines, must file a notification or application, depending on whether the carrier is considered dominant in the provision of a particular international service, pursuant to § 63.19 of the Commission's rules. Discontinuance notifications and applications are filed online using IBFS and staff process and review them. We estimate that the Commission's costs in processing an international 214 discontinuance consist of the following: Industry analyst processing and red-light check, attorney legal review, supervisory review. Our estimate is that this process involves $335 in costs. We seek comment on these proposals.

c. Foreign Ownership Petitions for Declaratory Ruling

143. Section 310(b) of the Communications Act contains specific restrictions on who can hold a broadcast, common carrier, or aeronautical radio station license. Section 310(b)(3) prohibits foreign individuals, governments, and corporations from owning more than 20% of the capital stock of a broadcast, common carrier, or aeronautical radio station licensee. Section 310(b)(4) establishes a 25% benchmark for investment by foreign individuals, governments, and corporations in U.S.-organized entities that directly or indirectly control a broadcast, common carrier, or aeronautical radio station licensee, unless the Commission finds that foreign ownership above that benchmark would serve the public interest. The Commission's rules set out procedures for seeking a prior Commission approval to exceed the benchmarks set out in the statute. The International Bureau processes petitions for declaratory ruling seeking approval to exceed the benchmarks set out in sections 310(b)(3) and 310(b)(4) for common carrier wireless or aeronautical licenses. Currently, there is no fee for a 310(b) petition for declaratory ruling or associated applications.

144. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based fee
Section 310(b) petitions for declaratory ruling	n/a	$2,485
Waiver	n/a	335

145. Section 310(b) petitions for declaratory ruling to exceed the statutory benchmarks in sections 310(b)(3) and 310(b)(4) for a common carrier wireless license are filed online using IBFS and involve staff review. The Commission also coordinates the 310(b) petition for declaratory ruling with other federal agencies, as necessary. Currently there is no fee for a 310(b) petition for declaratory ruling but typically the petition includes complex ownership structures and requires substantial review by staff. We estimate the Commission's resources in processing a 310(b) petition for declaratory ruling to exceed the statutory benchmark in section 310(b)(3) or 310(b)(4) consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $2,485 in costs.

146. We propose to charge a fee for waiver requests related to a 310(b) petition for declaratory ruling. An individual or entity may request a waiver of the requirements under §§ 1.5000–1.5004. Currently, there is no fee for such a waiver request. A standalone waiver request related to the foreign ownership rules is filed online using IBFS and involves International Bureau staff review. We estimate the Commission's resources in processing a typical waiver request filed separately from a 310(b) petition for declaratory ruling consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $335 in costs for a typical

request to waive the foreign ownership rules that is filed separately from a 310(b) petition for declaratory ruling. We seek comment on these proposals.

d. Recognized Operating Agency

147. Any individual or corporation, other than a government establishment, that seeks recognition to operate an international public correspondence or radio service capable of causing harmful interference and upon which are imposed obligations provided for in Article 44 of the International Telecommunication Convention, must file an ROA application via IBFS. The purpose of the ROA is to assure members of the International Telecommunication Union (ITU) that private communications entities that are not themselves parties to the Convention will nonetheless be required to observe the rights of other member states under the treaty. If the application is approved, a recommendation letter is sent to the State Department. Currently, there is a fee for an ROA application but no fees for any associated requests, such as waivers.

148. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based estimate for typical application
ROA	$1,195	$1,145
Waiver	n/a	335

149. We estimate that the Commission's resources in processing an ROA application consist of the following: Program analyst review and processing, attorney legal review, and attorney supervisor legal review. Our estimate is that this process involves $1,145 in costs.

150. We propose to charge a fee for waiver requests related to an ROA. An individual or entity may request a waiver of the requirements under § 63.701. A standalone waiver request related to an ROA is filed online using IBFS and involves International Bureau staff review. We estimate the Commission's resources in processing a separately filed waiver request consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $335 in costs for a typical request to waive the ROA application rules that is filed separately from an application. We seek comment on these proposals.

e. Data Network Identification Code

151. The data network identification code (DNIC) is a four-digit number used to identify data networks and is the central device of the international data numbering plan developed by the ITU and set forth in Recommendation X.121. The primary function of the DNIC is to identify and to facilitate routing of traffic to a particular data-network subscriber. Any public network provider seeking to obtain a DNIC must file an application through IBFS for a request for assignment of a DNIC. Currently, there is no fee for a DNIC.

152. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based fee
DNIC	n/a	$785
Waiver	n/a	335

153. We propose to charge a fee for requesting a DNIC. We estimate that the Commission's resources in processing a DNIC application consist of the following: Program analyst review and processing, attorney legal review, and attorney supervisor legal review. Our estimate is that this process involves $785 in costs. We seek comment on this proposal.

154. We propose to charge a fee for waiver requests related to a DNIC. An individual or entity may request a waiver of the DNIC requirements set forth in the ITU's DNIC guidance. A standalone waiver request related to the DNIC use is filed online using IBFS and involves International Bureau staff review. We estimate the Commission's resources in processing a separately filed waiver request consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $335 in costs for a typical request to waive the DNIC requirements that is filed separately from an application. We seek comment on these proposals.

f. International Signaling Point Code

155. The ITU defines a signaling point code as a ''part of the label in a signaling [sic] message that uniquely identifies each signaling point which belongs to the international signaling network'' and is used for signaling message routing and identification of signaling points at the international level. Such signaling points are within a Signaling System 7 switch. For this reason, only carriers that operate their own switch would need a signaling point code. Carriers that need an international signaling point code must file an application through IBFS for a Request for Assignment of International Signaling Point Codes (ISPC) for Signaling System No. 7. The ISPC application must include information demonstrating compliance with the standards set forth in ITU–T Recommendation Q.708. Currently, there is no fee for an ISPC or associated requests, such as amendments.

156. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based fee
ISPC	n/a	$785
Transfer of Control	n/a	675
Modification	n/a	675
Waiver	n/a	335

157. We propose to charge a fee for filing an ISPC. We estimate that the Commission's resources in processing an ISPC application consist of the following: Program analyst review and processing, attorney legal review, and attorney supervisor legal review. Our estimate is that this process involves $785 in costs.

158. We also propose to charge a fee for notification of a transfer of an ISPC from one entity to another in the course of a merger, acquisition, divestiture, or joint venture. FCC staff must review a notification of an ISPC transfer. Although an ISPC transfer application is likely to be filed only in connection with the transfer of control or assignment of the signaling point operator's international section 214 authorization, we believe a fee for the ISPC notification is warranted. Transfer of an ISPC is not necessarily a component of every section 214 transaction, and staff review and processing of the notification will be necessary. Staff review would include coordination with staff reviewing the underlying section 214 transaction. We estimate the Commission's resources in processing a transfer notification consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $675 in costs.

159. Signaling point operators may modify how they use an assigned ISPC. ITU Q.708 requires a notification for changes such as name changes and changing the city where the ISPC is located. Operators must file a modification notification application in the event that they implement such changes. We propose to charge a fee for modification of an ISPC assignment. FCC staff must review an ISPC modification notification and notify the ITU of such changes. We estimate the Commission's resources in processing a modification notification consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $675 in costs.

160. We propose to charge a fee for waiver requests related to an ISPC. An individual or entity may request a waiver of the ISPC requirements set forth in the ITU's ISPC guidance. A standalone waiver request related to the ISPC use is filed online using IBFS and involves International Bureau staff review. We estimate the Commission's resources in processing a separately filed waiver request consist of the following: Industry analyst processing and review, staff attorney review, and supervisory review. Our estimate is that this process involves $335 in costs for a typical request to waive the ISPC requirements that is filed separately from an application. We seek comment on these proposals.

g. Satellite Earth Stations

161. Below is a table showing the current fees and proposed fees based on costs for the processing of filings related to earth stations, up to the release of public notice of acceptance for filing and through the first-level of supervision. We propose and seek comment on elimination of some current filing fees, creation of new cost-based filing fees, and addition of filing fees by subdividing some existing fees into separate fees for single and multiple sites.

Application	Current fee	Cost-based fee
Fixed or Temporary Fixed Transmit or Transmit/Receive Earth Stations, per Call Sign:		
Initial application, single site	$2,985	$360.
Initial application, multiple sites	n/a	$6,515.
Fixed Satellite transmit/receive Earth Stations (2 meters or less operating in the 4/6 GHz band).	$6,615	Eliminate (use Fixed or Temporary Fixed Transmit or Transmit/Receive Earth Stations, per Call Sign).
Receive Only Earth Stations License or Registration, per Call Sign or Registration:		
Initial application or registration, single site, per site	$450	$175.
Initial application or registration, multiple sites, per system.	n/a	$465.
Fixed Satellite Very Small Aperture Terminal (VSAT) Systems, per Call Sign.	$11,015	Eliminate (use Blanket Earth Stations, per Call Sign).
Blanket Earth Stations, per Call Sign	$11,015 for VSAT Systems	$360.
Mobile Earth Stations, per Call Sign:		
Initial Application for Blanket Authorization, per system, per Cal Sign.	$11,015	$815.
Initial Application for Individual Earth Station	$2,645	Eliminate.
Amendments to Earth Station Applications or Registrations:		
Single Site	$210	$430.
Multiple Sites	$210	$630.
Modification of Earth Station Licenses or Registrations, per Call Sign.	$210	$545.
Assignment or Transfer of Control of Earth Station Licenses or Registrations, per Call Sign.	$590 to $2,945	$745.
Pro Forma Assignment or Transfer of Control of Earth Station Licenses or Registrations, per Call Sign.	n/a	$400.
Renewals of Earth Station Licenses, per Call Sign:		

Application	Current fee	Cost-based fee
Single Site	$210	$115.
Multiple Sites	n/a	$145.
Earth Station Extension of Construction Permit	$210	Eliminate.
Requests for U.S. Market for Non-U.S. Licensed Space Stations, per request.		See Space Stations below.

162. We first seek comment on cost-based application fees for licenses for earth stations transmitting, or transmitting and receiving signals, either at a fixed location or temporarily at a fixed location. These licensees include entities that operate earth stations to provide fixed-satellite service (FSS) as well as other services. We propose adopting separate filing fees for applications involving a single site and applications involving multiple sites.

163. We estimate that the Commission's processing of the following types of applications involves five steps, with the particular estimated costs below: Program analyst processing the application; program analyst initial review; engineer technical review; program analyst placing the application on public notice; and first-level supervision. Those types of applications are: An initial application for a fixed or temporary fixed transmit or transmit receive earth station: $360; an initial application for a license or registration of a single receive-only earth station, $175; an initial application for a license or registration of multiple receive-only earth stations at multiple sites, $465; an initial application for a blanket earth station license, $360; an initial application for a mobile earth station fixed blanket license, $815; amendment to application involving a single earth station site, $430; an amendment to application involving multiple earth station sites, $630; a modification application requiring prior Commission approval, $545; an application for an STA, $205; an application for renewal of an earth station license involving a single earth station site, $112; and an application for renewal of an earth station license involving multiple earth station sites, $145.

164. We propose to create a new application fee for typical applications for initial authority for earth stations with multiple sites, per call sign, including fixed and temporary fixed and transmit and transmit/receive earth stations. We estimate that the Commission's resources in processing an initial application consist of the following: One program analyst processing the application; initial program analyst review; engineer technical review; program analyst placing the application on public notice; and first-level supervision. We estimate this process costs $6,515.

165. The current application fee for Fixed Satellite transmit/receive Earth Stations (2 meters or less operating in the 4/6 GHz band) is $6,615. We propose to eliminate this category and replace it with the proposed fee categories for Fixed or Temporary Fixed Transmit or Transmit/Receive Earth Stations. There is no substantive difference in the review process for fixed or temporary fixed earth station applications in the 4/6 GHz band compared with such applications in other frequency bands. Consolidating the filing fee categories for fixed or temporary fixed transmit/receive earth station applications will streamline the fee filing process by eliminating potential mis-categorization and unnecessary sub-categories.

166. We next seek comment on cost-based application fees for earth stations that do not emit radiofrequency signals, but rather are used exclusively to receive signals transmitted by space stations. A license from the FCC is not generally required to operate a receive-only earth station, but a license may be electively requested. Alternatively, a party may seek to register a receive-only FSS earth station with the FCC. Registration of receive-only earth stations does not constitute a license, but rather is a method to record the existence of the earth station so that it may be taken into account for regulatory purposes, such as for coordination with other services to avoid radiofrequency interference. Currently, the initial application fee for licensing or registration of Receive Only Earth Stations is $465. This fee is for the licensing or registration of a single earth station. As was the case for Fixed or Temporary Fixed Transmit or Transmit/Receive Earth Stations, we propose to adopt separate filing fees for applications involving a single earth station and for those involving multiple earth stations.

167. We seek comment as well on cost-based application fees for blanket earth station facilities, which are earth station systems authorized pursuant to blanket licensing procedures in part 25 of the Commission's rules. Applications for licenses for Earth Stations in Motion (ESIM) and certain SDARS terrestrial repeaters are included in this fee category. This filing fee category replaces the filing fee category for Very Small Aperture Terminal (VSAT) systems, since the definition of blanket license includes—but also goes beyond—the category of services included in VSAT systems. The Commission eliminated VSAT-specific rules in 2015, and we therefore propose to eliminate the filing fees for VSAT, but the previous VSAT fees will be used as the baseline for evaluating the change in filing fees for blanket licensed earth stations.

168. For Mobile Earth Stations, the Commission has provided for filing fees for blanket licenses which permit the licensing of multiple mobile earth stations under a single application and filing fee. We propose to continue this procedure. We propose and seek comment on cost-based application fees for blanket license applications involving mobile earth stations, communicating with geostationary and non-geostationary satellites.

169. Next, we propose to create separate fee categories for (1) license renewal applications, (2) license modification applications, (3) amendments to applications, and (4) applications for STAs for all categories of earth station licenses, on a per call sign basis. Currently, each earth station fee category includes sub-categories of fees for each of these types of applications. However, the current fees are identical—$210 in all earth station categories. Consistent with the existing practice, we anticipate that the costs involved in processing applications within any of these four application types will not vary significantly across different earth station categories up through the first-level of supervision. Although in some instances the cost incurred for reviewing an amendment to an application is the same or greater than the application fee itself, it will be more concise to have a single fee category for each of the four types of applications, rather than including separate sub-categories for each category of earth station licenses. Similar to earth station license fee categories, we propose to have separate fees for applications involving a single site and those involving multiple earth station

sites. We propose and seek comment on these cost-based application fees.

170. We also propose to create a separate fee category for assignment or transfer of control of all categories of earth station licenses on a per call sign basis. Currently, separate filing fees are assessed for assignment or transfer of control of each category of earth station licenses. Current fees range from $590 for assignment or transfer of the first station of a Fixed Satellite Transmit/Receive Earth Station license, to $2,945 for assignment or transfer of a Mobile Satellite Earth Station (per system). In our experience, however, the review of assignment or transfer applications is largely the same regardless of the service being provided, up to the release of public notice of acceptance for filing and up through the first-level of supervision. Accordingly, we propose to create a new cost-based separate fee for all assignments or transfers of control of earth station licenses per call sign, rather than including a separate sub-category for each category of earth station licenses.

171. We estimate that the Commission's resources in processing an assignment or transfer of control consist of the following: Program analyst handling the application intake, attorney determining acceptability for filing, program analyst preparing weekly public notice for applications accepted for filing, and Policy Branch Chief first-level supervision. Our estimate is that this process will involve $745 in costs. In establishing a separate fee category for assignments and transfers that are non-substantial (pro forma) in nature. public notice and prior Commission approval are not needed. Accordingly, the estimated Commission's resources in processing a pro forma assignment or transfer will be consist of the following: Program analyst handling the application intake; Policy Branch chief first-level supervision. Our estimate is that this process will involve $400 in costs.

172. We propose to eliminate the fee category for extensions of construction permits, as earth station construction permits are no longer required under the Commission's rules.

173. Applicants and licensees may request authority to communicate with a non-U.S. licensed space station as part of an earth station application. Currently, there is no additional fee associated with such a request. Below, we propose to adopt a fee based on the costs associated with processing and reviewing requests for U.S. market access involving non-U.S. licensed space stations. We propose that any earth station application that includes a request to communicate with a non-U.S. licensed space station that does not have a valid grant of U.S. market access also pay the filing fees proposed below for space station petitions for declaratory ruling for U.S. market access. An earth station application including a request for U.S. market access involves the same process and review as a space station petition for market access. In addition, unless the same fees are assessed for earth station applications involving requests for U.S. market access, parties may seek to arbitrage the system by shifting all market access requests to earth station filings in order to avoid any future fees adopted for filings of requests for market access by space stations.

h. Space Stations

174. A space station is a station located on an object which is beyond, is intended to go beyond, or has been beyond, the major portion of the Earth's atmosphere. Valid authorization must be obtained from the Commission prior to the use and operation of a space station. With limited exceptions, approval for orbital deployment and a station license (*i.e.,* operating authority) must be applied for and granted before a space station may be deployed and operated in orbit.

175. The table below summarizes the current application fees where they exist, the proposed cost-based fees, and proposed fees to be eliminated. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Filing category	Current fee	Cost-based fee
Space Stations, Geostationary Orbit:		
Application for Authority to Construct, Deploy, and Operate, per satellite	$136,930	$3,555
Application for Authority to Operate, per satellite	n/a	3,555
Extension of Launch Authority	$980	Eliminate
Space Stations, Non-Geostationary Orbit:		
Application for Authority to Construct, Deploy, and Operate, per system of technically identical satellites, per Call Sign.	$471,575	14,536
Application for Authority to Operate, per system of technically identical satellites, per Call Sign.	n/a	15,050
Extension of Launch Authority	$980	Eliminate
Space Stations, Petition for Declaratory Ruling for a Foreign Space Station to Access the United States Market:		
Geostationary Orbit	n/a	3,555
Non-Geostationary Orbit	n/a	15,050
Space Stations, Small Satellites, per Call Sign:		
Application to Construct, Deploy, and Operate, per Call Sign	$30,000	2,175
Space Stations, Amendments, per Call Sign	$1,960 for GSO, $6,740 for NGSO	1,620
Space Stations, Modifications, per Call Sign	$9,785 for GSO, $33,685 for NGSO	2,495
Space Stations, Assignment or Transfer of Control, per Call Sign	$9,785 for GSO, $13,480 for NGSO	745
Space Stations, Pro Forma Assignment or Transfer of Control, per Call Sign	n/a	400
Space Stations, Special Temporary Authority, per Call Sign	$980 for GSO, $3,375 for NGSO	1,435

176. We estimate that the Commission's resources in processing an application to construct, deploy, and operate a GSO consist of the following: Industry analyst handling the application intake, attorney determining acceptability for filing, engineer determining acceptability for filing, industry analyst releasing the accepted for filing public notice, Policy Branch chief first-level supervision, and Engineering Branch chief first-level supervision. Our estimate is that this process involves $3,555 in costs.

177. We seek comment on a new fee category: Application for authority to operate per satellite, a space station that is already in orbit as a U.S. licensed

space station. We expect that the costs involved in this process are identical to those for authority to construct, deploy, and operate a GSO, since the information required to be reviewed is the same in both cases.

178. We propose to remove the application fee for extension of launch authority as it is the same as a space station modification. Any request to change to the terms or conditions of an authorization can and should be filed through a request for modification of the authorization. We do not see any reason to preserve a separate application fee for requests to extend authority for launch of geostationary satellites, and elimination of this separate fee category helps to streamline and simplify our fee structures.

179. For applications for authority to construct, deploy, and operate, per system of technically identical satellites, per call sign include NGSO satellites providing fixed-, mobile-, and earth-exploration satellite services, we estimate that the Commission's resources in processing the application consist of the following: Industry analyst handling the application intake, attorney determining acceptability for filing, engineer determining acceptability for filing, industry analyst preparing weekly accepted for filing public notice, Policy Branch chief first-level supervision, and Engineering Branch chief first-level supervision. Our estimate is that this process involves $15,050 in costs.

180. We seek comment on a new fee category: Application for authority to operate per system, a space station that is already in orbit, as a U.S. licensed space station. We expect that the costs involved in this process are identical to those for authority to construct, deploy, and operate Non-Geostationary Space Stations, per system, since the information required to be reviewed is the same in both cases.

181. The Commission assesses application fees involving space stations (both in geostationary and in non-geostationary orbits) licensed, or to be licensed, by the Commission, but does not currently have an application fee for petitions for foreign-licensed space stations to access the U.S. market. These petitions involve the submission and review of essentially the same information as provided in applications (that is, Form 312, Schedule S, and Technical and Legal Narratives) involving U.S.-licensed space stations, with very similar costs of processing. The costs up through the first-level of supervision are identical for both applications for U.S. licenses and petitions for declaratory ruling to access the U.S. market. In both cases, the same documentation is required to be prepared and reviewed. Thus, pursuant to the requirement of the RAY BAUM'S Act that we recover the costs of processing filings, we seek comment on adopting a new application fee for petitions for declaratory ruling to access the U.S. market by foreign licensed space stations.

182. Small satellites typically are associated with small size, short duration missions, and relatively low cost. In the *Small Satellite Report and Order,* the Commission adopted rules governing licensing of these small satellites and adopted an interim application fee for small satellites of $30,000. After review of anticipated costs involved with the processing of all space station filing fees, we propose and seek comment on a new cost-based application fees for satellites that are able to be licensed under the small satellite rules, based on the estimated costs involved in processing the applications. We estimate that the Commission's resources in processing a small satellite application to construct, deploy, and operate, per system, will consist of the following: Industry analyst handling the application intake, including checking fee payment, entering data in IBFS, and routing application to branch chiefs, attorney determining acceptability for filing, engineer determining acceptability for filing, industry analyst preparing weekly public notice for applications accepted for filing, Policy Branch chief first-level supervision, and Engineering Branch chief first-level supervision. Our estimate is that this process will involve $2,103 in costs.

183. We propose to create a separate fee category for amendments of all categories of space filings on a per call sign basis. There are currently separate fees for amendments of filings involving geostationary and non-geostationary satellites; the fee for amendments for Space Stations (Geostationary) is currently $1,960; the fee for amendments for Space Stations (NGSO) is $6,740. The costs involved with amendments up through the first-level of supervision are likely to be similar for both geostationary and non-geostationary space stations, as well as for small satellites, since the information reviewed in all cases will be the same and the standard for acceptability for filing is also the same.

184. An application for amendment of a pending application or petition for declaratory ruling involving geostationary, non-geostationary satellites, or small satellites, adds satellites, frequencies, or changes orbital location, but does not constitute a major amendment resulting in loss of place in the processing round. Under existing Commission rules, an entity requesting access to the United States market through a non-U.S.-licensed space station pursuant to a petition for declaratory ruling may amend its request by submitting an additional petition for declaratory ruling. We estimate that the Commission's resources in processing amendments to applications for space stations consist of the following: Industry analyst handling the application intake, including checking fee payment, entering data in IBFS, and routing application to branch chiefs, attorney determining acceptability for filing, engineer determining acceptability for filing, industry analyst preparing weekly public notice for applications accepted for filing, Policy Branch chief first-level supervision, and Engineering Branch chief first-level supervision. Our estimate is that this process will involve $1,620 in costs.

185. Currently there is no fee associated with requests involving U.S. market access by non-U.S.-licensed space stations, so the fee is zero regardless of whether the amendment is made through another petition for declaratory ruling, or through an amendment, and in practice many petitioners for U.S. market access have sought to amend their pending petitions through amendments, rather than new petitions for declaratory ruling. Because we are proposing to assess fees on requests for U.S. market access in order to recover the costs involved with these requests, we propose to include amendments to a pending petition for U.S. market access in the Space Stations, Amendments fee category and we seek comment on this proposal.

186. As a general matter, no modification of a station license that affects the parameters or terms and conditions of the station authorization can be made except upon application to and grant of such application by the Commission. We propose to create a separate fee category for filings to modify all categories of space station license approvals on a per call sign basis. Currently, there are separate fees for modifications depending on whether the space station involved is in geostationary or non-geostationary orbit: The fee for modification for Space Stations (GSO) is currently $9,785; the fee for modification for Space Stations (NGSO) is $33,685. The costs involved with applications for modification through accepted for filing public notice and up to first-level supervision are similar for both geostationary and non-

geostationary space stations, as well as for small satellites, since the information reviewed in all cases will be the same and the standard for acceptability for filing is also the same. We estimate that the Commission's resources in processing modification requests will consist of the following: Industry analyst handling the application intake, attorney determining acceptability for filing, engineer determining acceptability for filing, industry analyst preparing weekly public notice for applications accepted for filing, Policy Branch chief first-level supervision, and Engineering Branch chief first-level supervision. Our estimate is that this process will involve $2,495 in costs.

187. Commission rules permit requests for modification of U.S. market access grants. Currently, no fee is assessed for such modification applications, consistent with Commission policy of not assessing fees involving grants of U.S. market access. The process and costs involved in reviewing modification requests involving non-U.S. licensed satellites are generally the same as those for modifications of licenses issued by the FCC. Because we are proposing to assess fees on filings involving requests for U.S. market access in order to recover the costs involved with these requests, we propose to include modifications to a grant of U.S. market access in the Space Stations, Modifications fee category.

188. An application is required to be filed and granted before a space station license can be transferred, assigned, or disposed of (voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation or any other entity). We propose to create a separate fee category for filings to assign or transfer control of all categories of space station licenses on a per call sign basis. Currently, there are separate fees for assignments and transfers of control depending on whether the space station involved is in geostationary or non-geostationary orbit: The fee for assignment or transfer of control for Space Stations (GSO) is currently $9,785; the fee for assignment or transfer of control for Space Stations (NGSO) is $13,480. The costs involved with applications for assignment or transfer of control up through the first-level of supervision are likely to be similar for both geostationary and non-geostationary space stations, as well as for small satellites, since the information reviewed in all cases will be the same and the standard for acceptability for filing is also the same. We estimate that the Commission's resources in processing of applications for assignment or transfer of control include the following: Industry analyst handling the application intake, attorney determining acceptability for filing, industry analyst preparing weekly public notice for applications accepted for filing, and Policy Branch chief first-level supervision. Our estimate is that this process will involve $719 in costs.

189. Commission rules do not require prior Commission consent to an assignment or transfer of control of a grant of U.S. market access by a non-U.S. licensed space station. Instead, a non-U.S. licensed satellite operator that acquires control of a non-U.S. licensed space station that has been permitted to serve the United States must notify the Commission within 30 days after consummation of the transaction so that the Commission can afford interested parties an opportunity to comment on whether the transaction affected any of the considerations we made when we allowed the satellite operator to enter the U.S. market. Currently, no fee is assessed for such assignments or transfers of control involving non-U.S. licensed space stations, consistent with Commission policy of not assessing fees involving grants of U.S. market access. The process and costs involved in reviewing assignments and transfers of control involving non-U.S. licensed satellites are generally the same as those for assignments and transfers of control of licenses issued by the FCC up through the first-level of supervision. Because we are proposing to assess fees on filings involving requests for U.S. market access in order to recover the costs involved with these requests, we propose to include assignment and transfer of control of a grant of U.S. market access in the Space Stations, Assignment or Transfer of Control fee category. We also seek comment on whether a separate fee category should be established for assignments and transfers that are non-substantial (pro forma) in nature. In these instances, public notice and prior Commission approval are not needed. Accordingly, the estimated Commission's costs in processing a typical pro forma assignment or transfer will consist of the following: Program analyst handling the application intake, Policy Branch chief first-level supervision. Our estimate is that this process will involve $400 in costs.

190. In circumstances requiring immediate or temporary use of facilities, request may be made for STA to install and/or operate new or modified equipment. The Commission may grant a temporary authorization only upon a finding that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of these temporary operations would seriously prejudice the public interest. The Commission may grant a temporary authorization for a period not to exceed 180 days, with additional periods not exceeding 180 days, if the Commission has placed the STA request on public notice. The Commission may grant STA without placing the request on public notice first, if the request is for a period not to exceed 30 days, or the period is not to exceed 60 days and the applicant plans to file a request for regular authority for the service.

191. We propose to create a separate fee category for an STA for all categories of space station license applications on a per call sign basis. Currently, there are separate fees for an STA depending on whether the space station involved is in geostationary or non-geostationary orbit: The fee for an STA for Space Stations (GSO) is currently $980; the fee for an STA for Space Stations (NGSO) is $3,375. The costs involved with applications for an STA through accepted for filing public notice and up to first-level supervision are likely to be similar for both geostationary and non-geostationary space stations, as well as for small satellites, since the information reviewed in all cases will be the same and the standard for acceptability for filing is also the same.

192. We estimate that the Commission's resources in processing an application for Space Stations STA, per call sign, consist of the following: Industry analyst handling the application intake, attorney determining acceptability for filing, engineer determining acceptability for filing, industry analyst preparing weekly public notice for applications accepted for filing, Policy Branch chief first-level supervision, and Engineering Branch chief first-level supervision. Our estimate is that this process will involve $1,435 in costs.

i. Direct Broadcast Satellites

193. We propose removing this fee category and using application fees and categories for Geostationary Space Stations instead. In September 2019, the Commission revised and updated the rules governing DBS processing procedures to align them with the streamlined processing procedures for GSO FSS satellites. The Commission found that there is little difference technically between GSO FSS satellite systems and DBS systems in geostationary orbit, and that DBS license applications could be processed in the

same manner as GSO FSS satellites under a first-come, first-served basis. Given the technical and regulatory similarities between GSO FSS satellites and DBS satellites, there is no need to maintain a separate filing fee for DBS satellites, and we propose to assess filing fees for DBS satellites under the proposed fees for geostationary space stations, which also apply to GSO FSS satellite applications.

j. Unified Space and Earth Station Licenses

194. The Commission has sought comment on a proposal to create a new unified license that would include authority for both space stations and earth stations in a single grant. Currently, the Commission issues separate licenses for earth stations and space stations and has separate, and different, application requirements for each. As a result, there are separate fees associated with applications for earth or space station licenses, which we have proposed to update as set forth above. The proposal to create a unified earth and licensing regime is pending before the Commission at the time of the release of this item.

195. As part of the proposal, the Commission sought comment on creating a new application fee category for unified space station/earth station licenses based on the fees for space station applications and sought comment on the appropriate values for the various types of applications. Alternatively, the Commission sought comment on applying the space station application fees to unified license applications as well.

196. In light of the changes proposed above to space and earth station filing fees, we seek additional comment on the appropriate fees that would apply to applications for unified licenses if this proposal is adopted in some form. Because the proposal is pending before the Commission, the exact nature and scope of any unified license, or the precise mechanics for applying for it, have not yet been decided. Nonetheless, we seek comment on what the appropriate fee would be for applications for unified space station/earth station licenses based on the prior proposal and taking into account the revised fees proposed above.

197. The RAY BAUM'S Act requires that application fees recover the Commission's costs in processing the application. Accordingly, should any new fee for a unified license simply be the sum of the filing fees for the component space and earth station authorizations, since the unified license would require review of legal and technical parameters of both space and earth station operations? Do the revised filing fees proposed above sufficiently account for any reduction in the information required to be submitted and reviewed under the proposal for a unified license, or any other administrative efficiencies of a unified license? For example, under the Commission's proposal, a unified license applicant would be allowed to omit certain earth station information that is redundant with the information provided for the space station, thereby saving Commission staff review time. It may be the case that including blanket earth station authorization in a unified license requires little more information, or review, than the satellite network description already provided in a space station license application. If so, and depending on the implementation of any new, unified license, would it be appropriate to apply the space station application fee schedule to unified license applications, or to create a new category of filing fees that would be less than the sum of the fees of the comparable space and earth station filings? How should filing fees be applied to requests for modification of licenses or amendments to pending applications that affect only the information provided for either the space station operations or the earth station operations? Should new unified license filing fee categories be created in each of those instances, or should the fee assessed be the fee for the equivalent space or earth station filing?

198. Furthermore, how would filing fees for unified license applications apply to requests for access to the U.S. market by non-U.S. licensed satellites? Would the manner of application of the fees differ depending on whether we adopt the proposal above to apply filing fees to requests for U.S. market access?

k. International Broadcast Stations

199. An International Broadcast Station (IBS) uses broadcast frequencies between 5,950 kHz and 26,100 kHz to provide its broadcast service which is intended to be received in foreign countries. This service also is known as High Frequency Broadcasting (HF) or Shortwave Broadcasting. Unlike other broadcasting services, HF broadcasters are authorized frequencies on a seasonal basis. Currently, two seasons exist: A Summer season and a Winter season. The adjustment of frequencies between seasons results mainly from changes in propagation conditions, altered programming needs, and objectionable interference situations.

200. The following table summarizes the current application fees where they exist and the proposed cost-based fees. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based fee
IBS New Construction Permit	$3,340	$4,010
IBS Construction Permit Modification	$3,340	4,010
IBS New License	$755	905
IBS License Renewal	$190	230
IBS Frequency Assignment	$70 (per frequency hour)	80
IBS Transfer of Control	$120	595
IBS STA	$200	395

201. Applications for a new construction permits and those for modified construction permits have a high level of complexity and requires significant engineering analysis to process. We estimate that the Commission's resources in processing either an application for a new IBS construction permit or a construction permit modification consist of the following: Engineer technical and administrative review, engineer supervisory review. Our cost estimate of this process for either type of application is $4,010.

202. Applications for a new license require moderate engineering technical and administrative attention. We estimate that the Commission's resources in processing an application for an IBS License consist of the following: Engineer administrative review, engineer supervising. Our cost

estimate of this process is $905. An IBS license renewal application involves moderate engineering technical and administrative attention. We estimate that the Commission's resources in processing an application for renewal consist of the following: Engineer administrative review. Our cost estimate of this process is $230.

203. Other applications require significant or moderate engineering or legal analysis. An application for frequency assignment requires significant engineering analysis to process. We estimate that the Commission's resources in processing an application for a new IBS Construction Permit consist of the following: Engineer technical and administrative review. Our cost estimate of this process is $80 per frequency hour. An IBS transfer of control involves significant legal analysis. We estimate that the Commission's resources in processing an IBS Transfer of Control application consist of the following: Attorney review of application, attorney supervising, attorney reviewing multiple ownership, attorney reviewing pleadings, attorney reviewing written disposition. Our cost estimate is of this process is $595. An STA involves moderate engineering and administrative processing. We estimate that the Commission's resources in processing an IBS STA consist of the following: Engineer technical and administrative review, supervisory engineer review. Our cost estimate of this process is $395. We seek comment on these proposals.

l. Permit To Deliver Programs to Foreign Broadcast Stations

204. An application for 325(c) authorization for a new license, license renewal, license transfer of control, or STA is received in electronic or hard copy format and reviewed for completeness. If the application is complete, then it will be placed on Public Notice for 30 days and reviewed. The application also is reviewed by IB/Cross Border Staff Engineer (AM, FM or TV) to ensure foreign station facilities are accurate and approved via Treaty guidelines. Upon a positive review of application by IB engineering and legal the application is uploaded into IBFS. The application is coordinated with the Media Bureau and Enforcement Bureau for further analysis, enforcement violations, and possible ownership/applicant issues. If there are no problems, then the application will be granted, and the Public Notice of the grant will be released.

205. The following table summarizes the current application fees where they exist and the proposed cost-based fees. We propose and seek comment on adopting the following cost-based fees for these applications—and we give as an example the current fees for these services.

Application	Current fee	Cost-based fee
325(c) New License	$110	$360
325(c) License Modification	110	185
325(c) License Renewal	110	155
325(c) STA	110	155
325(c) Transfer of Control	110	260

206. Applications related to 325(c) require the filing of FCC form 308 under a new authorization (except applications for license renewal, which may be made under extension of existing authority). We estimate that the Commission's resources in processing 325(c) applications for a new 325(c) license consist of the following: Engineer technical and compliance review, attorney review. Applications for a new 325(c) license involve legal analysis and minor engineering and technical compliance review. Our estimate is that the cost of this process is $360. Applications for a 325(c) license modification involve legal analysis and minor engineering and technical compliance review. Our estimate is that the cost of this process is $180. Applications for a 325(c) license renewal involve legal analysis. Our estimate is that the cost of this process is $155.

207. Applications for a 325(c) STA involve legal analysis and minor engineering and technical compliance review. Our estimate is that the cost of this process is $150. Applications for a 325(c) transfer of control involve legal analysis. We estimate that the Commission's costs in processing a 325(c) transfer of control application consist of the following: attorney review. Our estimate is that the cost of this process is $260. We seek comment on these proposals.

m. International Fixed Public Radio

208. We propose eliminating this fee category from the application fee schedule because this service was removed from the Commission's rules in 2010. We seek comment on this proposal.

B. Exemptions

209. Among the changes made by the RAY BAUM's Act is the inclusion of noncommercial radio station and television station licensees as statutorily exempt from fees. Because this new statutory exemption codifies the regulatory exemption found in § 1.1116 of the Commission's rules, no amendment to the rule in regard to noncommercial radio station and television station licenses is necessary. Congress did not otherwise add further exemptions to the statutory list of exempt entities and therefore we do not propose further exemptions to § 1.1116 here. We further note that because Congress elected not to update the list of application fees, but instead directed the Commission to do so, applications that were previously not subject to fees will now be subject to fees under our proposals above. If additional exemptions are sought by commenters, we direct commenters to provide relevant authority and/or legislative history that would support modifying the limited Congressional list of exemptions. Moreover, commenters should address the legal effect of the limited list of exemptions adopted by Congress.

210. In 2019, as part of the Commission's ongoing effort to maximize spectrum use in the commercial marketplace, the Commission issued an order in which it eliminated eligibility, educational use and leasing restrictions for EBS licenses, clearing the way for commercial, non-educational use of the channels within the 2.5 GHz Band previously reserved for EBS services. In light of these transformational changes, we propose to eliminate § 1.1116(e)(4) of the Commission's regulations, which exempts EBS licensees from application fees. We seek comment on this proposal.

211. Section 8(d)(2) of the RAY BAUM'S Act allows the Commission to eliminate an application fee when the Commission determines that the cost of collecting the fee exceeds the amount

collected. Specifically, section 8(d)(2) provides that ''[i]f in the judgment of the Commission, the cost of collecting an application fee established under this section would exceed the amount collected, the Commission may by rule eliminate such fee.''

212. In the FY 2019 regulatory fee proceeding we discussed implementation of a similar provision, section 9(e)(2) of the RAY BAUM's Act, which permits the Commission to exempt a regulatory fee if the cost of collecting the fee is more than the fee itself. We then adopted a $1,000 de minimis regulatory fee exemption based on our estimate that the cost of collecting a delinquent regulatory fee debt would exceed $1000.

213. Unlike delinquent regulatory fees, the Commission has no or nominal collection costs for delinquent application fees, for the simple reason that we do not consider or grant applications for which application fees are owed unless the fee is paid at the time of filing. Occasionally, an applicant will, in lieu of paying an application fee, file a waiver and deferral request when it files its application, and under those circumstances the relevant bureau may process the pending application before a decision on the waiver request has issued. If the waiver request is denied thereafter, the Commission may incur costs to collect the application fee debt. These circumstances however are infrequent and do not merit implementation of a rule based on section 9(e)(2) of the statute. We therefore do not propose to create such a rule at this time.

C. Large and Small Application Fees

214. Under section 9A(e)(1) of the RAY BAUM'S Act, the Commission must permit payment of large application fees in installments. Neither the RAY BAUM'S Act itself nor the act's legislative history defines ''large'' fees. In determining how to define ''large'' for the purpose of implementing this provision, we aim to adopt a rule for large fee installment payments that can be fairly and efficiently administered, without undue administrative burden or cost. With that aim in mind, we seek comment on how to define ''large'' fees. Should we define a fee as large if it exceeds a specified amount, for example $20,000, or should we define a fee as large on some other basis, and if so, on what basis and why? Also pertinent to the determination of what constitutes a large fee is whether we should consider individual application fees or whether we should aggregate application fees in some way, for example, by licensee and/or by fees that arise within a specified timeframe, in defining ''large'' fees. We note that many of the fees that we have proposed in this item are lower than their current counterparts; even so, those or other fees when aggregated, as in the case of a bidder that wins multiple licenses at auction, could be large.

215. We also seek comment on how to structure an installment payment program for large fees. For example, should we require payment of all fee installments for an application before the application is filed, or should we permit an application to be filed with less than full payment of the fee, with fee or the balance of the fee to be paid in installments? Or should we require the installments to be paid while the application is pending but before final disposition? We seek comment on how we should protect the Commission against the risk of non-payment if we permit an applicant to pay its fee in installments after the application is filed. For example, should we condition a grant on full payment of the fee, the effect of which would void any grant in the event of nonpayment? Bearing in mind that the Supreme Court's decision in the *Nextwave* case severely curtails the Commission's ability to cancel a license for nonpayment when a licensee files bankruptcy, are there other protections against nonpayment risk that the Commission should consider? In certain circumstances, (*e.g.,* when a party demonstrates financial inability to pay a fee or other debt to the Commission), the Commission will permit the debt then due to be repaid in installments. In those cases, we fix the terms of repayment, such as the interest rate to be assessed, based on our determination of the risk of nonpayment. If we permit a large fee to be paid in installments after an application is filed, should we employ a similar construct? And more generally, how many installment payments should we permit and over what term?

216. Under section 9A(e)(2) of the RAY BAUM'S Act, the Commission must permit payment of application fees ''in small amounts, in advance for a number of years not to exceed the term of the license held by the payor.'' Again, the RAY BAUM'S Act does not define ''small'' for the purpose of implementing section 9A(e)(2). In the regulatory fee context, where a similar statutory provision was enacted in 1994, we began by defining ''small'' fees as fees that would be inefficient to collect on an annual basis and more efficient to collect in total upfront, and by permitting a small fee licensee to prepay its annual regulatory fees for the entire term of their license by paying an amount equal to the first year regulatory fee times the number of years in the license term concurrently with the licensee's new, renewal or reinstatement application. That precedent, while helpful in considering how to define ''small'' fees, is not helpful in otherwise fashioning a companion rule for application fees, which unlike regulatory fees, are neither regular nor predictable during the term of a license. Though construction related applications and fees are sometimes required of licenses won at auction, the great majority of licensees do not know what applications they might need or want to file during a license term. We therefore seek comment on how and under what circumstances to implement such a rule, as well as how to define ''small'' fees for the purpose of the rule. Specifically, should we focus our efforts on defining small fees in the auction context or are there other circumstances in which this rule can be usefully applied? How should we define small fees in the auction or other contexts and how should we structure payment of those fees? To the latter question, should we simply permit an applicant to pay all of its anticipated small fees at rates then applicable, as we have for small regulatory fees?

D. Framework for Section 8 Fees

217. We seek comment on whether our proposed fee setting methodologies could be improved or changed to ensure that our application fees accurately reflect the Commission's cost of processing the applications. Moreover, we seek comment on how the reformulation of our authority under Section 8 impacts the Commission's responsibilities in assessing and collecting application fees. Commenters should discuss any effect on the Commission's proposed application fee methodology explained in detail above as it relates to the reformulation of the requirements under section 8.

218. We propose to interpret processing under our section 8 authority as a limited set of activities and seek comment on this proposal.

219. The specific application fee proposals included above are based on using direct costs as the measure of costs for purposes of establishing application fees. Direct application processing costs for a particular type of application are costs attributable to processing an application. Although our specific fee proposals included above are based on solely on direct labor cost, we also seek comment on using other direct costs to process an application. Moreover, we seek comment on whether

direct costs are a reasonable methodology to implement the requirements of the RAY BAUM'S Act. Labor costs generally are traceable to activities, such as application processing. Non-labor costs often are not traceable, tending to be common costs, or are traceable but only with a lot of effort and at great expense.

220. In our fee proposals, we have based direct labor costs on time estimates and staff compensation (salaries and the cost of employer-paid benefits). We have estimated direct costs in our proposals on an estimate of the cost of staff that process a particular application, based on the time spent processing that application and the compensation received for that work time. We seek comment on whether direct labor cost estimates based on such an approach are likely to be reliable estimates. Our specific fee proposals include first line supervisory direct labor costs. We seek comment, however, on whether direct labor costs should exclude those first line supervisory costs. We also seek comment on whether direct labor costs should include costs for beyond the supervisory level and include second or third supervisory direct labor? Our proposals include the cost of employer-paid benefits. We seek comment, however, on whether such costs should be included and how they should be estimated?

221. We generally have not proposed to recover non-labor costs in application fees but we seek comment on whether we should include some of them. If commenters contend that some non-labor direct cost should be included in the application fees, they should identify with specificity the non-labor direct costs to be included. Should an estimate of the cost for desktop hardware be developed and included in the application fees along with the direct labor costs? Should an allowance for depreciation expense associated with the Commission's investment in desktop hardware (reflecting the loss in economic value of such a long-lived asset over time) and a return on the undepreciated portion of that investment (reflecting the opportunity cost of the money invested in desktop hardware) be estimated, and included and if so, how? Should we take into consideration the fact that regulatory fees are an offsetting collection for our annual S&E appropriation in deciding on whether to include non-labor costs in addition to direct labor costs. Is the fact that some of the same entities that pay application fees also pay regulatory fees relevant to the determining the scope of costs to include in the application fees?

222. We seek comment on whether fees based on direct costs promote the same efficiencies as fees based on incremental or marginal cost. Commenters should discuss whether the costs of an application should be based on the marginal cost or the incremental cost to process an additional application. Do estimates of the direct cost to process an application, developed as described above, roughly approximate incremental or marginal cost, and do fees based on direct cost roughly promote the same efficiencies as fees based on marginal or incremental cost? We seek comment on the advantages and the disadvantages of the direct cost versus the marginal or incremental approaches, including the administrability of the two approaches.

223. Commenters should discuss whether application processing fees should recover common costs. Commenters should discuss whether any common costs should be reflected in the application fees, how these costs should be estimated, and the basis for allocating these costs between application processing activities and the Commission's other regulatory activities, and among the different types of applications.

224. The direct labor costs of processing applications vary widely across the Commission. Some applications take considerable Commission resources to process, particularly if the application is contested. The Commission has, however, automated the application process for other services and there is little input from Commission staff in these instances. For applications that involve considerable staff review and analysis, such as space station applications, we recognize that these application fees must consider the significant staff input and analysis involved in each application. For applications that are wholly or largely automated, in this rulemaking we propose a fee to account for the nominal direct labor costs needed to maintain the automation over time, and to process the small percentages in these categories that are not automated.

225. We seek comment on which tasks should be included in application processing. In our proposals above, we have provided estimates of the Commission's costs in processing applications. In many examples we have included the estimated costs up through the first level supervisor reviewing the application. Commenters should discuss whether this is the appropriate amount of costs to include or if we should include more, or fewer, levels of processing. We seek comment on which staff inputs we should use in defining the application process. Some applications involve complex policy issues that may also affect Commission proceedings beyond the application at issue. As explained above, the specific fee proposals in most instances use as the basis of the application fees the initial steps in the application process, and exclude costs relating to steps that take place after the first level of supervisory review. We also propose basing the application fee on costs for an unopposed application. Commenters should discuss the appropriate definition of application process for each service. In the estimates we provided above, we have included various activities by attorneys, analysts, engineers, and others that are part of processing an application and we invite comment on those estimates and how they should be used in determining the application fee. Our estimates of costs for processing applications are based on staff estimates of the amount of time it takes to perform various steps in processing an application that the staff has determined to be typical. Each step may be considered a potential cost and commenters should discuss which steps should be used, and which should be excluded, in the estimate of cost for determining an appropriate application fee. Not all applications for a given service are the same and we invite comment on whether we have over-estimated or under-estimated a level of complexity for cost-based fees.

E. Restatement of Certain Rules Fundamental To Waiver, Enforcement, and Collection of Application Fees

226. Section 9A of the RAY BAUM'S Act moved, reformatted and changed certain provisions of prior sections 8 and 9 relating to waiver, enforcement and collection of application and regulatory fees. The section 9A provisions are virtually identical for application fees and regulatory fees. Because we took great care in our *FY 2019 Report and Order* to explain the RAY BAUM'S Act revisions to those essential aspects of old section 9, we will not belabor the same points here as relate to old section 8, but only summarize them and note, as we did in the *FY 2019 Report and Order,* that our application of the provisions remains largely unchanged.

227. *Waiver of Application Fees.* The Commission continues to interpret its statutory waiver authority narrowly, to permit only those waivers ''unambiguously articulating 'extraordinary circumstances' outweighing the public interest in recouping the cost of the Commission's

regulatory services for a particular regulatee.'' While financial hardship may justify waiving and/or deferring a party's application fees, the circumstances must be extraordinary and conclusively proven through full and complete documentation provided by the requesting party.

228. *Dismissal and other enforcement remedies.* An application fee must be paid when the application to which it pertains is filed. Failure to timely pay an application fee may result in the dismissal of the application. In the event an application for which a fee is due has not been dismissed, the Commission will impose a 25% late payment penalty on the unpaid application fee debt, and the application fee plus the penalty will accrue interest, until the debt is paid in full. An applicant that fails to pay its application fee debt will also be on ''red light'' and the Commission will withhold action on and subsequently dismiss all applications and other requests for benefits by the applicant, until all debt owed by the applicant is paid in full. The Commission will pursue collection of all past due application fees, including penalties and accrued interest, using collection remedies available to it under the Debt Collection Improvement Act of 1996, its implementing regulations and federal common law, including offsetting application fee debt against monies owed to the debtor by the Commission, and referral of the debt to the United States Treasury for further collection efforts, including centralized offset against monies other federal agencies may owe the debtor.

WIRELESS RADIO SERVICE CODE REFERENCE TABLE

[Codes in use today]

Radio service code	Service description	Application fees under current rules
	PERSONAL RADIOS SERVICES	
HA	Amateur	NO.
HV	Vanity	NO.
AC	Aircraft	YES.
CM	Commercial Operator	YES.
RR	Restricted Operator	YES.
SA	Ship Recreational or Voluntarily Equipped	YES.
SB	Ship Compulsory Equipped	YES.
SE	Ship Exemption	YES.
ZA	General Mobile Radio Services (GMRS)	YES.
	GEOGRAPHIC RADIO SERVICES	
AD	AWS–4	NO.
AH	AWS–H Block	NO.
AT	AWS–3	NO.
AW	AWS, 1710–1755/2110–2155 MHz Bands	NO.
BA	1390–1392 MHz Band, Market Area	NO.
BB	1392–1395 and 1432–1435 MHz Bands, Market Area	NO.
BC	1670–1675 MHz Band, Market Area	NO.
BR	Broadband Radio Service	NO.
CJ	Commercial Aviation Air-Ground (800 MHz)	NO.
CN	PCS Narrowband	NO.
CP	Part 22 VHF/UHF Paging (excluding 931 MHz)	YES.
CW	PCS Broadband	NO.
CY	1910–1915/1990–1995 MHz Bands, Market Area	NO.
CZ	Paging and Radiotelephone, Auctioned	YES.
DV	Multichannel Video Distribution and Data Service	NO.
ED	Educational Broadband Service (currently fee exempt)	NO.
GC	929–931 MHz Bands, Auctioned	NO.
LD	Local Multipoint Distribution Service	NO.
LS	Location and Monitoring Service, Multilateration (LMS)	YES.
MS	Multiple Address Service, Auctioned	YES.
PC	Public Coast Stations, Auctioned	YES.
PL	3.5 GHz, Auctioned	NO.
QA	220–222 MHz Band, Auctioned	YES.
TC	MSS ATC Leasing	NO.
TN	39 GHz, Auctioned	YES.
TZ	24 GHz Service	YES.
UU	Upper Microwave Flexible Use Service	NO.
WS	Wireless Communications Service	NO.
WT	600 MHz Band	NO.
WU	700 MHz Upper Band (Block C)	NO.
WX	700 MHz Guard Band	NO.
WY	700 MHz Lower Band (Blocks A, B, E)	NO.
WZ	700 MHz Lower Band (Blocks C,D)	NO.
YC	SMR, 806–821/851–866 MHz, Auctioned	YES.
YD	SMR, 896–901/935–940 MHz, Auctioned	YES.
YH	SMR, 806–821/851–866 MHz, Auctioned	YES.
ZV	218–219 MHz	NO.

WIRELESS RADIO SERVICE CODE REFERENCE TABLE—Continued

[Codes in use today]

Radio service code	Service description	Application fees under current rules
	SITE-BASED RADIO SERVICES	
AA	Aviation Auxiliary Group	YES.
AB	Aural Microwave Booster	YES.
AF	Aeronautical and Fixed	YES.
AI	Aural Intercity Relay	YES.
AR	Aviation Radionavigation	YES.
AS	Aural Studio Transmitter Link	YES.
CA	Commercial Air-Ground Radiotelephone	YES.
CB	BETRS	YES.
CD	Paging and Radiotelephone	YES.
CE	Digital Electronic Message Service (Common Carrier)	YES.
CF	Common Carrier Fixed Point-to-Point Microwave	YES.
CG	General Aviation Air-ground Radiotelephone	YES.
CJ	Commercial Aviation Air-ground Radiotelephone	YES.
CL	Cellular	YES.
CO	Offshore Radiotelephone	YES.
CR	Rural Radiotelephone	YES.
CT	Local Television Transmission	YES.
GB	Business, 806–821/851–866 MHz, Conventional	YES.
GI	Other Indust/Land Transp, 896–901/935–940 MHz, Conv.	YES.
GJ	800 MHz Conventional B/ILT	YES.
GL	900 MHz Conventional SMR (SMR, Site-Specific)	YES.
GM	800 MHz Conventional SMR (SMR, Site-Specific)	YES.
GO	Other Indust/Land Transp, 806–821/851–866 MHz, Conv.	YES.
GR	SMR, 896–901/935–940 MHz, Conventional	YES.
GS	Private Carrier Paging, 929–930 MHz	YES.
GU	Business, 896–901/935–940 MHz, Conventional	YES.
GX	SMR, 806–821/851–866 MHz, Conventional	YES.
IG	Industrial/Business Pool, Conventional	YES.
IK	Industrial/Business Pool, Commercial, Conventional	YES.
LN	902–928 MHz Location Narrowband (non-multilateration)	YES.
LP	Broadcast Auxiliary Low Power	YES.
LV	Low Power Wireless Assist Video Devices	YES.
LW	902–928 MHz Location Wideband (Grandfathered AVM)	YES.
MA	Marine Auxiliary Group	YES.
MC	Coastal Group	YES.
MG	Microwave Industrial/Business Pool	YES.
MK	Alaska Group	YES.
MM	Millimeter Wave 70–80–90 GHz	YES.
MR	Marine Radiolocation Land	YES.
NC	Nationwide Commercial 5 Channel, 220 MHz	YES.
NN	3650–3700 MHz	YES.
PE	Digital Electronic Message Service (Private Operational Fixed)	YES.
QD	Non-Nationwide Data, 220 MHz	YES.
QO	Non-Nationwide Other, 220 MHz	YES.
QQ	Intelligent Transportation Service (Non-Public Safety)	YES.
QT	Non-Nationwide 5 Channel Trunked, 220 MHz	YES.
RP	Broadcast Auxiliary Remote Pickup	YES.
RS	Land Mobile Radiolocation	YES.
TB	TV Microwave Booster	YES.
TI	TV Intercity Relay	YES.
TP	TV Pickup	YES.
TS	TV Studio Transmitter Link	YES.
TT	TV Translator Relay	YES.
WA	Microwave Aviation	YES.
WM	Microwave Marine	YES.
WR	Microwave Radiolocation	YES.
YB	Business, 806–821/851–866 MHz, Trunked	YES.
YG	Industrial/Business Pool, Trunked	YES.
YI	Industrial/Business Pool, Trunked	YES.
YJ	Business/Industrial/Land Trans, 809–824/854–869 MHz, Trunked	YES.
YK	Industrial/Business Pool—Commercial, Trunked	YES.
YL	900 MHz Trunked SMR	YES.
YM	800 MHz Trunked SMR (SMR, Site-Specific)	YES.
YO	Other Indust/Land Transp. 806–821/851–866 MHz, Trunked	YES.
YS	SMR, 896–901/935–940 MHz, Trunked	YES.
YU	Business, 896–901/935–940 MHz, Trunked	YES.
YX	SMR, 806–821/851–866 MHz, Trunked	YES.

II. Procedural Matters

229. *Paperwork Reduction Act Analysis.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

230. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA) the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this Further Notice of Proposed Rulemaking. The IRFA is contained in Appendix B of the *Notice of Proposed Rulemaking.*

231. *Filing Instructions.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *Electronic Filers:* Comments may be filed electronically by accessing ECFS at *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

232. *People with Disabilities:* To *request* materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 1–888–835–5322 (tty).

233. *Ex Parte Information.* This proceeding shall be treated as a permit-but-disclose proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

III. Initial Regulatory Flexibility Analysis

234. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on this *Notice.* The Commission will send a copy of the *Notice,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

235. The *Notice* seeks comment on new cost-based application fees, which will replace an outdated schedule of fees that was established by Congress over 30 years ago. The RAY BAUM'S Act requires the Commission to establish fees for all applications filed with the Commission based on the cost to process such applications. The proposed fees, which are rules, are needed to meet the statutory requirement. The objective of this rulemaking is to provide an opportunity to bring this set of fees into the 21st century by lowering fees to account for processing efficiencies where appropriate, adding new fees for applications that were implemented after the original fee schedule was adopted, and eliminating fees for applications that no longer exist. The proposed actions will further simplify and streamline an overly complex schedule of fees by proposing significant fee consolidation in matters overseen by both the Wireless Telecommunications Bureau and the International Bureau. We believe that these objectives and the proposed rules are in the public interest and will benefit both large and small entities.

236. The *Notice* proposes a methodology to establish the direct costs of processing applications and, using such methodology, sets forth the Commission's costs in processing applications in services, for the Wireless Telecommunications Bureau, Media Bureau, Wireline Competition Bureau, Enforcement Bureau, International Bureau, Public Safety and Homeland Security Bureau, Office of Engineering and Technology, and Office of Economic Analysis. The *Notice* seeks

comment on the calculation of costs, on eliminating some application fees from the fee schedule, on consolidating some fees, and on new application fees.

B. Legal Basis

237. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 8, and 303(r) of the Communications Act of 1934, as amended.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

238. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

239. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

240. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

241. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.'' Governmental entities are, however, exempt from application fees.

242. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable and IPTV) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

243. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year. Of that total, 3,083 operated with fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

244. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

245. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers and under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72

carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

246. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

247. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate NAICS code category for prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. All 193 carriers have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small.

248. *Local Resellers.* The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICs code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data from 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities.

249. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 2012 Census Bureau data show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 2012 Census Bureau data show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

250. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS code category is for Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer

employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities.

251. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

252. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of $25,000,000 or less. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

253. The Commission has estimated the number of licensed commercial television stations to be 1,377. Of this total, 1,258 stations (or about 91%) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 384. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of noncommercial educational broadcast services stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,300 low power television stations, including Class A stations (LPTV) and 3,681 TV translator stations. Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

254. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

255. *Radio Stations.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' The SBA has established a small business size standard for this category as firms having $38.5 million or less in annual receipts. Economic Census data for 2012 show that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

256. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database as of January 2018, about 11,261 (or about 99.9%) of 11,383 commercial radio stations had revenues of $38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial AM radio stations to be 4,633 stations and the number of commercial FM radio stations to be 6,738, for a total number of 11,371. We note the Commission has also estimated the number of licensed noncommercial FM radio stations to be 4,128. Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of noncommercial stations that would permit it to determine how many such stations would qualify as small entities. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a ''small business,'' an entity may not be dominant in its field of operation. We further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

257. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size

standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are 4,600 active cable systems in the United States. Of this total, all but seven cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

258. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' As of 2018, there were approximately 50,504,624 cable video subscribers in the United States. Accordingly, an operator serving fewer than 505,046 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but six incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

259. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS is included in SBA's economic census category ''Wired Telecommunications Carriers.'' The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA determines that a wireline business is small if it has fewer than 1,500 employees. U.S. Census Bureau data for 2012 indicates that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on that data, we conclude that the majority of wireline firms are small under the applicable SBA standard. Currently, however, only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that internally developed FCC data are persuasive that, in general, DBS service is provided only by large firms.

260. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $35 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49, 999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

261. *RespOrgs.* Responsible Organizations, or RespOrgs, are entities chosen by toll free subscribers to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber. Although RespOrgs are often wireline carriers, they can also include non-carrier entities. Therefore, in the definition herein of RespOrgs, two categories are presented, *i.e.,* Carrier RespOrgs and Non-Carrier RespOrgs.

262. *Carrier RespOrgs.* Neither the Commission, the U.S. Census, nor the SBA have developed a definition for Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Carrier RespOrgs are Wired Telecommunications Carriers, and Wireless Telecommunications Carriers (except satellite).

263. The U.S. Census Bureau defines *Wired Telecommunications Carriers* as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Based on that data, we conclude that the majority of Carrier RespOrgs that operated with wireline-based technology are small.

264. The U.S. Census Bureau defines *Wireless Telecommunications Carriers (except satellite)* as establishments engaged in operating and maintaining

switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 967 Wireless Telecommunications Carriers operated in that year. Of that number, 955 operated with less than 1,000 employees. Based on that data, we conclude that the majority of Carrier RespOrgs that operated with wireless-based technology are small.

265. *Non-Carrier RespOrgs.* Neither the Commission, the U.S. Census, nor the SBA have developed a definition of Non-Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Non-Carrier RespOrgs are ''Other Services Related to Advertising'' and ''Other Management Consulting Services.''

266. The U.S. Census defines *Other Services Related to Advertising* as comprising establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services). The SBA has established a size standard for this industry as annual receipts of $15 million dollars or less. Census data for 2012 show that 5,804 firms operated in this industry for the entire year. Of that number, 5,612 operated with annual receipts of less than $10 million. Based on that data we conclude that the majority of Non-Carrier RespOrgs who provide toll-free number (TFN)-related advertising services are small.

267. The U.S. Census defines *Other Management Consulting Services* as establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry. The SBA has established a size standard for this industry of $15 million dollars or less. Census data for 2012 show that 3,683 firms operated in this industry for that entire year. Of that number, 3,632 operated with less than $10 million in annual receipts. Based on this data, we conclude that a majority of non-carrier RespOrgs who provide TFN-related management consulting services are small.

268. In addition to the data contained in the four (see above) U.S. Census NAICS code categories that provide definitions of what services and functions the Carrier and Non-Carrier RespOrgs provide, Somos, the trade association that monitors RespOrg activities, compiled data showing that as of July 1, 2016 there were 23 RespOrgs operational in Canada and 436 RespOrgs operational in the United States, for a total of 459 RespOrgs currently registered with Somos.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

269. This *Notice* does not propose any changes to the Commission's current information collection, reporting, recordkeeping, or compliance requirements. Licensees, including small entities, will be required to pay application fees after such fees are adopted.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

270. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

271. This *Notice* seeks comment on new application fees and consolidating or deleting some existing application fees. The fees proposed in the *Notice* are based on the Commission's costs in processing the applications. This is now required under section 8 of the Communications Act. In many instances, the proposed fees are much lower than current fees. In some cases, the proposed fees are similar to current fees or slightly higher. There are some new fees proposed for applications that previously had no fees. The Commission is required to base the fees on costs, but commenters may propose different calculations of cost that would result in lower fees.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

272. None.

IV. Ordering Clauses

273. Accordingly, *it is ordered* that, pursuant to section 8 of the Communications Act of 1934, as amended, 47 U.S.C. 158, this Notice of Proposed Rulemaking *is hereby adopted.* 246. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461, unless otherwise noted.

■ 2. Section 1.767 is amended by revising paragraph (e) to read as follows:

§ 1.1101 Cable landing licenses.

* * * * *

(e) A separate application shall be filed with respect to each individual cable system for which a license is requested or a modification of the cable system, renewal, or extension of an existing license is requested. Applicants for common carrier cable landing licenses shall also separately file an international section 214 authorization for overseas cable construction.

* * * * *

■ 3. Section 1.1101 is revised to read as follows:

§ 1.1101 Authority.

Authority to impose and collect these charges is contained in section 8 of the Communications Act, as amended by sections 102 and 103 of title I of the Consolidated Appropriations Act of 2018 (Pub. L. 115–141, 132 Stat. 1084),

47 U.S.C. 158, which directs the Commission to assess and collect application fees to recover the costs of the Commission to process applications.

■ 4. Section 1.1102 is revised to read as follows:

§ 1.1102 Schedule of charges for applications and other filings in the wireless telecommunications services.

In the table below, the amounts appearing in the column labeled ''Fee Amount'' are for application fees only. Those services designated in the table below with an asterisk (*) in the column labeled ''Payment Type Code'' also have associated regulatory fees that must be paid at the same time the application fee is paid. Please refer to the FY _____ Wireless Telecommunications Fee Filing Guide (updated and effective _____) for the corresponding regulatory fee amount located at *https://www.fcc.gov/document/wtb-fee-filing-guide-effective-*_____. For additional guidance, please refer to *§ 1.1152.* Payment can be made electronically using the Commission's electronic filing and payment system ''Fee Filer'' (*www.fcc.gov/feefiler*). Remit manual filings and/or payments for these services to: Federal Communications Commission, Wireless Bureau Applications, P.O. Box 979097, St. Louis, MO 63197–9000.

Service	FCC Form No.	Fee amount	Payment type code
1. Site-Based Wireless Licenses:			
a. New; Major Modification	601 & 159	$190.00	
b. Minor Modification	601 & 159	50.00	
c. Special Temporary Authority	601 & 159	135.00	
d. Assignment/Transfer of Control	603 & 159	50.00	
e. Renewal	601 & 159	50.00	
e. Rule Waiver	601, 603, 608 or 609–T & 159	380.00	
f. Construction Notification	608 & 159	50.00	
g. Spectrum Leasing	608 & 159	50.00	
2. Personal Wireless Licenses:			
a. New; Major Modification; Amateur Vanity Callsign	601 & 159	50.00	
b. Minor Modification	601 & 159	50.00	
c. Special Temporary Authority	601 & 159	135.00	
d. Rule Waiver	601, 603 or 608 & 159	50.00	
e. Renewal	601 & 159	50.00	
3. Geographic-Based Wireless Licenses:			
a. New (other than auction long form); Major Modification	601 & 159	305.00	
New License (Pre-Auction Short Form Application) (per application; NOT per call sign).		575	
b. New (auction long form, spectrum auction; per application)	601 & 159	2,600	
c. Renewal		50.00	
d. Minor Modification	601 & 159	200.00	
e. Construction Notification/Extensions		290.00	
f. Special Temporary Authority	601 & 159	335.00	
g. Assignment of Authorization; Transfer of Control;	603 & 159	195.00	
h. Spectrum Leasing	608 & 159	165.00	
i. Rule Waiver		380.00	
j. Designated Entity Licensee Reportable Eligibility Event		50.00	

■ 5. Section 1.1103 is revised to read as follows:

§ 1.1103 Schedule of charges for assignment of grantee codes, experimental radio services (or service).

Payment can be made electronically using the Commission's electronic filing and payment system Fee Filer (*www.fcc.gov/feefiler*). Remit manual filings and/or payments for these services to: Federal Communications Commission, OET Services, P.O. Box 979095, St. Louis, MO 63197–9000.

Service	FCC Form No.	Fee amount	Payment type code
1. Assignment of Grantee Code	159, 702, 703	$50.00	EAG
2. Experimental Radio Service:			
a. New Station Authorization	442 & 159	125.00	EAE
b. Modification of Authorization	442 & 159	125.00	EAE
c. Renewal of Station Authorization	405 & 159	125.00	EAE
d. Assignment of License or Transfer of Control	702 or 703 & 159	125.00	EAE
e. Special Temporary Authority	STA & Correspondence	125.00	EAE
f. Confidentiality Request	Correspondence	50.00	EAE

■ 6. Section 1.1104 is revised to read as follows:

§ 1.1104 Schedule of charges for applications and other filings for media services.

Payment can be made electronically using the Commission's electronic filing and payment system Fee Filer (*www.fcc.gov/feefiler*). Remit manual filings and/or payments for these services to: Federal Communications Commission, Media Bureau Services, P.O. Box 979089, St. Louis, MO 63197–9000. The asterisk (*) indicates that

multiple stations and multiple fee submissions are acceptable within the same post office box.

Service	FCC Form No.	Fee amount	Payment type code
1. Commercial Full Service TV Services and Class A Stations:			
a. New and Major Modification Construction Permits	301 & 159, 301–CA & 159	$4,260.00	MVT
b. Minor Modification	301 & 159	1,335.00	MPT
c. New License	302–TV & 159, 302–CA & 159	380.00	MJT
d. License Renewal	303–S & 159	330.00	MGT
e. License Assignment: (i) Long Form	314 & 159	1,245.00	MPT
(ii) Short Form	316 & 159	405.00	MDT
f. Transfer of Control: (i) Long Form	315 & 159	1,245.00	MPT
(ii) Short Form	316 & 159	405.00	MDT
g. Call Sign	380 & 159	170.00	MBT
h. Special Temporary Authority	Corres & 159	270.00	MGT
i. Petition for Rulemaking for New Community of License	301 & 159, 302–TV & 159	3,395.00	MRT
j. Ownership Report	323 & 159	85.00	MAT
2. TV Translators and LPTV Stations:			
a. New or Major Change Construction Permit	346 & 159	775.00	MOL
b. New License	347 & 159	215.00	MEL
c. License Renewal	303–S & 159	145.00	MAL
d. Special Temporary Authority	Corres & 159	270.00	MGL
e. License Assignment	345 & 159, 314 & 159, 316 & 159	335.00	MDL
f. Transfer of Control	345 & 159, 315 & 159, 316 & 159	335.00	MDL
g. Call Sign	380 & 159	170.00	MBT
4. Cable Television Services:			
a. CARS license	327 & 159	450.00	TIC
b. CARS Major Modification	327 & 159	345.00	TIC
c. CARS Minor Modification	327 & 159	50.00	TIC
d. CARS renewal	327 & 159	260.00	TIC
e. CARS assignment	327 & 159	365.00	TIC
f. CARS transfer of control	327 & 159	465.00	TIC
g. CARS special temporary authority	Corres & 159	225.00	TGC
h. Special relief petition	Corres & 159	1,615.00	TQC
i. CARS registration statement	322 & 159	105.00	TAC
j. MVPD aeronautical frequency usage notification	321 & 159	90.00	TAC
5. Commercial AM Application Fees:			
a. New Construction Permit	301 & 159	3,980.00	MUR
b. Minor modification	301 & 159	1,625.00	MPR
c. New License	302–AM & 159	645.00	MMR
d. Directional antenna	302–AM & 159	1,260.00	MOR
e. License Renewal	303–S & 159	$325.00	MGR
f. License Assignment: (i) Long Form	314 & 159	1,005.00	MPR
(ii) Short Form	316 & 159	425.00	MDR
g. Transfer of Control: (i) Long Form	315 & 159	1,005.00	MPR
(ii) Short Form	316 & 159	425.00	MDR
h. Call Sign	380 & 159	170.00	MBR
i. Special temporary authority	Corres & 159	290.00	MGR
j. Ownership Report	323 & 159 or Corres & 159	85.00	MAR
6. Commercial FM Application Fees:			
a. New or Major Change Construction Permit	301 & 159	3,295.00	MTR
b. Minor modification	301 & 159	1,265.00	MPR
c. New License	302–FM & 159	$235.00	MHR
d. Directional antenna	302–FM & 159	630.00	MLR
e. License Renewal	303–S & 159	325.00	MGR
f. License Assignment: (i) Long form	314 & 159	1,005.00	MPR
(ii) Short form	316 & 159	425.00	MDR
g. Transfer of Control: (i) Long form	315 & 159	1,005.00	MPR
(ii) Short form	316 & 159	425.00	MDR
h. Call sign	380 & 159	170.00	MBR
i. Special temporary authority	Corres & 159	210.00	MGR
j. Petition for rulemaking	301 & 159 or 302–FM & 159	3,180.00	MRR
k. Ownership report	323 & 159 or Corres & 159	85.00	MAR
7. FM Translators and Boosters:			
a. Translator, new construction permit	349 & 159	705.00	MOF
b. Translator, minor modification		210.00	
c. Translator, new license	350 & 159	180.00	MEF
d. Translator, renewal	303–S & 159	175.00	MAF
e. Translator, special temporary authority	Corres & 159	170.00	MGF
f. Translator, assignment	345 & 159, 314 & 159, 316 & 159	290.00	MDF
g. Translator, transfer of control	345 & 159, 315 & 159, 316 & 159	290.00	MDF
h. Booster, new or major change construction permit	346 & 159	705.00	MOF
i. Booster, new license	347 & 159	180.00	MEF
j. Booster, special temporary authority	Corres & 159	170.00	MGF

Service	FCC Form No.	Fee amount	Payment type code
8. Special Media Service Filing:			
a. Broadcast Services Short-Form Application	175 & 159	575.00	
b. Section 310(b) petitions for declaratory ruling	Corres & 159	2,485	

■ 7. Section 1.1105 is revised to read as follows:

§ 1.1105 Schedule of charges for applications and other filings for the wireline competition services.

Payments should be made electronically using the Commission's electronic filing and payment system Fee Filer (*www.fcc.gov/feefiler*). Manual filings and/or payments for these services are no longer accepted.

Service	FCC Form No.	Fee amount	Payment type code
1. Domestic 214 Applications:			
a. Part 63 Transfers of Control	Corres & 159	$1,230.00	CDT
b. Special Temporary Authority	Corres & 159	675.00	
2. Domestic 214 Applications—Part 63 Discontinuances:			
a. Non-Standard Review	Corres & 159	1,230.00	
b. Standard Streamlined Review	Corres & 159	335	
3. Interconnection VoIP Numbering: Authorization—Part 51	Corres & 159	1,330.00	
4. Tariff Filings	Corres & 159	930.00	CQK
5. Complex Tariff Filings (Large)		6,540.00	
6. Complex Tariff Filings (Small)		3,270.00	
7. Application for Special Permission for Waiver of Tariff Rules	Corres & 159	375.00	
8. Universal Service Short-Form Auction Application		1,030	
9. Universal Service Long Form Auction Application		1,935.00	
10. Waiver of Accounting Rules	Corres & 159	4,415.00	BEA

■ 8. Section 1.1106 is revised to read as follows:

§ 1.1106 Schedule of charges for applications and other filings for the enforcement services.

Remit payment for these services electronically using the Commission's electronic payment system in accordance with the procedures set forth on the Commission's website, *www.fcc.gov/licensing-databases/fees.*

Service	FCC Form No.	Proposed fee amount	Payment type code
1. Formal Complaints and Pole Attachment Complaints	Corres & 159	$540.00	CIZ

■ 9. Section 1.1107 is revised to read as follows:

§ 1.1107 Schedule of charges for applications and other filings for the international services.

Payment can be made electronically using the Commission's electronic filing and payment system Fee Filer (*www.fcc.gov/feefiler*). Remit manual filings and/or payments for these services to: Federal Communications Commission, International Bureau Applications, P.O. Box 979093, St. Louis, MO 63197–9000.

Service	FCC Form No.	Proposed fee amount	Payment type code
1. Cable Landing License:			
a. New license	Corres & 159	$3,835.00	CXT
b. Assignment/transfer of control, substantive	Corres & 159	1,230.00	CUT
c. Assignment/transfer of control, pro forma	Corres & 159	675.00	CUT
d. Foreign Carrier Affiliation Notification		495.00	
e. Modification	Corres & 159	1,230.00	
f. Renewal	Corres & 159	2,440.00	
g. Special Temporary Authority	Corres & 159	675.00	CUT
h. Waiver	Corres & 159	335.00	
2. International Section 214 Applications:			
a. New authorization	Corres & 159	785.00	
b. Assignment/transfer of control, substantive	Corres & 159	1,230.00	
c. Assignment/transfer of control, pro forma	Corres & 159	675.00	
d. Foreign Carrier Affiliation Notification	Corres & 159	495.00	
e. Modification	Corres & 159	675.00	
f. Special Temporary Authority	Corres & 159	675.00	
g. Waiver	Corres & 159	335.00	
h. Discontinuance of services	Corres & 159	335.00	

Service	FCC Form No.	Proposed fee amount	Payment type code
3. Section 310(b) Foreign Ownership Petitions for Declaratory Ruling:			
a. Petition	Corres & 159	2,485.00	
b. Waiver	Corres & 159	335.00	
4. Recognized Operating Agency:			
a. ROA application	Corres & 159	1,145.00	CUG
b. Waiver	Corres & 159	335.00	
5. Data Network Identification Code:			
a. DNIC application	Corres & 159	785.00	
b. Waiver		335.00	
6. International Signaling Point Code:			
a. ISPC application	Corres & 159	785.00	
b. Transfer of Control	Corres & 159	675.00	
c. Modification		675.00	
d. Waiver		335.00	
7. Fixed or Temporary Fixed Transmit or Transmit/Receive Earth Stations, per call sign:			
a. Initial Application, single site	312 Main & Schedule B & 159	360.00	BAX
b. Initial application, multiple sites	312 Main & Schedule B & 159	6,515.00	BAX
8. Receive Only Earth Stations:			
a. Initial Applications for Registration or License, single site, per site.	312 Main & Schedule B & 159	175.00	CMO
b. Initial application or registration, multiple sites, per system	312 Main & Schedule B & 159	465.00	CMO
9. Blanket Earth Stations, per call sign: a. Initial Applications for Registration or License.	312 Main & Schedule B & 159	360.00	BGB
10. Mobile Earth Stations, per call sign: a. Initial application for blanket authorization, per system, per call sign.	312 Main & Schedule B & 159	815.00	BGB
11. Amendments to Earth Station Applications or Registrations:			
a. Single site	312 Main & Schedule A or B & 159	430.00	
b. Multiple sites	312 Main & Schedule A or B & 159	630.00	
12. Modifications of Earth Station Licenses or Registrations	312 Main & Schedule B & 159	545.00	
13. Assignment or Transfer of Control of Earth Station Licenses or Registrations, per call sign.	312 Main & Schedule A & 159	745.00	
14. Pro Forma Assignment or Transfer of Control of Earth Station Licenses or Registrations, per call sign.	312 Main & Schedule A & 159	400.00	
15. Renewals of Earth Station Licenses, per call sign:			
a. Single site	312–R & 159	115.00	
b. Multiple sites	312–R & 159	145.00	
16. Earth Station Special Temporary Authority, per call sign	312 & 159	195.00	
17. Space Stations—Geostationary Orbit:			
a. Application for Authority to Construct, Deploy, & Operate, per satellite.	312 Main & Schedule S & 159	3,555.00	BNY
b. Application for authority to operate, per satellite	312 Main & Schedule S & 159	3,555.00	
18. Space Stations, Non-Geostationary Orbit:			
a. Application for authority to construct, deploy, & operate, per system of technically identical satellites, per call sign.	312 Main & Schedule S & 159	15,050.00	CLW
b. Application for authority to operate, per system of technically identical satellites, per call sign.	312 Main & Schedule S & 159	15,050.00	
19. Space Stations, Petition for declaratory ruling for a foreign space station to access the U.S. market:			
a. Geostationary orbit	Corres & 159	3,555.00	
b. Non-Geostationary Orbit	Corres & 159	15,050.00	
20. Space Stations, Small Satellites, per call sign: a. Application for authority to construct, deploy, & operate, per call sign.	312 Main & Schedule S & 159	2,175.00	
21. Space Stations, Amendments, per call sign	312 Main & Schedule S & 159	1,620.00	
22. Space Stations, Modifications, per call sign	312 Main & Schedule S (if needed) & 159.	2,495.00	
23. Space Stations, Assignment or Transfer of Control, per call sign	312 Main & Schedule A & 159	745.00	
24. Space Stations, Pro Forma Assignment or Transfer of Control, per call sign.	312 Main & Schedule A & 159	400.00	
25. Space Stations, Special Temporary Authority, per call sign	312 Main & Corres & 159	1,435.00	
26. International Broadcast Stations:			
a. New Station & Facilities Change Construction Permit	309 & 159	4,010.00	
b. New License	310 & 159	905.00	
c. License Renewal	311 & 159	230.00	
d. License Assignment/Transfer of Control	314, 315, 316, & 159	80.00	
e. Frequency Assignment & Coordination	Written Request & 159	595.00	
f. Special Temporary Authorization	Written Request & 159	395.00	
27. Permit to Deliver Programs to Foreign Broadcast Stations:			
a. New License	308 & 159	360.00	
b. Modification	308 & 159	185.00	
c. License Renewal	308 & 159	155.00	
d. STA	308 & 159	155.00	
e. Transfer of Control	308 & 159	260.00	

■ 11. Section 1.1109 is revised to read as follows:

§ 1.1109 Schedule of charges for applications and other filings for the Homeland services.

Payments should be made electronically using the Commission's electronic filing and payment system Fee Filer (*www.fcc.gov/feefiler*). Manual filings and/or payments for these services are no longer accepted.

Service	FCC Form No.	Fee amount	Payment type code
1. Communication: Assistance for Law Enforcement (CALEA) Petitions	Corres & 159	$3,875.00	CLEA

■ 12. Section 1.1112 is revised to read as follows:

§ 1.1112 Form of payment.

(a) Annual and multiple year regulatory fees must be paid electronically as described in paragraph (e) of this section. Except as otherwise permitted under these rules, application fees and fees for other filings must also be paid electronically in accordance with paragraph (e) of this section. Fee payments that are permitted to be paid manually under these rules should be in the form of a check, cashier's check, or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by a Visa, MasterCard, American Express, or Discover credit card. No other credit card is acceptable. Fees for applications and other filings paid by credit card will not be accepted unless the credit card section of FCC Form 159 is completed in full. For those fees payable manually under these rules, (i) the Commission discourages applicants from submitting cash and will not be responsible for cash sent through the mail; (ii) personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient and (iii) third party checks (*i.e.,* checks with a third party as maker or endorser) will not be accepted.

(1) Payors of fees that may be paid manually under these rules are encouraged to submit these payments electronically under the procedures described in paragraph (e) of this section.

(2) Specific procedures for electronic payments are announced in Bureau/Office fee filing guides.

(3) It is the responsibility of the payer to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures will result in the return of the application or other filing.

(4) To insure proper credit, applicants making wire transfer payments must follow the instructions set out in the appropriate Bureau Office fee filing guide.

(b) Applicants are required to submit one payment instrument (check, cashier's check, or money order) and FCC Form 159 with each application or filing; multiple payment instruments for a single application or filing are not permitted. A separate Fee Form (FCC Form 159) will not be required once the information requirements of that form (the Fee Code, fee amount, and total fee remitted) are incorporated into the underlying application form.

(c) The Commission may accept multiple money orders in payment of a fee for a single application where the fee exceeds the maximum amount for a money order established by the issuing agency and the use of multiple money orders is the only practical method available for fee payment.

(d) The Commission may require payment of fees with a cashier's check upon notification to an applicant or filer or prospective group of applicants under the conditions set forth below in paragraphs (d) (1) and (2) of this section.

(1) Payment by cashier's check may be required when a person or organization has made payment on one or more occasions with a payment instrument on which the Commission does not receive final payment and such failure is not excused by bank error.

(2) The Commission will notify the party in writing that future payments must be made by cashier's check until further notice. If, subsequent to such notice, payment is not made by cashier's check, the party's payment will not be accepted and its application or other filing will be returned.

(e) Annual and multiple year regulatory fee payments, and except as otherwise permitted under these rules, application and other fee payments shall be submitted by online ACH payment, online Visa, MasterCard, American Express, or Discover credit card payment, or wire transfer payment denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission. No other credit card is acceptable. Any other form of payment (*e.g.,* paper checks) will be rejected and sent back to the payor.

(f) All fees collected will be paid into the general fund of the United States Treasury in accordance with *Public Law 115–141.*

(g) The Commission will furnish a stamped receipt of an application filed by mail or in person only upon request that complies with the following instructions. In order to obtain a stamped receipt for an application (or other filing), the application package must include a copy of the first page of the application, clearly marked ''copy'', submitted expressly for the purpose of serving as a receipt of the filing. The copy should be the top document in the package. If hand delivered, the copy will be date-stamped immediately and provided to the bearer of the submission. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the date stamped copy of the application. No remittance receipt copies will be furnished. Stamped receipts of electronically-filed applications will not be provided.

■ 13. Section 1.1113 is revised to read as follows:

§ 1.1113 Filing locations.

(a) Except as noted in this section, applications and other filings, with attached fees and FCC Form 159, must be submitted to the locations and addresses set forth in *§§ 1.1102* through *1.1109.*

(1) Tariff filings shall be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. On the same day, the filer should submit a copy of the cover letter, the FCC Form 159, and the appropriate fee in accordance with the procedures established in *§ 1.1105.*

(2) Bills for collection must be paid in accordance with the payment instructions set forth on the bill sent by the Commission.To ensure proper credit, payments must be accompanied by the bill. Electronic payments must

include the reference number contained on the bill sent by the Commission.

(3) Petitions for reconsideration or applications for review of fee decisions pursuant to *§ 1.1119(b)* of this subpart must be accompanied by the required fee for the application or other filing being considered or reviewed.

(4) Applicants claiming an exemption from a fee requirement for an application or other filing under *47 U.S.C. 158(d)(1)* or *§ 1.1116* of this subpart shall file their applications in the appropriate location as set forth in the rules for the service for which they are applying, except that request for waiver accompanied by a tentative fee payment should be filed as set forth in *§§ 1.1102* through *1.1109.*

(b) Except as provided for in paragraph (c) of this section, all materials must be submitted as one package. The Commission will not take responsibility for matching fees, forms and applications submitted at different times or locations. Materials submitted at other than the location and address required by *§ 0.401(b)* and paragraph (a) of this section will be returned to the applicant or filer.

(c) Fees for applications and other filings pertaining to the Wireless Radio Services that are submitted electronically via ULS may be paid electronically or sent to the Commission's lock box bank manually. When paying manually, applicants must include the application file number (assigned by the ULS electronic filing system on FCC Form 159) and submit such number with the payment in order for the Commission to verify that the payment was made. Manual payments must be received no later than ten (10) days after receipt of the application on ULS or the application will be dismissed. Payment received more than ten (10) days after electronic filing of an application on a Bureau/Office electronic filing system (*e.g.,* ULS) will be forfeited (see *§§ 1.934* and *1.1111.*)

(d) Fees for applications and other filings pertaining to the Multichannel Video and Cable Television Service (MVCTS) and the Cable Television Relay Service (CARS) that are submitted electronically via the Cable Operations and Licensing System (COALS) may be paid electronically or sent to the Commission's lock box bank manually. When paying manually, applicants must include the FCC Form 159 generated by COALS (pre-filled with the transaction confirmation number) and completed with the necessary additional payment information to allow the Commission to verify that payment was made. Manual payments must be received no later than ten (10) days after receipt of the application or filing in COALS or the application or filing will be dismissed.

■ 14. Section 1.1114 is revised to read as follows:

§ 1.1114 Conditionality of Commission or staff authorizations.

(a) Any instrument of authorization granted by the Commission, or by its staff under delegated authority, will be conditioned upon final payment of the applicable fee or delinquent fees and timely payment of bills issued by the Commission. As applied to checks, bank drafts and money orders, final payment shall mean receipt by the Treasury of funds cleared by the financial institution on which the check, bank draft or money order is drawn.

(1) If, prior to a grant of an instrument of authorization, the Commission is notified that final payment has not been made, the application or filing will be:

(i) Dismissed and returned to the applicant;

(ii) Shall lose its place in the processing line;

(iii) And will not be accorded nunc pro tunc treatment if resubmitted after the relevant filing deadline.

(2) If, subsequent to a grant of an instrument of authorization, the Commission is notified that final payment has not been made, the Commission will:

(i) Automatically rescind that instrument of authorization for failure to meet the condition imposed by this subsection; and

(ii) Notify the grantee of this action; and

(iii) Not permit nunc pro tunc treatment for the resubmission of the application or filing if the relevant deadline has expired.

(3) Upon receipt of a notification of rescission of the authorization, the grantee will immediately cease operations initiated pursuant to the authorization.

(b) In those instances where the Commission has granted a request for deferred payment of a fee or issued a bill payable at a future date, further processing of the application or filing, or the grant of authority, shall be conditioned upon final payment of the fee, plus other required payments for late payments, by the date prescribed by the deferral decision or bill. Failure to comply with the terms of the deferral decision or bill shall result in the automatic dismissal of the submission or rescission of the Commission authorization for failure to meet the condition imposed by this subpart. The Commission reserves the right to return payments received after the date established on the bill and exercise the conditions attached to the application. The Commission shall:

(1) Notify the grantee that the authorization has been rescinded;

(i) Upon such notification, the grantee will immediately cease operations initiated pursuant to the authorization.

(ii) [Reserved by *74 FR 3446*]

(2) Not permit nunc pro tunc treatment to applicants who attempt to refile after the original deadline for the underlying submission.

(c)(1) Where an applicant is found to be delinquent in the payment of an application fee, including any installment payment, the Commission will make a written request for the delinquent fee or installment payment, together with any penalty and interest that may be due. Such request shall inform the applicant/filer that failure to pay or make satisfactory payment arrangements with the Commission will result in the Commission's withholding action on, and/or as appropriate, dismissal of, any applications or requests filed by the applicant. The staff shall also inform the applicant of the procedures for seeking Commission review of the staff's fee determination.

(2) If, after final determination that the fee is due or that the applicant is delinquent in the payment of fees, and payment is not made in a timely manner, the staff will withhold action on the application or filing until payment or other satisfactory arrangements is made with the Commission. If payment or satisfactory arrangement with the Commission is not made within 30 days of the date of the original notification, the application will be dismissed.

■ 15. Section 1.1117 is amended by revising the section heading and paragraph (a) to read as follows:

§ 1.1117 Adjustments and amendments to charges.

(a) The Schedule of Charges established by *§§ 1.1102* through *1.1109* of this subpart shall be reviewed by the Commission on October 1, ____ and every two years thereafter, and adjustments and amendments made, if any, will be reflected in the next publication of Schedule of Charges in accordance with section 8 of the Communications Act, as amended by sections 102 and 103 of title I of the Consolidated Appropriations Act of 2018 (Pub. L. 1115–141, 132 Stat. 1084), 47 U.S.C. 158.

* * * * *

■ 16. Section 1.1118 is revised to read as follows:

§ 1.1118 Penalty for late or insufficient payments.

(a) Filings subject to fees and accompanied by defective fee submissions will be dismissed under *§ 1.1111 (d)* of this part where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission.

(1) A defective fee may be corrected by resubmitting the application or other filing, together with the entire correct fee.

(2) For purposes of determining whether the filing is timely, the date of resubmission with the correct fee will be considered the date of filing. However, in cases where the fee payment fails due to error of the applicant's bank, as evidenced by an affidavit of an officer of the bank, the date of the original submission will be considered the date of filing.

(b) Applications or filings accompanied by insufficient fees or no fees, or where such applications or filings are made by persons or organizations that are delinquent in fees owed to the Commission, that are inadvertently forwarded to Commission staff for substantive review will be billed for the amount due if the discrepancy is not discovered until after 30 calendar days from the receipt of the application or filing by the Commission. Applications or filings that are accompanied by insufficient fees or no fees will have a penalty charge equaling 25 percent of the amount due added to each bill. Any Commission action taken prior to timely payment of these charges is contingent and subject to rescission.

(c) Applicants to whom a deferral of payment is granted under the terms of this subsection will be billed for the amount due plus a penalty charge equaling 25 percent of the amount due. Any Commission actions taken prior to timely payment of these charges are contingent and subject to rescission.

(d) Failure to submit fees, following notice to the applicant of failure to submit the required fee, is subject to collection of the fee, the 25 percent penalty, and interest thereon pursuant to Section 9A of the Communications Act, as amended, and the provisions of the Debt Collection Improvement Act of 1996 (DCIA), *Public Law 104–134, 110 Stat. 1321,* 1358 (Apr. 26, 1996), codified at *31 U.S.C. 3701 et seq.* See *47 CFR 1.1901* through *1.1952.* The debt collection processes described above may proceed concurrently with any other sanction in this paragraph and elsewhere in the Commission's rules.

■ 17. Section 1.1119 is revised to read as follows:

§ 1.1119 Petitions and applications for review.

(a) The fees established by this subpart and any associated penalties and interest charges may be waived, reduced or deferred in specific instances where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.

(b) Requests for waiver, reduction or deferral will only be considered when received from applicants acting in respect to their own applications. Requests for waiver, reduction or deferral of entire classes of services will not be considered.

(c) Petitions for waiver, reduction or deferral of fees, fee determinations, reconsiderations and applications for review will be acted upon by the Managing Director with the concurrence of the General Counsel. All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. Requests for deferral of a fee payment for financial hardship must be accompanied by supporting documentation.

(1) Petitions and applications for review submitted with a fee must be submitted electronically or to the Commission's lock box bank at the address for the appropriate service as set forth in *§§ 1.1102* through *1.1109.*

(2) If no fee payment is submitted, the request should be filed electronically through the Commission's Electronic Comment Filing System or with the Commission's Secretary.

(d) Deferrals of fees will be granted for an established period of time not to exceed six months.

(e) Applicants seeking waivers must submit the request for waiver with the application or filing, required fee and FCC Form 159, or a request for deferral. Petitions for waiver, reduction and/or deferral of payment must be submitted to the Office of the Managing Director as specified in paragraph (c) of this section. Requests that do not comply with this regulation will be dismissed in accordance with *§ 1.1111* of this subpart. Submitted fees will be returned in whole if a waiver is granted and in part if a reduction is granted. The Commission will not be responsible for delays in acting upon these requests.

(f) Petitions for waiver of a fee based on financial hardship will be subject to the provisions of paragraph 1.1166(e).

■ 18. Section 1.1120 is revised to read as follows:

§ 1.1120 Error claims.

(a) Applicants who wish to challenge a staff determination of an insufficient fee payment or delinquent debt may do so in writing. A challenge to a determination that a party is delinquent in paying the full application fee must be accompanied by suitable proof that the fee payment had been paid or waived (or deferred from payment during the period in question), or by the required application fee payment and any assessedt penalty and interest (see *§ 1.1118*). Failure to comply with these procedures will result in dismissal of the challenge. These claims should be addressed to the Federal Communications Commission, Attention: Financial Operations, 445 12th St. SW, Washington, DC 20554 or emailed to *ARINQUIRIES@fcc.gov.*

(b) Actions taken by Financial Operations staff are subject to the reconsideration and review provisions of *§§ 1.106* and *1.115* of this part, EXCEPT THAT reconsideration and/or review will only be available where the applicant has made the full and proper payment of the underlying fee as required by this subpart.

(1) Petitions for reconsideration and/or applications for review submitted by applicants that have not made the full and proper fee payment will be dismissed; and

(2) If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.

[FR Doc. 2020–21530 Filed 10–14–20; 8:45 am]

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Part VI

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 1, 2, 3, et al.

Federal Acquisition Regulation: Revision of Definition of ''Commercial Item''; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 37, 38, 39, 42, 44, 46, 47, 49, 52, and 53

[FAR Case 2018–018; Docket No. FAR–2018–0018, Sequence No. 1]

RIN 9000–AN76

Federal Acquisition Regulation: Revision of Definition of ''Commercial Item''

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA and NASA are proposing to amend the Federal Acquisition Regulation to implement a section of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 to change the definition of ''commercial item.''

DATES: Interested parties should submit comments to the Regulatory Secretariat Division at one of the addresses shown below on or before December 14, 2020 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments in response to FAR Case 2018–018 to *https://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2018–018''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2018–018.'' Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2018–018'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''FAR case 2018–018'' in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or *zenaida.delgado@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite ''FAR Case 2018–018''.

SUPPLEMENTARY INFORMATION:

I. Background

The current Federal Acquisition Regulation (FAR) definition of ''commercial item'' in FAR part 2 was established by FAR case 94–790, Acquisition of Commercial Items, published at 60 FR 48231 on September 18, 1995, which implemented the revised statutory authorities in Title VIII of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355).

DoD, GSA, and NASA are proposing to amend the FAR definition of ''commercial item'' to implement section 836 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). This section separates the definition of ''commercial item'' at 41 U.S.C. 103 into the definitions of ''commercial product'' and ''commercial service,'' at 41 U.S.C. 103 and 103a. Section 836 sets the effective date of the new definitions as January 1, 2020.

Splitting the definition of ''commercial item'' into the definitions of ''commercial product'' and ''commercial service'' was a recommendation made by the independent panel created by section 809 of the NDAA for FY 2016 (Pub. L. 114–92). The panel was created to review and improve the functioning of the defense acquisition system, and eliminate any regulations found unnecessary to achieve such improvements. The panel recommended the splitting of the definition of ''commercial item'' to better ''reflect the significant roles services and commercial services play today in the DoD procurement budget.'' See recommendation on pages 29 to 30 of Volume 1 of 3 dated January 2018 of the Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations, available via the internet at *https://section809panel.org/wp-content/uploads/2018/04/Sec809Panel_Vol1-Report_Jan18_REVISED_2018-03-14.pdf.*

This change resolves the issue the Section 809 Panel cites, which is that the ''acquisition workforce has faced issues with inconsistent interpretations of policy, confusion over how to identify eligible commercial products and services''. Bifurcating the definition of ''commercial item'' into ''commercial product'' and ''commercial service'' is a way to provide clarity for the acquisition workforce, which may result in greater engagement with the commercial marketplace.

It is important to note, the amendment to separate ''commercial item'' with ''commercial product'' and ''commercial service'' does not expand or shrink the universe of products or services that the Government may procure using FAR part 12, nor does it change the terms and conditions vendors must comply with.

II. Discussion and Analysis

As required by section 836 of the NDAA for FY 2019, DoD, GSA, and NASA are proposing to replace instances of commercial item(s) with commercial product(s), commercial service(s), or both commercial product(s) and commercial service(s). The following summarizes the proposed changes to the FAR:

1. Removed from FAR part 2 the definition of ''commercial item'' and replaced it with the definitions of ''commercial product,'' and ''commercial service'' from the NDAA with only the minor revisions for clarification currently in the FAR definition of ''commercial item.'' The clarification in paragraph 3(ii) of the proposed definition of ''commercial product'' has been in FAR part 2 since the definition of ''commercial item'' was incorporated by FAR case 94–790, Acquisition of Commercial Items, in 1995. Paragraphs 2(i) and 2(ii) of the proposed definition of ''commercial service'' are also long standing; they stem from a FAR change published October 22, 2001, which was revised slightly in a FAR change published June 18, 2004.

2. Replaced all instances of ''non-commercial'' and ''noncommercial'' with ''other than commercial'' as it relates to this rule. This is an editorial change and will provide consistent language throughout the FAR.

3. Removed FAR 12.102(g), and a corresponding reference at FAR 37.601(c), as obsolete. FAR 12.102(g) only applies to contracts or orders entered into before November 23, 2013.

4. Added the definition of ''established price'' at FAR 16.001 to be consistent with the term as defined at the FAR clauses at FAR 52.216–2, Economic Price Adjustment—Standard Supplies, and 52.216–3, Economic Price Adjustment-Semistandard Supplies. This is an editorial change for consistency to have the definition in both the clause and the corresponding FAR part.

5. Made conforming changes to cross references, and the following Standard Forms (SF): SF 294, Subcontracting Report for Individual Contracts; SF 1443, Contractor's Request for Progress Payment; and SF 1449, Solicitation/Contract/Order for Commercial Items. These forms are managed by the FAR Council and were identified as containing the term ''commercial item.'' This rule proposes to replace each instance of the term with ''commercial product'' or ''commercial service'' as appropriate. Also minor editorial changes were made as needed throughout the FAR. These revisions do not impact terms and conditions of commercial contracts or how the Government procures commercial products or commercial services.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule does not add any new solicitation provisions or contract clauses. This rule merely replaces the term ''commercial item(s)'' with ''commercial product(s),'' ''commercial service(s),'' ''commercial product(s) or commercial service(s),'' or ''commercial product(s) and commercial service(s)'' in the FAR including in part 52, as appropriate. It does not add any new burdens because the case does not add or change any requirements with which vendors must comply.

IV. 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 is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the FAR to change the definition of ''commercial item'' by splitting it into the definitions of ''commercial product'' and ''commercial service.''

The objective is to implement section 836 of the John S. McCain NDAA for FY19 (Pub. L. 115–232). The legal basis for this rule is 40 U.S.C. 121(c), 10 U.S.C. chapter 137, and 51 U.S.C. 20113.

The proposed rule impacts all entities that do business with the Federal Government, including the over 327,458 small business registrants in the System for Award Management database. However, DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities because the rule is not implementing any requirements with which small entities must comply. This proposed rule splits the definition of ''commercial item'' into the definitions of ''commercial product'' and ''commercial service.'' These revisions do not impact terms and conditions of commercial contracts or how the Government procures commercial products or commercial services; it is merely editorial.

The proposed rule does not include additional, or change any existing, reporting or record keeping requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no available alternatives to the proposed rule to accomplish the desired objective of the statute.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2018–018) in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) does apply; however, the proposed changes to the FAR and the updates to the information collections do not impose new information collection burden. The changes do not impose additional, or change any existing, information collection requirements to the paperwork burden previously approved under the following OMB Control Numbers: 9000–0007, Subcontracting Plans; 9000–0018, Certification Of Independent Price Determination, Contractor Code of Business Ethics and Conduct, and Preventing Personal Conflicts of Interest; 9000–0193, FAR Part 9 Responsibility Matters; 9000–0097, Federal Acquisition Regulation Part 4 Requirements; 9000–0136, Commercial Item Acquisitions; 9000–0034, Examination of Records by Comptroller General and Contract Audit; 9000–0013, Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data; 9000–0048, Authorized Negotiators and Integrity of Unit Prices; 9000–0010, Progress Payments, SF 1443; 9000–0024, Buy American, Trade Agreements, and Duty-Free Entry; 9000–0061, Transportation Requirements; 9000–0068, Economic Price Adjustment; 9000–0070, Payments; 9000–0138, Contract Financing; 9000–0188, Combating Trafficking in Persons; 9000–0197, Use of Products and Services of Kaspersky Lab; 9000–0198, Violations of Arms Control Treaties or Agreements; and 1615–0092, E-Verify Program.

List of Subjects in 48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 37, 38, 39, 42, 44, 46, 47, 49, 52, and 53

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 37, 38, 39, 42, 44, 46, 47, 49, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 37, 38, 39, 42, 44, 46, 47, 49, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.102 [Amended]

■ 2. Amend section 1.102 by removing from paragraph (b)(1)(i) ''commercial products and services;'' and adding

''commercial products and commercial services;'' in its place.

1.102–2 [Amended]

■ 3. Amend section 1.102–2 by removing from paragraph (a)(4) ''commercial products and services'' and adding ''commercial products and commercial services'' in its place.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 4. Amend section 2.101 in paragraph (b)(2) by—

■ a. In the defined term ''Biobased product'' removing ''commercial or industrial product'' and adding ''commercial product or industrial product'' in its place;

■ b. In the defined term ''Commercial component'' removing ''commercial item'' and adding ''commercial product'' in its place;

■ c. In the defined term ''Commercial computer software'' removing ''commercial item'' and adding ''commercial product or commercial service'' in its place.

■ d. Removing the defined term ''Commercial item'';

■ e. In the defined term ''Commercially available off-the-shelf (COTS) item'' removing in paragraph (1)(i) ''commercial item'', and ''definition in this section'' and adding ''commercial product'' and ''definition of ''commercial product'' in this section'' in their places, respectively; and

■ f. Adding the defined terms ''Commercial product'' and ''Commercial service'' in alphabetical order to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Commercial product means—

(1) A product, other than real property, that is of a type customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes, and—

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) A product that evolved from a product described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) A product that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, except for—

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. ''Minor modifications'' means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of products meeting the requirements of paragraphs (1), (2), or (3) of this definition that are of a type customarily combined and sold in combination to the general public;

(5) A product, or combination of products, referred to in paragraphs (1) through (4) of this definition, even though the product, or combination of products, is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(6) A nondevelopmental item, if the procuring agency determines the product was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments or to multiple foreign governments.

* * * * *

Commercial service means—

(1) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of a commercial product as defined in this section, regardless of whether such services are provided by the same source or at the same time as the commercial product; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(2) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services—

(i) *Catalog price* means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) *Market prices* means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors;

(3) A service referred to in paragraphs (1) or (2) of this definition, even though the service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.104–1 [Amended]

■ 5. Amend section 3.104–1 by removing from the defined term ''Contractor bid or proposal information'' in paragraph (1) ''10 U.S.C. 2306a(h)'' and ''41 U.S.C. 3501(a)(2)'' and adding ''10 U.S.C. 2306a(h)(1)'' and ''41 U.S.C. 3501(a)(1)'' in their places, respectively.

■ 6. Amend section 3.104–9 by revising the introductory text to read as follows:

3.104–9 Contract clauses.

In solicitations and contracts that exceed the simplified acquisition threshold, other than those for commercial products or commercial services, insert the clauses at—

* * * * *

3.404 [Amended]

■ 7. Amend section 3.404 by removing ''commercial items'' and adding ''commercial products or commercial services'' in its place.

■ 8. Amend section 3.502–2 by revising paragraph (i) to read as follows:

3.502–2 Subcontractor kickbacks.

* * * * *

(i) Requires each contracting agency to include in each prime contract, other than for commercial products or commercial services, exceeding $150,000, a requirement that the prime contractor shall—

* * * * *

3.502–3 [Amended]

■ 9. Amend section 3.502–3 by removing ''commercial items'' and adding ''commercial products or commercial services'' in its place.

3.503–2 [Amended]

■ 10. Amend section 3.503–2 by removing ''commercial items'' and adding ''commercial products or commercial services'' in its place.

3.1004 [Amended]

■ 11. Amend section 3.1004 by removing from paragraph (b)(1) ''commercial item'' and adding ''commercial product or commercial service'' in its place.

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

4.203 [Amended]

■ 12. Amend section 4.203 by removing from paragraph (a) ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place.

4.605 [Amended]

■ 13. Amend section 4.605 by removing from paragraph (b) ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place.

4.1103 [Amended]

■ 14. Amend section 4.1103 by removing from paragraph (a)(3) ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place.

4.1201 [Amended]

■ 15. Amend section 4.1201 by removing from paragraph (d) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

4.1202 [Amended]

■ 16. Amend section 4.1202 by removing from paragraph (a) ''commercial item solicitations'' and adding ''solicitations for commercial products or commercial services'' in its place.

4.1902 [Amended]

■ 17. Amend section 4.1902 by removing from text ''commercial items'' and adding ''commercial products or commercial services,'' in its place.

PART 5—PUBLICIZING CONTRACT ACTIONS

5.202 [Amended]

■ 18. Amend section 5.202 by removing from paragraph (a)(10) ''commercial items'' and adding ''commercial products'' in its place.

5.203 [Amended]

■ 19. Amend section 5.203 by removing from paragraphs (a), (b), and (c) ''commercial items'' and adding ''commercial products or commercial services'' in their places, respectively.

PART 6—COMPETITION REQUIREMENTS

6.001 [Amended]

■ 20. Amend section 6.001 by removing from paragraph (a) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

6.302–5 [Amended]

■ 21. Amend section 6.302–5 by removing from paragraph (a)(2)(ii) ''commercial item'' and adding ''commercial product''; and removing from paragraph (c)(3) ''brand-name commercial items'' and adding ''brand name commercial products'' in their places, respectively.

■ 22. Amend section 6.502 by—

■ a. Revising paragraph (a);

■ b. Removing from paragraph (b)(1)(i) ''commercial items'' and adding ''commercial products and commercial services'' in its place;

■ c. Removing from paragraph (b)(1)(iv) ''commercial items or'' and adding ''commercial products or commercial services, or restricting'' in its place;

■ d. Removing from paragraph (b)(2)(ii) ''commercial items'' and adding ''commercial products and commercial services'' in its place; and

■ e. Removing from paragraphs (b)(2)(v) and (b)(2)(vi) ''commercial items'' and adding ''commercial products, commercial services,'' in their places, respectively.

The revised text reads as follows:

6.502 Duties and responsibilities.

(a) Agency and procuring activity advocates for competition are responsible for—

(1) Promoting the acquisition of commercial products and commercial services;

(2) Promoting full and open competition;

(3) Challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics; and

(4) Challenging barriers to the acquisition of commercial products and commercial services; and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.

* * * * *

PART 7—ACQUISITION PLANNING

7.102 [Amended]

■ 23. Amend section 7.102 by removing from paragraph (a)(1) ''commercial items or, to the extent that commercial items suitable'' and adding ''commercial products or commercial services, or to the extent that commercial products suitable'' in its place.

7.103 [Amended]

■ 24. Amend section 7.103 by removing from paragraph (b) ''commercial items, or to the extent that commercial items suitable'' and adding ''commercial products or commercial services, or to the extent that commercial products suitable'' in its place.

7.105 [Amended]

■ 25. Amend section 7.105 by removing from paragraph (b)(14)(i) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.402 [Amended]

■ 26. Amend section 8.402 by—

■ a. Removing from paragraph (a) ''commercial supplies and services'' and adding ''commercial supplies and commercial services'' in its place; and

■ b. Removing from paragraph (f)(1) ''commercial items (part 12),'' and adding ''commercial products or commercial services (part 12),'' in its place.

PART 9—CONTRACTOR QUALIFICATIONS

9.106–1 [Amended]

■ 27. Amend section 9.106–1 by removing from paragraph (a) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

9.109–5 [Amended]

■ 28. Amend section 9.109–5 by removing from the text ''commercial items'' and adding ''commercial products or commercial services'' in its place.

9.405–2 [Amended]

■ 29. Amend section 9.405–2 by removing from paragraph (b) ''commercial items'' and adding ''commercial products'' in its place.

PART 10—MARKET RESEARCH

■ 30. Amend section 10.001 by—

■ a. Removing from paragraph (a)(2)(v) ''for a noncommercial item'' and adding ''for other than a commercial product or commercial service'' in its place;

■ b. Removing from paragraph (a)(3)(ii) ''commercial items or, to the extent commercial items suitable'' and adding ''commercial products or commercial services, or, to the extent commercial products suitable'' in its place;

■ c. Removing from paragraph (a)(3)(iii) ''commercial items'' and adding ''commercial products'' in its place;
■ d. Removing from paragraph (a)(3)(iv) ''commercial items'' and adding ''commercial products or commercial services'' in its place; and
■ e. Revising paragraph (d) to read as follows:

10.001 Policy.

* * * * *

(d) In accordance with section 826 of Public Law 110–181, see 10.003 for the requirement for a prime contractor to perform market research in contracts in excess of $5.5 million, other than contracts for the acquisition of commercial products or commercial services.

10.002 [Amended]

■ 31. Amend section 10.002 by—
■ a. Removing from paragraph (b) ''commercial items'' and adding ''commercial products, commercial services,'' in its place;
■ b. Removing from paragraph (b)(1) ''item'' and adding ''product or service'' in its place;
■ c. Removing from paragraphs (b)(1)(i)(A), (B), and (C) ''Items'' and adding ''Products or services'' in their places;
■ d. Removing from paragraph (b)(1)(ii) ''items'' and adding ''products or services'' in its place;
■ e. Removing from paragraph (c) ''indicates commercial'' and ''permit commercial'' and adding ''indicates commercial products, commercial services,'' and ''permit commercial products, commercial services,'' in their places, respectively; and
■ f. Removing from paragraph (d)(1) ''item or'' and ''commercial item'' and adding ''product or'' and ''commercial product or commercial service'' in their places, respectively.
■ 32. Amend section 10.003 by revising the text to read as follows:

10.003 Contract clause.

The contracting officer shall insert the clause at 52.210–1, Market Research, in solicitations and contracts over $5.5 million, other than solicitations and contracts for the acquisition of commercial products or commercial services.

PART 11—DESCRIBING AGENCY NEEDS

11.002 [Amended]

■ 33. Amend section 11.002 by—
■ a. Removing from paragraph (a)(2)(ii) ''commercial items, or, to the extent that commercial items suitable'' and adding ''commercial products or commercial services, or, to the extent that commercial products suitable'' in its place;
■ b. Removing from paragraph (a)(2) (iii) and (a)(2)(iv) ''commercial items'' and adding ''commercial products, commercial services,'' in their places; and
■ c. Removing from paragraph (a)(2)(v) ''commercial items or,'' and ''commercial items suitable'' and adding ''commercial products or commercial services or'' and ''commercial products suitable'' in their places, respectively.

11.302 [Amended]

■ 34. Amend section 11.302 by—
■ a. Removing from paragraph (b)(1) ''acquiring other'' and ''commercial items'' and adding ''acquiring products other'' and ''commercial products as defined in 2.101'' in their places, respectively;
■ b. Removing from paragraph (b)(2) ''commercial items'' and ''the item'' and adding ''commercial products'' and ''the product'' in their places, respectively; and
■ c. Removing from paragraph (c)(1) ''commercial items'' and adding ''commercial products'' in its place.

11.304 [Amended]

■ 35. Amend section 11.304 by removing from the text ''commercial items'' and adding ''commercial products'' in its place.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 36. Amend the part heading by removing ''COMMERCIAL ITEMS'' and adding ''COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES'' in its place.

12.000 [Amended]

■ 37. Amend section 12.000 by—
■ a. In the first sentence removing ''commercial items'' and adding ''commercial products, including commercial components, and commercial services'' in its place; and
■ b. In the second sentence removing ''commercial items'' and ''commercial items and components'' and adding ''commercial products and commercial services'' (twice) in their places, respectively.

12.001 [Amended]

■ 38. Amend section 12.001 by removing from the defined term ''Subcontract'' ''commercial items'' and adding ''commercial products or commercial services'' in its place.

12.101 [Amended]

■ 39. Amend section 12.101 by removing from paragraphs (a), (b), and (c) ''commercial items'' and adding ''commercial products, commercial services,'' in their places.

12.102 [Amended]

■ 40. Amend section 12.102 by—
■ a. Removing from paragraph (a) ''the definition of commercial items'' and adding ''the definitions of ''commercial product'' or ''commercial service'''' in its place;
■ b. Removing from paragraph (c) ''commercial items'' (twice) and adding ''commercial products or commercial services'' in their places;
■ c. Removing from paragraph (d) ''commercial item'' and adding ''commercial product'' in its place;
■ d. Removing from paragraphs (e) and (f)(1) ''commercial items'' and adding ''commercial products or commercial services'' in their places;
■ e. Removing from paragraph (f)(2) ''for an item'' and ''commercial item'' (twice) and adding ''for a product'' and ''commercial product or commercial service'' (twice) in their places, respectively; and removing from paragraph (f)(2)(i) ''see Subpart 30.2'' and adding ''see subpart 30.2'' in its place; and
■ f. Removing paragraph (g).

12.103 [Amended]

■ 41. Amend section 12.103 by removing from the text ''commercial items'' and ''12.504);'' and adding ''commercial products'' and ''12.504).'' in their places, respectively.
■ 42. Amend the subpart heading of 12.2 by removing ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place.

12.201 [Amended]

■ 43. Amend section 12.201 by removing ''commercial items'' (twice) and adding ''commercial products and commercial services'' (twice) in their places.

12.202 [Amended]

■ 44. Amend section 12.202 by—
■ a. Removing from paragraph (a) ''commercial items'' and adding ''commercial products and commercial services'' in its place;
■ b. Removing from the first sentence of paragraph (b) ''commercial items'' and ''products or services'' and adding ''commercial products or commercial services'' and ''products or commercial services'' in their places, respectively; and
■ c. Removing from the second sentence of paragraph (b) ''commercial item'' and ''type of product or service'' and adding ''commercial product or commercial service'' and ''type of commercial

product or commercial service'' in their places, respectively.

12.203 [Amended]

■ 45. Amend section 12.203 by removing from the text ''commercial items'' (three times) and adding ''commercial products and commercial services'' and ''commercial products or commercial services'' (twice) in their places, respectively.

12.204 [Amended]

■ 46. Amend section 12.204 by removing from paragraph (a) ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place.

12.205 [Amended]

■ 47. Amend section 12.205 by—

■ a. Removing from the first sentence of paragraph (a) ''product''; and removing from the second sentence of paragraph (a) ''product literature from offerors of commercial items'' and adding ''product or service literature from offerors of commercial products or commercial services'' in its place;

■ b. Removing from the first sentence of paragraph (b) ''more than one product'' and ''commercial items'' and adding ''multiple offers'' and ''commercial products or commercial services'' in their places, respectively; and removing from the second sentence of paragraph (b) ''product as a separate offer'' and adding ''offer separately'' in its place; and

■ c. Removing from paragraph (c) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

12.206 [Amended]

■ 48. Amend section 12.206 by removing from the text ''commercial items'' and adding ''commercial products and commercial services'' in its place.

12.207 [Amended]

■ 49. Amend section 12.207 by removing from paragraphs (a) and (e) ''commercial items'' and adding ''commercial products or commercial services'' in their places.

■ 50. Revise section 12.208 to read as follows:

12.208 Contract quality assurance.

Contracts for commercial products shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial product being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice. The Government shall rely on the contractor to accomplish all inspection and testing needed to ensure that commercial services acquired conform to contract requirements before they are tendered to the Government.

12.209 [Amended]

■ 51. Amend section 12.209 by removing from the text ''commercial items'' and ''Commercial item'' and adding ''commercial products and commercial services'' and ''Commercial product and commercial service'' in their places, respectively.

12.210 [Amended]

■ 52. Amend section 12.210 by removing from the text ''commercial items'' and adding ''commercial products and commercial services'' in its place.

12.211 [Amended]

■ 53. Amend section 12.211 by removing from the text ''commercial item'' and ''commercial items'' (twice) and adding ''commercial product'' and ''commercial products'' (twice) in their places, respectively.

12.214 [Amended]

■ 54. Amend section 12.214 by—

■ a. Removing from the first sentence ''commercial items'' and adding ''commercial products or commercial services'' in its place;

■ b. Removing from the second sentence ''See 48 CFR 30.201–1'' and ''commercial items'' and adding ''See 30.201–1'' and ''commercial products or commercial services'' in their places, respectively; and

■ c. Removing from the last sentence ''in 48 CFR 30.201'' and adding ''in 30.201'' in its place.

■ 55. Amend the subpart heading of 12.3 by removing ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place.

12.300 [Amended]

■ 56. Amend section 12.300 by removing the text ''commercial items'' and adding ''commercial products and commercial services'' in its place.

12.301 [Amended]

■ 57. Amend section 12.301 by—

■ a. Removing from the heading ''commercial items'' and adding ''commercial products and commercial services'' in its place;

■ b. Removing from the introductory text of paragraph (a) and from paragraph (a)(1) ''commercial items'' and adding ''commercial products or commercial services'' in their places, respectively;

■ c. Removing from paragraph (b) ''commercial items'' (twice) and adding ''commercial products or commercial services'' in their places;

■ d. Removing from paragraphs (b)(1) and (2) ''*Commercial Items*'' and ''commercial items'' and adding ''*Commercial Products and Commercial Services*'' and ''commercial products or commercial services'' in their places; and removing from the third sentence of (b)(2) ''Subpart 1.4'' and adding ''subpart 1.4'' in its place;

■ e. Removing from paragraph (b)(3) ''*Commercial Items*'' and adding ''*Commercial Products and Commercial Services*'' in its place;

■ f. Removing from paragraphs (b)(4) ''*Commercial Items*'', ''commercial items'' (twice) and ''Part 15'' and adding ''*Commercial Products and Commercial Services*'', ''commercial products or commercial services'' (twice) and ''part 15'' in their places, respectively;

■ g. Removing from paragraph (c)(1) ''Commercial Items'' and ''commercial items'' and adding ''Commercial Products and Commercial Services'' and ''commercial products or commercial services'' in their places, respectively;

■ h. Removing from paragraph (d) ''commercial items'' (twice) and adding ''commercial products or commercial services'' in their places, respectively; and

■ i. Removing from paragraph (f) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

12.302 [Amended]

■ 58. Amend section 12.302 by—

■ a. Removing from the heading ''commercial items'' and adding ''commercial products and commercial services'' in its place;

■ b. Removing from paragraph (a) ''commercial items'' (twice) and ''Commercial Items'' (twice) and adding ''commercial products and commercial services'' (twice) and ''Commercial Products and Commercial Services'' (twice) in their places, respectively;

■ c. Removing from paragraph (b) ''*Commercial Items*'' and ''Commercial Items'' and adding ''*Commercial Products and Commercial Services*'' and ''Commercial Products and Commercial Services'' in their places, respectively; and

■ d. Removing from paragraph (c) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

12.303 [Amended]

■ 59. Amend section 12.303 by—

■ a. Removing from the introductory text ''commercial items'' and adding

''commercial products or commercial services'' in its place;
■ b. Removing from paragraph (c)(1) ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place;
■ c. Removing from paragraph (c)(3) ''and Executive Orders'' and adding ''or Executive Orders—Commercial Products and Commercial Services'' in its place; and
■ d. Removing from paragraphs (e)(1), (e)(3), and (e)(4) ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in their places, respectively.
■ 60. Amend subpart 12.4 by removing from the heading ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place.

12.401 [Amended]

■ 61. Amend section 12.401 by—
■ a. Removing from paragraph (a) ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place; and
■ b. Removing from paragraph (b) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

12.402 [Amended]

■ 62. Amend 12.402 by—
■ a. Removing from paragraph (a) ''commercial item'' and ''commercial items'' (twice) and adding ''commercial product or commercial service'' and ''commercial products or commercial services'' (twice) in their places, respectively;
■ b. Removing from paragraph (b) ''complex commercial items or commercial items used'' and adding ''complex commercial products or commercial services, or commercial products or commercial services used'' in its place; and
■ c. Removing from paragraph (c) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

12.403 [Amended]

■ 63. Amend section 12.403 by removing from paragraphs (a), (b), and (d) ''commercial items'' (four times) and adding ''commercial products or commercial services'' (four times) in their places, respectively.

12.404 [Amended]

■ 64. Amend section 12.404 by removing from paragraph (b) ''commercial items'' and adding ''commercial products'' in its place.
■ 65. Amend subpart 12.5 by removing from the heading ''Commercial Items'' and adding ''Commercial Products, Commercial Services,'' in its place.

12.500 [Amended]

■ 66. Amend section 12.500 by—
■ a. Removing from paragraph (a)(1) and (a)(2) ''commercial items'' and adding ''commercial products or commercial services'';
■ b. Removing from paragraph (a)(3) ''of COTS items'' and adding ''of commercially available off-the-shelf (COTS) items'' in its place; and
■ c. Removing from paragraph (b) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

12.501 [Amended]

■ 67. Amend section 12.501 by removing from paragraphs (a) and (b) ''commercial items'' and adding ''commercial products or commercial services'' in their places, respectively.

12.502 [Amended]

■ 68. Amend section 12.502 by—
■ a. Removing from paragraph (a) ''commercial items'' and adding ''commercial products or commercial services'' in its place; and
■ b. Removing from paragraph (b) ''commercial items or commercial components,'', ''Commercial Items'' (twice) and ''commercial items or commercial components'' and adding ''commercial products or commercial services,'', ''Commercial Products and Commercial Services'' (twice) and ''commercial products or commercial services'' in their places, respectively.

12.503 [Amended]

■ 69. Amend section 12.503 by—
■ a. Removing from the heading ''commercial items'' and adding ''commercial products and commercial services'' in its place;
■ b. Removing from paragraph (a) ''commercial items'' and adding ''commercial products or commercial services'' in its place; and
■ c. Removing from paragraphs (b) and (c) ''commercial items'' and adding ''commercial products and commercial services'' in their places, respectively.

12.504 [Amended]

■ 70. Amend section 12.504 by—
■ a. Removing from the heading ''commercial items'' and adding ''commercial products and commercial services'' in its place;
■ b. Removing from paragraph (a) ''commercial items or commercial components'' and adding ''commercial products or commercial services'' in its place;
■ c. Removing from paragraph (b) ''Subpart 22.3'' and ''commercial items or commercial components'' and adding ''subpart 22.3'' and ''commercial products or commercial services'' in their places, respectively; and
■ d. Removing from paragraph (c) ''commercial items or commercial components'' and adding ''commercial products or commercial services'' in its place.

12.505 [Amended]

■ 71. Amend section 12.505 by removing from the introductory text ''commercial items'' and adding ''commercial products'' in its place.
■ 72. Amend subpart 12.6 by removing from the heading ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place.
■ 73. Revise section 12.601 to read as follows:

12.601 General.

(a) This subpart provides optional procedures for—

(1) Streamlined evaluation of offers for commercial products or commercial services; and

(2) Streamlined solicitation of offers for commercial products or commercial services for use where appropriate.

(b) These procedures are intended to simplify the process of preparing and issuing solicitations, and evaluating offers for commercial products or commercial services consistent with customary commercial practices.
■ 74. Amend section 12.602 by—
■ a. Removing from paragraph (a) ''Commercial Items'' and ''commercial items'' and adding ''Commercial Products and Commercial Services'' and ''commercial products or commercial services'' in their places; and
■ b. Revising paragraph (b) to read as follows:

12.602 Streamlined evaluation of offers.

* * * * *

(b) Offers shall be evaluated in accordance with the criteria contained in the solicitation. For many commercial products or commercial services, the criteria need not be more detailed than technical (capability of the item offered to meet the agency need), price, and past performance. Technical capability may be evaluated by how well the proposed products or services meet the Government requirement instead of predetermined subfactors. Solicitations for commercial products or commercial services do not have to contain subfactors for technical capability when the solicitation adequately describes the intended use of the commercial product or commercial service. A technical evaluation would normally include examination of such things as product or service literature, product samples (if requested),

technical features, and warranty provisions. Past performance shall be evaluated in accordance with the procedures in section 13.106 or subpart 15.3, as applicable. The contracting officer shall ensure the instructions provided in the provision at 52.212–1, Instructions to Offerors—Commercial Products and Commercial Services, and the evaluation criteria provided in the provision at 52.212–2, Evaluation—Commercial Products and Commercial Services, are in agreement.

* * * * *

12.603 [Amended]

■ 75. Amend section 12.603 by—

■ a. Removing from the heading ''commercial items'' and adding ''commercial products or commercial services'' in its place;

■ b. Removing from paragraph (a) ''commercial items'' and adding ''commercial products or commercial services'' in its place;

■ c. Removing from paragraph (c)(2)(i) ''commercial items'' and ''Subpart 12.6'' and adding ''commercial products or commercial services'' and ''subpart 12.6'' in their places, respectively;

■ d. Removing from paragraphs (c)(2)(viii), (c)(2)(ix), (c)(2)(x) and (c)(2)(xi) ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in their places, respectively; and

■ e. Removing from paragraph (c)(2)(xii) ''Or Executive Orders-Commercial Items'' and adding ''or Executive Orders-Commercial Products and Commercial Services'' in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.000 [Amended]

■ 76. Amend section 13.000 by removing from the text ''and commercial items'' and ''of commercial items'' (twice) and adding ''commercial products, and commercial services'' and ''of commercial products and commercial services'' (twice) in their places, respectively.

13.003 [Amended]

■ 77. Amend section 13.003 by—

■ a. Removing from paragraph (c)(1)(ii) ''commercial items'' and ''Subpart 13.5'' and adding ''commercial products or commercial services'' and ''subpart 13.5'' in their places, respectively;

■ b. Removing from paragraph (c)(2) ''commercial items'' and ''Subpart 13.5'' and adding ''commercial products and commercial services'' and ''subpart 13.5'' in their places, respectively;

■ c. Removing from paragraph (g)(1) ''threshold for'' and ''commercial items'' and adding ''threshold when acquiring'' and ''commercial products or commercial services'' in their places, respectively; and

■ d. Removing from paragraph (g)(2) ''commercial items'' and ''in Parts'' and adding ''commercial products or commercial services'' and ''in parts'' in their places, respectively.

■ 78. Amend section 13.005 by revising paragraph (b) to read as follows:

13.005 List of laws inapplicable to contracts and subcontracts at or below the simplified acquisition threshold.

* * * * *

(b) The Federal Acquisition Regulatory Council (FAR Council) will include any law enacted after October 13, 1994, that sets forth policies, procedures, requirements, or restrictions for the acquisition of property or services, on the list set forth in paragraph (a) of this section. The FAR Council may make exceptions when it determines in writing that it is in the best interest of the Government that the enactment should apply to contracts or subcontracts not greater than the simplified acquisition threshold.

* * * * *

13.105 [Amended]

■ 79. Amend section 13.105 by removing from paragraph (b) ''commercial items'' and adding ''commercial products or commercial services,'' in its place.

13.106–1 [Amended]

■ 80. Amend section 13.106–1 by removing from paragraph (b)(2) ''commercial items'' and adding ''commercial products and commercial services'' in its place.

13.302–1 [Amended]

■ 81. Amend section 13.302–1 by removing from paragraph (a) ''commercial items'' and adding ''commercial products and commercial services'' in its place.

13.302–4 [Amended]

■ 82. Amend section 13.302–4 by—

■ a. Removing from paragraph (a)(1) ''commercial items'' and adding ''commercial products and commercial services'' in its place; and

■ b. Removing from paragraph (a)(2) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

13.302–5 [Amended]

■ 83. Amend section 13.302–5 by removing from paragraph (d)(1) ''Commercial Items'' and ''commercial items'' and adding ''Commercial Products and Commercial Services'' and ''commercial products or commercial services'' in their places, respectively.

13.303–5 [Amended]

■ 84. Amend section 13.303–5 by removing from paragraph (b)(2) ''commercial item'' and ''Subpart 13.5'' and adding ''commercial product and commercial service'' and ''subpart 13.5'' in their places, respectively.

13.303–8 [Amended]

■ 85. Amend section 13.303–8 by removing ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place.

13.307 [Amended]

■ 86. Amend section 13.307 by—

■ a. Removing from paragraph (a) ''*Commercial items*'' and ''Commercial Items'' and adding ''*Commercial products and commercial services*'' and ''Commercial Products and Commercial Services'' in their places, respectively;

■ b. Removing from paragraph (b) ''*commercial items*'' and adding ''*commercial products and commercial services*'' in its place; and

■ c. Removing from paragraph (c) ''*commercial items*'' and adding ''*commercial products and commercial services*'' in its place.

■ 87. Amend subpart 13.5 by removing from the heading ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place.

13.500 [Amended]

■ 88. Amend section 13.500 by—

■ a. Removing from paragraph (a) ''commercial items'' and ''commercial item acquisitions'' and adding ''commercial products or commercial services'' and ''commercial acquisitions'' in their places, respectively;

■ b. Removing from paragraph (b) ''commercial items'' and adding ''commercial products and commercial services'' in its place; and

■ c. Removing from paragraphs (c)(1) and (2) ''commercial items'' and adding ''commercial products or commercial services'' in their places, respectively.

PART 14—SEALED BIDDING

14.201–1 [Amended]

■ 89. Amend section 14.201–1 by removing from paragraph (c) ''(see 4.1202(b)) or for acquisitions of commercial items'' and adding ''(see 4.1202(b)) or, for acquisitions of commercial products and commercial services'' in its place.

PART 15—CONTRACTING BY NEGOTIATION

15.204–1 [Amended]

■ 90. Amend section 15.204–1 by removing from paragraph (b) ''commercial items'' and adding ''commercial products and commercial services'' in its place.

15.209 [Amended]

■ 91. Amend section 15.209 by removing from paragraph (b)(1)(iii) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

■ 92. Amend section 15.306 by revising paragraph (e)(2) to read as follows:

15.306 Exchanges with offerors after receipt of proposals.

* * * * *

(e) * * *

(2) Reveals an offeror's technical solution, including—

(i) Unique technology;

(ii) Innovative and unique uses of commercial products or commercial services; or

(iii) Any information that would compromise an offeror's intellectual property to another offeror;

* * * * *

15.401 [Amended]

■ 93. Amend section 15.401 by removing from the defined term ''Subcontract'', ''commercial items'' and ''41 U.S.C. 3501(a)(3)'' and adding ''commercial products or commercial services'' and ''41 U.S.C. 3501(a)(2)'' in their places, respectively.

■ 94. Amend section 15.403–1 by—

■ a. Removing from paragraph (b)(3) ''commercial item'' and ''subsection'' and adding ''commercial product or commercial service'' and ''section'' in their places, respectively;

■ b. Removing from paragraph (b)(5) ''commercial items'' and ''subsection'' and adding ''commercial products or commercial services'' and ''section'' in their places, respectively;

■ c. Revising the paragraph heading of paragraph (c)(3) and revising paragraph (c)(3)(i);

■ d. Removing from paragraphs (c)(3)(ii)(A) and (B) ''commercial items'' and adding ''commercial services'' in their places, respectively;

■ e. Revising paragraph (c)(3)(iii) introductory text;

■ f. Removing from paragraphs (c)(3)(iii)(A), (B), and (C) ''commercial item'' and adding ''commercial product'' in their places, respectively; and

■ g. Removing from paragraph (c)(3)(iv) ''for noncommercial supplies or services treated as commercial items'' and adding ''for other than commercial products or services treated as commercial products or commercial services'' in its place.

The revised text reads as follows:

15.403–1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

* * * * *

(c) * * *

(3) *Commercial products and commercial services.* (i) Any acquisition that the contracting officer determines meets the commercial product or commercial service definition in 2.101, or any modification, as defined in paragraph (3)(i) of the commercial product definition, that does not change a commercial product to other than commercial, is exempt from the requirement for certified cost or pricing data. If the contracting officer determines that a product or service claimed to be commercial is not, and that no other exception or waiver applies (*e.g.,* the acquisition is not based on adequate price competition; the acquisition is not based on prices set by law or regulation; and the acquisition exceeds the threshold for the submission of certified cost or pricing data at 15.403–4(a)(1)), the contracting officer shall require submission of certified cost or pricing data.

* * * * *

(iii) The following requirements apply to minor modifications defined in paragraph (3)(ii) of the definition of a commercial product at 2.101 that do not change the commercial product to other than commercial:

* * * * *

15.403–3 [Amended]

■ 95. Amend section 15.403–3 by—

■ a. Removing from the heading of paragraph (c) ''*Commercial items*'' and adding ''*Commercial products and commercial services*'' in its place;

■ b. Removing from paragraph (c)(1) ''commercial item'' and adding ''commercial product or commercial service'' in its place;

■ c. Removing from paragraph (c)(2) ''*commercial items*'' and ''commercial items'' and adding ''*commercial products or commercial services*'' and ''commercial products or commercial services'' in their places, respectively;

■ d. Removing from paragraph (c)(2)(ii) ''commercial items'' and adding ''commercial products or commercial services'' in its place; and

■ e. Removing from paragraph (c)(2)(iii) ''commercial items'' and adding ''commercial products and commercial services'' in its place.

15.404–1 [Amended]

■ 96. Amend section 15.404–1 by—

■ a. Removing from paragraph (a)(4) ''for commercial or non-commercial items'';

■ b. Removing from paragraph (b) ''for commercial or non-commercial items'';

■ c. Removing from the last sentence in paragraph (b)(1) ''item'';

■ d. Removing from paragraph (b)(2)(ii) introductory text ''commercial items including those ''of a type'' or requiring minor modifications'' and adding ''commercial products or commercial services including those ''of a type'', or requiring minor modifications for commercial products'' in its place;

■ e. Removing from paragraphs (b)(2)(ii)(C) and (e)(3) ''commercial items that are ''of a type'' or requiring minor modifications'' and adding ''commercial products or commercial services that are ''of a type'', or requiring minor modifications for commercial products'' in their places, respectively; and

■ f. Removing from paragraph (f)(2) ''commercial items'' and adding ''commercial products'' in its place.

15.404–2 [Amended]

■ 97. Amend section 15.404–2 by removing from paragraph (a)(2)(iii)(E) ''for an item'' and ''commercial item'' and adding ''for a product or service'' and ''commercial product or commercial service'' in their places, respectively.

15.407–2 [Amended]

■ 98. Amend section 15.407–2 by removing from paragraph (e)(1) ''commercial items'' and adding ''commercial products, commercial services'' in its place.

15.408 [Amended]

■ 99. Amend section 15.408 by—

■ a. Removing from paragraph (f)(1)(v) ''commercial items'' and adding ''commercial products and commercial services'' in its place;

■ b. Removing from paragraphs (n)(2)(i)(B)(*2*)(*iii*), (*iv*), and (*vi*) ''commercial item'' and adding ''commercial product or commercial service'' in their places, respectively;

■ c. Removing from the Table 15–2, ''*I. General Instructions*'' and ''*II. Cost Elements*'' and adding ''I. General Instructions'' and ''II. Cost Elements'' in their places, respectively;

■ d. Removing from the Table 15–2, in paragraph (II)(A)(2) in the second sentence ''commercial items'' and adding ''commercial products or commercial services'' in its place;

■ e. Removing from the Table 15–2, in paragraph (II)(A) (2) in the ninth

sentence ''commercial items'' and adding ''commercial products'' in its place; and

■ f. Removing from the Table 15–2, ''*III. Formats for Submission of Line Item Summaries*'' and adding ''III. Formats for Submission of Line Item Summaries'' in its place.

15.506 [Amended]

■ 100. Amend section 15.506 by removing from paragraph (d)(5) ''commercial items, the make and model of the item'' and adding ''commercial products, the make and model of the product'' in its place.

15.601 [Amended]

■ 101. Amend section 15.601 by revising the defined term ''Commercial item offer'' to read ''Commercial product or service offer'', and removing from that defined term ''commercial item'' and ''commercial items'' and adding ''commercial product or commercial service'' and ''commercial products or commercial services'' in their places, respectively.

15.603 [Amended]

■ 102. Amend section 15.603 by removing from paragraph (b) ''commercial item'' and adding ''commercial product or commercial service'' in its place.

PART 16—TYPES OF CONTRACTS

■ 103. Amend section 16.001 by adding in alphabetical order, the definition ''Established price'' to read as follows:

16.001 Definitions.

* * * * *

Established price means a price that—

(1) Is an established catalog or market price for a commercial product sold in substantial quantities to the general public; and

(2) Is the net price after applying any standard trade discounts offered by the contractor.

* * * * *

16.201 [Amended]

■ 104. Amend section 16.201 by removing from paragraph (a) ''commercial items'' and adding ''commercial products and commercial services'' in its place.

16.202–2 [Amended]

■

■ 105. Amend section 16.202–2 by removing from the introductory text ''commercial items'' and adding ''commercial products or commercial services'' in its place.

16.301–3 [Amended]

■ 106. Amend section 16.301–3 by removing from paragraph (b) ''commercial items'' and adding ''commercial products and commercial services'' in its place.

16.307 [Amended]

■ 107. Amend section 16.307 by removing from paragraph (a)(1) ''commercial item'' and adding ''commercial product or commercial service'' in its place.

16.506 [Amended]

■ 108. Amend section 16.506 by removing from paragraph (h) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

■ 109. Amend section 16.601 by—

■ a. Removing from paragraph (c)(2)(ii) ''noncommercial items'' and adding ''other than commercial products or commercial services'' in its place;

■ b. Removing from paragraph (c)(2)(iv) ''the definition of commercial items at 2.101'' and adding ''the definition of ''commercial service'' at 2.101'' in its place;

■ c. Removing from paragraph (d)(2) ''commercial items'' and adding ''commercial products and commercial services'' in its place; and

■ d. Revising the first sentence of paragraph (f)(1) and revising paragraphs (f)(2) and (f)(3).

The revised text reads as follows:

16.601 Time-and-materials contracts.

* * * * *

(f) * * *

(1) The contracting officer shall insert the provision at 52.216–29, Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition With Adequate Price Competition, in solicitations contemplating use of a time-and-materials or labor-hour type of contract for the acquisition of other than commercial products or commercial services, if the price is expected to be based on adequate price competition.

* * *

(2) The contracting officer shall insert the provision at 52.216–30, Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition without Adequate Price Competition, in solicitations for the acquisition of other than commercial products or commercial services contemplating use of a time-and-materials or labor-hour type of contract if the price is not expected to be based on adequate price competition.

(3) The contracting officer shall insert the provision at 52.216–31, Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Acquisition, in solicitations contemplating use of a commercial time-and-materials or labor-hour contract.

PART 18—EMERGENCY ACQUISITIONS

18.201 [Amended]

■ 110. Amend section 18.201 by removing from paragraph (e) ''*commercial items*'' and adding ''*commercial products and commercial services*'' in its place.

18.202 [Amended]

■ 111. Amend section 18.202 by—

■ a. Removing from paragraph (c) ''commercial items'' and adding ''commercial products or commercial services'' in its place; and

■ b. Removing from paragraph (d) ''*commercial items*'' and adding ''*commercial products and commercial services*'' in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.304 [Amended]

■ 112. Amend section 19.304 by removing from paragraph (b) ''Certifications-Commercial Items'' and adding ''Certifications-Commercial Products and Commercial Services'' in its place.

19.403 [Amended]

■ 113. Amend section 19.403 by removing from paragraph (a) ''Pub. L.'' and ''commercial items'' and adding ''Public Law'' and ''commercial products or commercial services'' in their places, respectively.

19.701 [Amended]

■ 114. Amend section 19.701 by removing from the defined term ''Commercial plan'' ''commercial items'' and adding ''commercial products and performance of commercial services'' in its place.

19.704 [Amended]

■ 115. Amend section 19.704 by removing from paragraph (d) ''commercial items'' and ''commercial item'' and adding ''commercial products and commercial services'' and ''commercial product or commercial service'' in their places, respectively.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.305 [Amended]

■ 116. Amend section 22.305 by removing from paragraph (b)

''commercial items'' and adding ''commercial products and commercial services'' in its place.

22.604–1 [Amended]

■ 117. Amend section 22.604–1 by removing from paragraph (a) ''commercial items'' and adding ''commercial products and commercial services'' in its place.

22.1302 [Amended]

■ 118. Amend section 22.1302 by removing from paragraph (b) ''commercial items'' and adding ''commercial products or commercial services,'' in its place.

22.1310 [Amended]

■ 119. Amend section 22.1310 by removing from paragraph (c) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

22.1505 [Amended]

■ 120. Amend section 22.1505 by removing from paragraph (a) ''commercial items'' and ''Certifications-Commercial Items'' and adding ''commercial products or commercial services'' and ''Certifications-Commercial Products and Commercial Services'' in their places, respectively.

22.1605 [Amended]

■ 121. Amend section 22.1605 by removing from paragraph (a) ''commercial items'' and adding ''commercial products, commercial services,'' in its place.

22.1801 [Amended]

■ 122. Amend section 22.1801 by removing from the defined term ''Commercially available off-the-shelf (COTS) item'' in paragraph (1)(i) ''commercial item (as defined in paragraph (1) of the definition at 2.101'' and adding ''commercial product (as defined in paragraph (1) of the definition of ''commercial product'' at 2.101'' in its place.

22.1802 [Amended]

■ 123. Amend section 22.1802 by removing from paragraph (b)(4)(i) ''Commercial or noncommercial services'' and adding ''Services'' in its place.

22.1803 [Amended]

■ 124. Amend section 22.1803 by removing from paragraph (c)(2) ''definition of ''commercial item'' at 2.101'' and adding ''definition of ''commercial product'' at 2.101'' in its place.

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.501 [Amended]

■ 125. Amend section 23.501 by removing from paragraph (b) ''commercial items'' and adding ''commercial products and commercial services'' in its place.

PART 25—FOREIGN ACQUISITION

25.103 [Amended]

■ 126. Amend section 25.103 by removing from paragraph (e) ''*commercial item*'', ''commercial item'' and ''Section'' and adding ''*commercial product*'', ''commercial product'' and ''section'' in their places, respectively.

■ 25.202 [Amended]

■ 127. Amend section 25.202 by removing from paragraph (a)(4) ''*commercial item*'', ''commercial item'' and ''Section'' and adding ''*commercial product*'', ''commercial product'', and ''section'' in their places, respectively.

25.703–2 [Amended]

■ 128. Amend section 25.703–2 by—

■ a. Removing from paragraph (b) ''of this subsection'' and adding ''of this section'' in its place; and

■ b. Removing from paragraph (b)(1) ''commercial items'' and adding ''commercial products and commercial services'' in its place.

25.1001 [Amended]

■ 129. Amend section 25.1001 by removing from paragraph (a) ''Executive Orders-Commercial Items'' and adding ''Executive Orders-Commercial Products and Commercial Services'' in its place.

25.1101 [Amended]

■ 130. Amend section 25.1101 by—

■ a. Removing from paragraph (a)(1)(i) ''Subpart'' and adding ''subpart'' in its place;

■ b. Removing from paragraph (a)(1)(ii) ''commercial item'' and adding ''commercial product'' in its place; and

■ c. Removing from paragraph (b)(1)(i)(B) ''commercial item'' and adding ''commercial product'' in its place.

■ 131. Amend section 25.1103 by revising paragraph (d) to read as follows:

25.1103 Other provisions and clauses.

* * * * *

(d) The contracting officer shall include in each solicitation for the acquisition of other than commercial products or commercial services the provision at 52.225–20, Prohibition on Conducting Restricted Business Operations in Sudan—Certification.

* * * * *

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.206 [Amended]

■ 132. Amend section 26.206 by removing from paragraph (a) ''commercial items'' and adding ''commercial products and commercial services'' in its place.

PART 27—PATENTS, DATA, AND COPYRIGHTS

27.102 [Amended]

■ 133. Amend section 27.102 by removing from paragraph (c) ''commercial items'' and adding ''commercial products and commercial services'' in its place.

27.201–1 [Amended]

■ 134. Amend section 27.201–1 by removing from paragraph (d) ''commercial items'' and adding ''commercial products or commercial services'' in its place, and by removing ''FAR''.

27.201–2 [Amended]

■ 135. Amend section 27.201–2 by—

■ a. Removing from paragraph (c)(1) ''commercial items'' and adding ''commercial products or the provision of commercial services'' in its place; and

■ b. Removing from paragraph (c)(2)(i) ''commercial items'' and adding ''commercial products or the provision of services that are not commercial services'' in its place.

PART 28—BONDS AND INSURANCE

28.106–4 [Amended]

■ 136. Amend section 28.106–4 by removing from paragraph (b) ''Section'', ''Pub. L.'' (twice), ''Sections'', and ''commercial items as defined in Subpart'' and adding ''section'', ''Public Law'' (twice), ''sections'', ''commercial products or commercial services as defined in subpart'' in their places, respectively.

28.106–6 [Amended]

■ 137. Amend section 28.106–6 by removing from paragraph (d) ''Pub. L.'' (twice), ''Sections'', and ''commercial items as defined in Subpart'' and adding ''Public Law'' (twice), ''sections'', and ''commercial products or commercial services as defined in subpart'' in their places, respectively.

PART 29—TAXES

29.402–3 [Amended]

■ 138. Amend section 29.402–3 by removing from paragraph (a) ''commercial items'' and adding ''commercial products and commercial services'' in its place.

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

30.201–5 [Amended]

■ 139. Amend section 30.201–5 by removing from the introductory text of paragraph (b)(1) ''$15,000,000'' and removing from (b)(1)(i) ''commercial items'' and adding ''$15 million'' and ''commercial products or commercial services'' in their places, respectively.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–26 [Amended]

■ 140. Amend section 31.205–26 by removing from paragraph (f) ''commercial item'' and ''subsection is transferred'' and adding ''commercial product or commercial service'' and ''section is sold or transferred'' in their places, respectively.

PART 32—CONTRACT FINANCING

32.000 [Amended]

■ 141. Amend section 32.000 by removing from paragraph (g) ''commercial items'' and adding ''commercial products and commercial services'' in its place.

32.002 [Amended]

■ 142. Amend section 32.002 by—
■ a. Removing from paragraph (b) ''Commercial Item'' and ''commercial items'' and adding ''Commercial Product and Commercial Service'' and ''commercial products and commercial services'' in their places, respectively;
■ b. Removing from paragraph (c)(1) ''Non-Commercial Item Purchase Financing'' and adding ''Financing for Other Than a Commercial Purchase'' in its place; and
■ c. Removing from paragraph (c)(2) ''For Non-Commercial Items'' and adding ''for Other Than Commercial Acquisitions'' in its place.

32.005 [Amended]

■ 143. Amend section 32.005 by removing from paragraph (c) ''for Non-Commercial Items'' and adding ''for Other Than Commercial Acquisitions'' in its place.
■ 144. Amend subpart 32.1 by removing from the heading ''Non-Commercial Item Purchase Financing'' and adding ''Financing for Other Than a Commercial Purchase'' in its place.

32.100 [Amended]

■ 145. Amend section 32.100 by removing from the text ''commercial items'' and adding ''commercial products or commercial services'' in its place.

32.110 [Amended]

■ 146. Amend section 32.110 by removing from paragraph (a) ''item''.
■ 147. Amend section 32.112 by removing from the heading ''contracts for noncommercial items'' and adding ''contracts other than for commercial products and commercial services'' in its place.

32.112–2 [Amended]

■ 148. Amend section 32.112–2 by removing from paragraph (a) ''Section'', ''Pub. L.'' (twice), ''Sections'' and ''contract for a noncommercial item'' and adding ''section'', ''Public Law'' (twice), ''sections'', and ''contract other than for a commercial product or commercial service'' in their places, respectively.
■ 149. Amend subpart 32.2 by removing from the heading ''Commercial Item'' and adding ''Commercial Product and Commercial Service'' in its place.

32.201 [Amended]

■ 150. Amend section 32.201 by removing from the text ''commercial items'' and adding ''commercial products or commercial services'' in its place.

32.202–1 [Amended]

■ 151. Amend section 32.202–1 by—
■ a. Removing from paragraph (a) ''commercial items'' and adding ''commercial products or commercial services'' in its place; and
■ b. Removing from paragraph (c) ''*non-commercial*'', and ''non-commercial'' (twice) and adding ''*other than commercial*'', and ''other than commercial'' (twice) in their places, respectively.

32.202–2 [Amended]

■ 152. Amend section 32.202–2 by—
■ a. Removing from the heading ''commercial item'' and adding ''commercial product and commercial service'' in its place; and
■ b. Removing from the defined term ''Commercial advance payment'' ''subsection'' and ''for Non-Commercial items'' and adding ''section'' and ''for Other Than Commercial Acquisitions'', in their places, respectively.

32.202–4 [Amended]

■ 153. Amend section 32.202–4 by removing from paragraph (a)(2) ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place.

32.206 [Amended]

■ 154. Amend section 32.206 by—
■ a. Removing from paragraph (a) ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place; and
■ b. Removing from paragraphs (b)(1)(v), (b)(2), and (c)(3)(ii) ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in their places, respectively;
■ c. Removing from paragraph (f) ''non-commercial'' and adding ''other than commercial'' in its place;
■ d. Removing from paragraph (g) ''*commercial items*'' and ''Commercial Items'' and adding ''*commercial products and commercial services*'' and ''Commercial Products and Commercial Services'' in their places, respectively; and
■ e. Removing from paragraph (g)(2) ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place.
■ 155. Amend subpart 32.4 by removing from the heading ''Non-Commercial Items'' and adding ''Other Than Commercial Acquisitions'' in its place.

32.504 [Amended]

■ 156. Amend section 32.504 by—
■ a. Removing from paragraph (a) ''item'';
■ b. Removing from paragraph (b) ''commercial item'' and adding ''commercial product or commercial service'' in its place; and
■ c. Removing from paragraph (g) ''commercial item'' and adding ''commercial product or commercial service'' in its place.

32.601 [Amended]

■ 157. Amend section 32.601 by removing from paragraphs (b)(3) and (b)(10) ''commercial item financing'' and adding ''financing of commercial products or commercial services'' in their places, respectively.

32.904 [Amended]

■ 158. Amend section 32.904 by removing from paragraph (b)(1)(ii)(B)(*4*) ''commercial item, including a brand-name commercial item for'' and adding ''commercial product or commercial service, including a brand-name commercial product for'' in its place.

32.908 [Amended]

■ 159. Amend section 32.908 by—
■ a. Removing from paragraph (c) ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place; and
■ b. Removing from paragraph (c)(1) ''commercial item'' and ''commercial

item for'' and adding ''commercial product or commercial service'' and ''commercial product for'' in their places, respectively.

PART 37—SERVICE CONTRACTING

37.601 [Amended]

■ 160. Amend section 37.601 by removing paragraph (c).

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

38.101 [Amended]

■ 161. Amend section 38.101 by removing from paragraph (a) ''commercial supplies and services'' and adding ''commercial supplies and commercial services'' in its place.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

39.203 [Amended]

■ 162. Amend section 39.203 by removing from paragraph (c)(1) ''commercial items'' and adding ''commercial products and commercial services'' in its place.

39.204 [Amended]

■ 163. Amend section 39.204 by removing from paragraph (e)(2)(ii) ''commercial items'' and ''service available'' and adding ''commercial products and commercial services'' and ''services available'' in their places, respectively.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.709–0 [Amended]

■ 164. Amend section 42.709–0 by removing from paragraph (b) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

42.709–6 [Amended]

■ 165. Amend section 42.709–6 by removing from the text ''commercial items'' and adding ''commercial products or commercial services'' in its place.

42.1305 [Amended]

■ 166. Amend section 42.1305 by removing from paragraph (c) ''modified-commercial items'' (twice) and adding ''modified-commercial products'' (twice) in their places, respectively.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.000 [Amended]

■ 167. Amend section 44.000 by removing from paragraph (b) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

44.302 [Amended]

■ 168. Amend section 44.302 by removing from paragraph (a) ''commercial items'' and ''Part 12'' and adding ''commercial products and commercial services'' and ''part 12'' in their places, respectively.

44.303 [Amended]

■ 169. Amend section 44.303 by removing from the introductory text ''commercial items'' and adding ''commercial products and commercial services'' in its place.

■ 170. Amend subpart 44.4 by removing from the heading ''Commercial Items and Commercial Components'' and adding ''Commercial Products and Commercial Services'' in its place.

44.400 [Amended]

■ 171. Amend section 44.400 by removing from the text ''commercial items or commercial components'' and adding ''commercial products, including commercial components, or commercial services'' in its place.

44.402 [Amended]

■ 172. Amend section 44.402 by—

■ a. Removing from paragraph (a)(1) ''commercial items'' and adding ''commercial products or commercial services,'' in its place;

■ b. Removing from paragraph (a)(2) and (a)(2)(i) ''commercial items or commercial components'' and adding ''commercial products or commercial services'' in their places, respectively;

■ c. Removing from paragraph (b) ''Commercial Items'' and ''commercial items or commercial components'' and adding ''Commercial Products and Commercial Services'' and ''commercial products or commercial services'' in their places, respectively; and

■ d. Removing from paragraph (c) ''commercial items'' and adding ''commercial products and commercial services'' in its place.

44.403 [Amended]

■ 173. Amend section 44.403 by removing from the text ''Commercial Items'' and ''commercial items'' and adding ''Commercial Products and Commercial Services'' and ''commercial products or commercial services'' in their places, respectively.

PART 46—QUALITY ASSURANCE

46.102 [Amended]

■ 174. Amend section 46.102 by—

■ a. Removing from paragraph (b) ''services tendered'' and adding ''services (including commercial services tendered'' in its place; and

■ b. Removing from paragraph (f) ''commercial items shall'' and ''commercial item'' and adding ''commercial products'' and ''commercial product'' in their places, respectively.

■ 175. Amend section 46.202–1 by revising the section including the section heading to read as follows:

46.202–1 Contracts for commercial products and commercial services.

When acquiring commercial products (see part 12), the Government shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial product being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice. The Government shall rely on the contractor to accomplish all inspection and testing needed to ensure that commercial services acquired conform to contract requirements before they are tendered to the Government.

46.317 [Amended]

■ 176. Amend section 46.317 by removing from paragraph (b)(1) ''Commercial items'' and adding ''Commercial products and commercial services'' in its place.

■ 177. Amend section 46.706 by—

■ a. Removing from paragraph (b)(1)(iii) ''commercial items'' and adding ''commercial products and commercial services'' in its place; and

■ b. Revising paragraph (b)(5).

The revision reads as follows:

46.706 Warranty terms and conditions.

* * * * *

(b) * * *

(5) *Markings.* (i) The packaging and preservation requirements of the contract shall require the contractor to stamp or mark the supplies delivered or otherwise furnish notice with the supplies of the existence of the warranty. The purpose of the markings or notice is to inform Government personnel who store, stock, or use the supplies that the supplies are under warranty. Markings may be brief but should include—

(A) A brief statement that a warranty exists;

(B) The substance of the warranty;

(C) Its duration; and

(D) Who to notify if the supplies are found to be defective.

(ii) For commercial products (see 46.709), the contractor's trade practice

in warranty marking is acceptable if sufficient information is presented for supply personnel and users to identify warranted supplies.

* * * * *

46.709 [Amended]

■ 178. Amend section 46.709 by removing from section heading and the section ''commercial items'' and adding ''commercial products and commercial services'' in their places, respectively.

46.710 [Amended]

■ 179. Amend section 46.710 by removing from the introductory text ''commercial items'' and adding ''commercial products and commercial services'' in its place.

46.801 [Amended]

■ 180. Amend section 46.801 by removing from paragraph (a) ''commercial items'' and adding ''commercial products and commercial services'' in its place.

PART 47—TRANSPORTATION

47.405 [Amended]

■ 181. Amend section 47.405 by removing the quote marks from the first sentence (twice), and by removing in the second sentence ''commercial items'' and adding ''commercial products'' in its place.

47.504 [Amended]

■ 182. Amend section 47.504 by removing from paragraph (d) ''commercial items or commercial components'' and adding ''commercial products, including commercial components, or commercial services'' in its place; and removing from paragraph (d)(4) ''commercial items'' and adding ''commercial products'' in its place.

47.507 [Amended]

■ 183. Amend section 47.507 by removing from paragraph (a)(3) ''*Alternate II*'' and ''commercial items'' and adding ''Alternate II'' and ''commercial products'' in their places, respectively.

PART 49—TERMINATION OF CONTRACTS

49.002 [Amended]

■ 184. Amend section 49.002 by removing from paragraph (a)(2) ''commercial item'', ''commercial items'' (twice), and ''Commercial Items'' and adding ''commercial product and commercial service'', ''commercial products and commercial services'' (twice) and ''Commercial Products and Commercial Services'' in their places, respectively.

49.501 [Amended]

■ 185. Amend section 49.501 by removing from the text ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 186. Amend section 52.203–6 by revising the date of Alternate I and removing from paragraph (b) of Alternate I ''commercial items'' and ''commercial item(s)'' and adding ''commercial products or commercial services'' and ''commercial product(s) and commercial service(s)'' in their places, respectively. The revised text reads as follows:

52.203–6 Restrictions on Subcontractor Sales to the Government.

* * * * *

Alternate I (DATE). * * *

* * * * *

■ 187. Amend section 52.203–13 by revising the date of the clause and removing from paragraph (c) ''commercial item'' and adding ''commercial product or commercial service'' in its place. The revised text reads as follows:

52.203–13 Contractor Code of Business Ethics and Conduct.

* * * * *

Contractor Code of Business Ethics and Conduct (Date)

* * * * *

■ 188. Amend section 52.203–14 by revising the date of the clause and removing from paragraph (d)(1) ''commercial item'' and adding ''commercial product or commercial service'' in its place. The revised text reads as follows:

52.203–14 Display of Hotline Poster(s).

* * * * *

Display of Hotline Poster(s) (Date)

* * * * *

■ 189. Amend section 52.204–8 by revising the date of the provision and removing from paragraph (c)(1)(xv) ''commercial items'' and adding ''commercial products or commercial services'' in its place. The revised text reads as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (Date)

* * * * *

■ 190. Amend section 52.204–21 by revising the date of the clause and removing from paragraph (c) ''commercial items'' and adding ''commercial products or commercial services'' in its place. The revised text reads as follows:

52.204–21 Basic Safeguarding of Covered Contractor Information Systems.

* * * * *

Basic Safeguarding of Covered Contractor Information Systems (Date)

* * * * *

■ 191. Amend section 52.204–23 by revising the date of the clause and removing from paragraph (d) ''commercial items'' and adding ''commercial products or commercial services'' in its place. The revised text reads as follows:

52.204–23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities.

* * * * *

Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Date)

* * * * *

■ 192. Amend section 52.204–24 by revising the date of the clause and removing from the introductory paragraph ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place. The revised text reads as follows:

52.204–24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

* * * * *

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Date)

* * * * *

■ 193. Amend section 52.204–25 by revising the date of the clause and removing from paragraph (e) ''commercial items'' and adding ''commercial products or commercial services'' in its place. The revised text reads as follows:

52.204–25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

* * * * *

Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Date)

* * * * *

■ 194. Amend section 52.209–6 by—

■ a. Revising the date of the clause;

■ b. Revising the defined term ''Commercially available off-the-shelf (COTS)'' to read ''Commercially available off-the-shelf (COTS) item'', and removing ''item, as used'' and adding '', as used'' in its place;
■ c. Removing from paragraph (a)(1)(i) ''commercial item (as defined in paragraph (1) of the definition in'' and adding ''commercial product (as defined in paragraph (1) of the definition of ''commercial product'' in'' in its place; and
■ d. Removing from paragraph (e) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

The revised text reads as follows:

52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.

* * * * *

Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment (Date)

* * * * *

■ 195. Amend section 52.209–13 by revising the date of the provision and removing from paragraph (a) ''commercial items as defined at FAR 2.101'' and adding ''commercial products and commercial services as defined in Federal Acquisition Regulation 2.101'' in its place.

The revised text reads as follows:

52.209–13 Violation of Arms Control Treaties or Agreements—Certification.

* * * * *

Violation of Arms Control Treaties or Agreements—Certification (Date)

* * * * *

■ 196. Amend section 52.210–1 by—
■ a. Revising the date of the clause;
■ b. Revising paragraph (a);
■ c. Revising the introductory text of paragraph (b);
■ d. Removing from the introductory text of paragraph (b)(1) ''commercial items or, to the extent commercial items'' and adding ''commercial products, commercial services, or, to the extent commercial products'' in its place; and
■ e. Removing from paragraph (b)(2) ''commercial items'' and adding ''commercial products, commercial services,'' in its place.

The revised text reads as follows:

52.210–1 Market Research.

* * * * *

Market Research (Date)

(a) Definition. As used in this clause—

Commercial product, commercial service, and *nondevelopmental item* have the meaning contained in Federal Acquisition Regulation (FAR) 2.101.

(b) Before awarding subcontracts for other than commercial acquisitions, where the subcontracts are over the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, the Contractor shall conduct market research to—

* * * * *

■ 197. Amend section 52.212–1 by—
■ a. Removing from the section and clause headings ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place;
■ b. Revising the date of the provision;
■ c. Removing from paragraph (b)(8) ''FAR 52.212–3'' and adding ''Federal Acquisition Regulation (FAR) 52.212–3'' in its place;
■ d. Removing from paragraph (e) ''subpart 4.10 of the Federal Acquisition Regulation'' and ''commercial items'' and adding ''FAR subpart 4.10'' and ''commercial products or commercial services'' in their places, respectively; and
■ e. Removing from paragraph (l)(5) ''commercial items, the make and model of the item'' and adding ''commercial products, the make and model of the product'' in its place.

The revised text reads as follows:

52.212–1 Instructions to Offerors—Commercial Products and Commercial Services.

* * * * *

Instructions to Offerors—Commercial products and Commercial Services (Date)

* * * * *

■ 198. Amend section 52.212–2 by—
■ a. Removing from the section and clause headings ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in their places; and
■ b. Revising the date of the provision.

The revised text reads as follows:

52.212–2 Evaluation—Commercial Products and Commercial Services.

* * * * *

Evaluation—Commercial Products and Commercial Services (Date)

* * * * *

■ 199. Amend section 52.212–3 by—
■ a. Removing from the section and clause headings ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in their places;
■ b. Revising the date of the provision; and
■ c. Removing from paragraph (b)(2) ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place.

The revised text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Products and Commercial Services.

* * * * *

Offeror Representations and Certifications—Commercial Products and Commercial Services (Date)

* * * * *

■ 200. Amend section 52.212–4 by—
■ a. Removing from the section and clause headings ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in their places;
■ b. Revising the date of the clause;
■ c. Removing from paragraph (d) ''FAR'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;
■ d. Removing from paragraph (i)(6)(vii) ''32.608–2 of the Federal Acquisition Regulation'' and adding ''FAR 32.608–2'' in its place;
■ e. Revising the date of Alternate I;
■ f. Removing from the introductory text of paragraph (i)(1)(ii)(A) of Alternate I ''commercial item at'' and adding ''commercial product at FAR'' in its place; and
■ g. Removing from paragraph (i)(6)(vii) of Alternate I ''32.608–2 of the Federal Acquisition Regulation'' and adding ''FAR 32.608–2'' in its place;

The revised text reads as follows:

52.212–4 Contract Terms and Conditions—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions—Commercial Products and Commercial Services (Date)

* * * * *

Alternate I (Date). * * *

* * * * *

■ 201. Amend section 52.212–5 by—
■ a. Removing from the section and clause headings ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place;
■ b. Revising the date of the clause;
■ c. Removing from the introductory text of paragraph (a) ''commercial items'' and adding ''commercial products and commercial services'' in its place;
■ d. Removing from paragraph (a)(2) ''(JUL 2018)'' and adding ''(Date)'' in its place;
■ e. Removing from paragraph (a)(3) ''(AUG 2020)'' and adding ''(Date)'' in its place;
■ f. Removing from the introductory text of paragraph (b) ''commercial items'' and ''[Contracting Officer check as

appropriate.]'' and adding ''commercial products and commercial services'' and ''[*Contracting Officer check as appropriate.*]'' in their places, respectively;

■ g. Removing from paragraph (b)(1) ''(OCT 1995)'' and adding ''(Date)'' in its place;

■ h. Removing from paragraph (b)(2) ''(JUN 2020)'' and adding ''(Date)'' in its place;

■ i. Removing from paragraph (b)(8) ''(JUN 2020)'' and adding ''(Date)'' in its place;

■ j. Removing from paragraph (b)(17)(i) ''(JUN 2020)'' and adding ''(Date)'' in its place;

■ k. Removing from paragraph (b)(35)(i) ''(JAN 2019)'' and adding ''(Date)'' in its place;

■ l. Removing from paragraph (b)(36) ''(OCT 2015)'' and ''commercial items'' and adding ''(Date)'' and ''commercial services'' in their places, respectively;

■ m. Removing from paragraph (b)(48) ''(MAY 2014)'' and adding ''(Date)'' in its place;

■ n. Removing from paragraph (b)(49)(i) ''(MAY 2014)'' and adding ''(Date)'' in its place;

■ o. Removing from paragraph (b)(56) ''Commercial Items'' and ''(FEB 2002)'' and adding ''Commercial Products and Commercial Services'' and ''(Date)'' in their places, respectively;

■ p. Removing from paragraph (b)(57) ''Commercial Items'' and ''(JAN 2017)'' and adding ''Commercial Products and Commercial Services'' and ''(Date)'' in their places, respectively;

■ q. Removing from paragraph (b)(63)(i) ''(FEB 2006)'' and adding ''(Date)'' in its place;

■ r. Removing from paragraph (b)(63)(iii) ''(FEB 2006)'' and adding ''(Date)'' in its place;

■ s. Removing from the introductory text of paragraph (c) ''commercial items'' and ''[Contracting Officer check as appropriate.]'' and adding ''commercial products and commercial services'' and ''[*Contracting Officer check as appropriate.*]'' in their places, respectively;

■ t. Removing from the introductory text of paragraph(e)(1) ''commercial items'' and adding ''commercial products or commercial services'' in its place;

■ u. Removing from paragraph (e)(1)(i) ''(JUN 2020)'' and adding ''(Date)'' in its place;

■ v. Removing from paragraph (e)(1)(iii) ''(JUL 2018)'' and adding ''(Date)'' in its place;

■ w. Removing from paragraph (e)(1)(iv) ''(AUG 2020)'' and adding ''(Date)'' in its place;

■ x. Removing from paragraph (e)(1)(xiii)(A) ''(JAN 2019)'' and adding ''(Date)'' in its place;

■ y. Removing from paragraph (e)(1)(xvi) ''(OCT 2015)'' and adding ''(Date)'' in its place;

■ z. Removing from paragraph (e)(1)(xxii) ''(FEB 2006)'' and adding ''(Date)'' in its place;

■ aa. Removing from paragraph (e)(2) ''May include in its subcontracts for commercial items'' and adding ''may include in its subcontracts for commercial products and commercial services'' in its place;

■ bb. Revising the date of Alternate II;

■ cc. Removing from the introductory text of paragraph (e)(1) of Alternate II ''commercial items'' and adding ''commercial products or commercial services'' in its place;

■ dd. Removing from paragraph (e)(1)(ii)(A) of Alternate II ''(**JUN 2020**)'' and adding ''(Date)'' in its place;

■ ee. Removing from paragraph (e)(1)(ii)(C) of Alternate II ''(JUL 2018)'' and adding ''(Date)'' in its place;

■ ff. Removing from paragraph (e)(1)(ii)(D) of Alternate II ''(AUG 2020)'' and adding ''(Date)'' in its place;

■ gg. Removing from paragraph (e)(1)(ii)(L)(*1*) of Alternate II ''(JAN 2019)'' and adding ''(Date)'' in its place;

■ hh. Removing from paragraph (e)(1)(ii)(O) of Alternate II ''(OCT 2015)'' and adding ''(Date)'' in its place; and

■ ii. Removing from paragraph (e)(1)(ii)(U) of Alternate II ''(FEB 2006)'' and adding ''(Date)'' in its place.

The revised text reads as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (Date)

* * * * *

Alternate II (Date) * * *

* * * * *

■ 202. Amend section 52.213–4 by—

■ a. Removing from the section and clause headings ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in their places;

■ b. Revising the date of the clause;

■ c. Removing from paragraph (a)(1)(ii) ''(JUL 2018)'' and adding ''(Date)'';

■ d. Removing from paragraph (a)(1)(iii) ''(AUG 2020)'' and adding ''(Date)'';

■ e. Removing from paragraph (a)(2)(vi) ''(DEC 2013)'' and adding ''(Date)'';

■ f. Removing from paragraph (a)(2)(viii) ''Commercial Items'' and ''(AUG 2020)'' and adding ''Commercial Products and Commercial Services'' and ''(Date)'' in their places, respectively;

■ g. Removing from paragraph (b)(1)(viii)(A) ''(JAN 2019)'' and adding ''(Date)'';

■ h. Removing from paragraph (b)(1)(xvii) ''(MAY 2014)'' and adding ''(Date)'';

■ i. Removing from paragraph (b)(1)(xxi) ''(FEB 2006)'' and adding ''(Date)'';

■ j. Removing from paragraph (b)(2)(i) ''(JUN 2016)'' and adding ''(Date)''; and

■ k. Removing from paragraph (b)(2)(ii) ''(JUN 2020)'' and adding ''(Date)''.

The revised text reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (Date)

* * * * *

■ 203. Amend section 52.215–1 by—

■ a. Revising the date of the provision; and

■ b. Removing from paragraph (f)(11)(v) ''commercial items, the make and model of the item'' and adding ''commercial products, the make and model of the product'' in its place.

The revised text reads as follows:

52.215–1 Instructions to Offerors—Competitive Acquisition.

* * * * *

Instructions to Offerors—Competitive Acquisition (Date)

* * * * *

■ 204. Amend section 52.215–14 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (c) ''commercial items'', and adding ''commercial products and commercial services'' in its place.

The revised text reads as follows:

52.215–14 Integrity of Unit Prices.

* * * * *

Integrity of Unit Prices (Date)

* * * * *

■ 205. Amend section 52.215–20 by—

■ a. Revising the date of the provision; and

■ b. Removing from paragraph (a)(1)(ii) ''*Commercial item*'' and ''commercial item'' and adding ''*Commercial product and commercial service*'' and ''commercial product and commercial service'' in their places, respectively.

The revised text reads as follows:

52.215–20 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

* * * * *

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data (Date)

* * * * *

■ 206. Amend section 52.215–21 by—

■ a. Revising the date of the clause;

■ b. Removing from the introductory text of paragraph (a)(1)(ii) ''*commercial items*'' and adding ''*commercial products or commercial services*'' in its place;

■ c. Removing from paragraph (a)(1)(ii)(A)(*1*) ''commercial item'' and adding ''commercial product or commercial service'' in its place;

■ d. Removing from paragraph (a)(1)(ii)(A)(*2*) ''commercial item to a contract or subcontract for the acquisition of an item other than a commercial item'' and adding ''commercial product or commercial service, to a contract or subcontract for the acquisition of other than a commercial product or commercial service'' in its place;

■ e. Redesignating paragraph (a)(1)(ii)(*B*) as (a)(1)(ii)(B); and

■ f. Removing from paragraph (a)(1)(ii)(B) ''commercial item'' and adding ''commercial product and commercial service'' in its place.

The revised text reads as follows:

52.215–21 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.

* * * * *

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications (Date)

* * * * *

■ 207. Amend section 52.216–2 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (a) ''commercial item'' and adding ''commercial product'' in its place.

The revised text reads as follows:

52.216–2 Economic Price Adjustment—Standard Supplies.

* * * * *

Economic Price Adjustment—Standard Supplies (Date)

* * * * *

■ 208. Amend section 52.216–3 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (a) ''commercial item'' and adding ''commercial product'' in its place.

The revised text reads as follows:

52.216–3 Economic Price Adjustment—Semistandard Supplies.

* * * * *

Economic Price Adjustment—Semistandard Supplies (Date)

* * * * *

■ 209. Amend section 52.216–29 by—

■ a. Removing from the section and clause headings ''Non-Commercial Item'' and adding ''Other Than Commercial'' in their places; and

■ b. Revising the date of the provision.

The revised text reads as follows:

52.216–29 Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition With Adequate Price Competition.

* * * * *

Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition With Adequate Price Competition (Date)

* * * * *

■ 210. Amend section 52.216–30 by—

■ a. Removing from the section and clause headings ''Non-Commercial Item'' and adding ''Other Than Commercial'' in their places;

■ b. Revising the date of the provision; and

■ c. Removing from paragraph (d) ''commercial item at 2.101'' and adding '' ''commercial service'' at Federal Acquisition Regulation 2.101'' in its place.

The revised text reads as follows:

52.216–30 Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition without Adequate Price Competition.

* * * * *

Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition without Adequate Price Competition (Date)

* * * * *

■ 211. Amend section 52.216–31 by—

■ a. Removing from the section and clause headings ''Commercial Item Acquisition'' and adding ''Commercial Acquisition'' in its place; and

■ b. Revising the date of the provision.

The revised text reads as follows:

52.216–31 Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Acquisition.

* * * * *

Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Acquisition (Date)

* * * * *

■ 212. Amend section 52.219–9 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (b) the defined term ''Commercial item'';

■ c. Removing from the defined term ''Commercial plan'' ''commercial items'' and adding ''commercial products and commercial services'' in its place;

■ d. Adding, in alphabetical order, the definitions ''Commercial product'' and ''Commercial service'';

■ e. Removing from paragraph (g) ''commercial items'' and ''commercial item'' and adding ''commercial products and commercial services'' and ''commercial product or commercial service'' in their places; and

■ f. Removing from paragraph (j) ''52.212–5'', ''Commercial Items'' (twice), ''commercial item'', and ''52.244–6'' and adding ''FAR 52.212–5'', ''Commercial Products and Commercial Services'' (twice), ''commercial product or commercial service'', and ''FAR 52.244–6'' in their places, respectively.

The added and revised text reads as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

Small Business Subcontracting Plan (Date)

* * * * *

(b) * * *

Commercial product means a product that satisfies the definition of ''commercial product'' in Federal Acquisition Regulation (FAR) 2.101.

Commercial service means a service that satisfies the definition of ''commercial service'' in FAR 2.101.

* * * * *

■ 213. Amend section 52.222–50 by—

■ a. Revising the date of the clause; and

■ b. In the defined term ''Commercially available off-the-shelf (COTS) item'' in paragraph (a), removing ''means'' in the introductory paragraph, and revising paragraph (1)(i).

The revised text reads as follows:

52.222–50 Combating Trafficking in Persons.

* * * * *

Combating Trafficking in Persons (Date)

* * * * *

(a) * * *

(1) Means any item of supply (including construction material) that is-

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' at Federal Acquisition Regulation (FAR) 2.101;

* * * * *

■ 214. Amend section 52.222–54 by—

■ a. Revising the date of the clause;

■ b. In the defined term ''Commercially available off-the-shelf (COTS) item'' in paragraph (a), revising paragraph (1)(i); and

■ c. Removing from paragraph (e)(1)(i) ''Commercial or noncommercial

services'' and adding ''Services'' in its place.

The revised text reads as follows:

52.222–54 Employment Eligibility Verification.

* * * * *

Employment Eligibility Verification (Date)

* * * * *

(a) * * *

(1) * * *

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' at Federal Acquisition Regulation (FAR) 2.101;

* * * * *

■ 215. Amend section 52.225–1 by—

■ a. Revising the date of the clause; and

■ b. In the defined term ''Commercially available off-the-shelf (COTS) item'' in paragraph (a), revising paragraph (1)(i).

The revised text reads as follows:

52.225–1 Buy American—Supplies.

* * * * *

Buy American—Supplies (Date)

* * * * *

(a) * * *

(1) * * *

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' at Federal Acquisition Regulation (FAR) 2.101;

* * * * *

■ 216. Amend section 52.225–3 by—

■ a. Revising the date of the clause; and

■ b. In the defined term ''Commercially available off-the-shelf (COTS) item'' in paragraph (a), revising paragraph (1)(i).

The revised text reads as follows:

52.225–3 Buy American—Free Trade Agreements—Israeli Trade Act.

* * * * *

Buy American—Free Trade Agreements—Israeli Trade Act (Date)

* * * * *

(a) * * *

(1) * * *

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' at Federal Acquisition Regulation (FAR) 2.101;

* * * * *

■ 217. Amend section 52.225–9 by—

■ a. Revising the date of the clause;

■ b. In the defined term ''Commercially available off-the-shelf (COTS) item'' in paragraph (a), revising paragraph (1)(i); and

■ c. Removing from paragraph (b)(2) ''commercial item'' and adding ''commercial product'' in its place.

The revised text reads as follows:

52.225–9 Buy American—Construction Materials.

* * * * *

Buy American—Construction Materials (Date)

* * * * *

(a) * * *

(1) * * *

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' at Federal Acquisition Regulation (FAR) 2.101;

* * * * *

■ 218. Amend section 52.225–11 by—

■ a. Revising the date of the clause;

■ b. In the defined term ''Commercially available off-the-shelf (COTS) item'' in paragraph (a), revising paragraph (1)(i); and

■ c. Removing from paragraph (b)(3) ''commercial item'' and adding ''commercial product'' in its place.

The revised text reads as follows:

52.225–11 Buy American—Construction Materials Under Trade Agreements.

* * * * *

Buy American—Construction Materials Under Trade Agreements (Date)

* * * * *

(a) * * *

(1) * * *

(i) A commercial product (as defined in paragraph (1) of the definition of ''commercial product'' at Federal Acquisition Regulation (FAR) 2.101;

* * * * *

■ 219. Amend section 52.232–7 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (b)(2) ''commercial item at 2.101'' and adding ''commercial product or commercial service in Federal Acquisition Regulation (FAR) 2.101'' in its place.

The revised text reads as follows:

52.232–7 Payments Under Time-and-Materials and Labor-Hour Contracts.

* * * * *

Payments Under Time-and-Materials and Labor-Hour Contracts (Date)

* * * * *

■ 220. Amend section 52.232–16 by—

■ a. Revising the date of the clause;

■ b. Removing from the introductory text of paragraph (j)(5) ''commercial item'' and adding ''commercial product or commercial service'' in its place; and

■ c. Removing from paragraph (j)(5)(i) ''commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR Parts'' and adding ''commercial product or commercial service purchase that meets the definition and standards for acquisition of commercial products and commercial services in FAR parts'' in its place.

The revised text reads as follows:

52.232–16 Progress Payments.

* * * * *

Progress Payments (Date)

* * * * *

■ 221. Amend section 52.232–29 by—

■ a. Removing from the section and clause headings ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in their places;

■ b. Revising the date of the clause; and

■ c. Removing from paragraph (b) ''52.212–4, Contract Terms and Conditions—Commercial Items'' and adding ''Federal Acquisition Regulation (FAR) 52.212–4, Contract Terms and Conditions-Commercial Products and Commercial Services'' in its place; and

■ d. Removing from paragraph (h) ''52.232–31'' and adding ''FAR 52.232–31'' in its place.

The revised text reads as follows:

52.232–29 Terms for Financing of Purchases of Commercial Products and Commercial Services.

* * * * *

Terms for Financing of Purchases of Commercial Products and Commercial Services (Date)

* * * * *

■ 222. Amend section 52.232–30 by—

■ a. Removing from the section and clause headings ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in their places;

■ b. Revising the date of the clause; and

■ c. Removing from paragraph (g) ''52.212–4, Contract Terms and Conditions—Commercial Items'' and adding ''Federal Acquisition Regulation 52.212–4, Contract Terms and Conditions-Commercial Products and Commercial Services'' in its place.

The revised text reads as follows:

52.232–30 Installment Payments for Commercial Products and Commercial Services.

* * * * *

Installment Payments for Commercial Products and Commercial Services (Date)

* * * * *

■ 223. Amend section 52.232–31 by—

■ a. Revising the date of the provision; and

■ b. Removing from paragraph (a) ''Commercial Items, at 52.232–29'' and adding ''Commercial Products and Commercial Services, at Federal Acquisition Regulation (FAR) 52.232–29'' in its place; and

■ c. Removing from paragraph (b) ''52.232–29, Terms for Financing of

Purchases of Commercial Items, the terms of the clause at 52.232–29 shall govern'' and adding ''FAR 52.232–29, Terms for Financing of Purchases of Commercial Products and Commercial Services, the terms of the clause at FAR 52.232–29 shall govern'' in its place.

The revised text reads as follows:

52.232–31 Invitation To Propose Financing Terms.

* * * * *

Invitation To Propose Financing Terms (Date)

* * * * *

■ 224. Amend section 52.232–40 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraphs (c) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

The revised text reads as follows:

52.232–40 Providing Accelerated Payments to Small Business Subcontractors.

* * * * *

Providing Accelerated Payments to Small Business Subcontractors (Date)

* * * * *

■ 225. Amend section 52.242–17 by revising the introductory text. The revised text reads as follows:

52.242–17 Government Delay of Work.

As prescribed in 42.1305(c), insert the following clause:

* * * * *

■ 226. Amend section 52.244–6 by—

■ a. Removing from the section and clause headings ''Commercial Items'' and adding ''Commercial Products and Commercial Services'' in its place;

■ b. Revising the date of the clause;

■ c. In paragraph (a), in the defined terms ''Commercial item'' and ''commercially available off-the-shelf item'' removing ''Commercial item'' and adding ''Commercial product,'' and ''commercial service,'' in its place;

■ d. Removing from the defined term ''Subcontract'' in paragraph (a) ''commercial items'' and adding ''commercial products or commercial services'' in its place;

■ e. Removing from paragraph (b) ''commercial items'' and adding ''commercial products, commercial services,'' in its place;

■ f. Removing from the introductory text of paragraph (c)(1) ''commercial items'' and adding ''commercial products or commercial services'' in its place;

■ g. Removing from paragraph (c)(1)(i) ''(Jun 2020)'' and adding ''(Date)'' in its place;

■ h. Removing from paragraph (c)(1)(iv) ''(JUN 2016)'' and adding ''(Date)'' in its place;

■ i. Removing from paragraph (c)(1)(v) ''(JUL 2018)'' and adding ''(Date)'' in its place;

■ j. Removing from paragraph (c)(1)(vi) ''(AUG 2020)'' and adding ''(Date)'' in its place;

■ k. Removing from paragraph (c)(1)(xiv)(A) ''(JAN 2019)'' and adding ''(Date)'' in its place;

■ l. Removing from paragraph (c)(1)(xix) ''(DEC 2013)'' and adding ''(Date)'' in its place;

■ m. Removing from paragraph (c)(1)(xx) ''(FEB 2006)'' and adding ''(Date)'' in its place;

■ n. Removing from paragraph (c)(2) ''commercial items'' and adding ''commercial products or commercial services'' in its place.

The revised text reads as follows:

52.244–6 Subcontracts for Commercial Products and Commercial Services.

* * * * *

Subcontracts for Commercial Products and Commercial Services (Date)

* * * * *

■ 227. Amend section 52.246–26 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (g)(1)(i) ''FAR'' and adding ''Federal Acquisition Regulation (FAR)'' in its place; and

■ c. Removing from paragraph (g)(2)(i) ''Commercial items'' and adding ''Commercial products and commercial services'' in its place. The revised text reads as follows:

52.246–26 Reporting Nonconforming Items.

* * * * *

Reporting Nonconforming Items (Date)

* * * * *

■ 228. Amend section 52.247–64 by—

■ a. Revising the date of clause;

■ b. Removing from the introductory text of paragraph (e)(4) ''commercial items'' and adding ''commercial products or commercial services'' in its place;

■ c. Revising the date of Alternate II;

■ d. Removing from the introductory text of paragraph (e)(4) of Alternate II ''commercial items'' and adding ''commercial products or commercial services'' in its place; and

■ e. Removing from paragraph (e)(4)(ii)(C) of Alternate II ''commercial items'' and adding ''commercial products'' in its place.

The revised text reads as follows:

52.247–64 Preference for Privately Owned U.S.-Flag Commercial Vessels.

* * * * *

Preference for Privately Owned U.S.-Flag Commercial Vessels (Date)

* * * * *

Alternate II (Date)

* * * * *

PART 53—FORMS

53.212 [Amended]

■ 229. Amend section 53.212 by—

■ a. Removing from the section heading ''commercial items'' and adding ''commercial products and commercial services'' in its place; and

■ b. Removing from the paragraph (''*Rev.2/2012)*'', ''*Commercial Items*'' and ''commercial items'' and adding ''(*Rev.* Date)'', ''*Commercial Products and Commercial Services*'' and ''commercial products and commercial services'' in their places, respectively.

53.213 [Amended]

■ 230. Amend section 53.213 by—

■ a. Removing from paragraph (a) ''(*Rev. 2/2012*)'' and ''*Commercial Items*'' and adding ''(*Rev.* Date)'' and ''*Commercial Products and Commercial Services*'' in their places, respectively; and

■ b. Removing from paragraph (f) ''(*Rev. 2/2012*)'' and ''*Commercial Items*'' and adding ''(*Rev.* Date)'' and ''*Commercial Products and Commercial Services*'' in their places, respectively.

53.219 [Amended]

■ 231. Amend section 53.219 by removing from the text ''(Rev. 8/2016)'' and adding ''(Rev. Date)'' in its place.

53.232 [Amended]

■ 232. Amend section 53.232 by removing from the text ''*(Jul 2009)*'' and adding ''(Date)'' in its place.

53.300 [Amended]

■ 233. Amend section 53.300 by removing from the Table 53–1 in paragraph (a) ''SF 1449 Solicitation/Contract/Order for Commercial Items'' and adding ''SF 1449 Solicitation/Contract/Order for Commercial Products and Commercial Services'' in its place.

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Part VII

The President

Memorandum of October 9, 2020—Delegation of Authority Under 15 U.S.C. 634c(b)(3)(B)

Federal Register
Vol. 85, No. 200
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Presidential Documents

Title 3—

The President

Memorandum of October 9, 2020

Delegation of Authority Under 15 U.S.C. 634c(b)(3)(B)

Memorandum for the United States Trade Representative

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the United States Trade Representative the authority vested in the President by section 634c(b)(3)(B) of title 15, United States Code.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, October 9, 2020

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S. 4072/P.L. 116–169

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