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Contents

Federal Register

Vol. 85, No. 247

Wednesday, December 23, 2020

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders:

13967.....83739
13968.....83745

8 CFR

208.....84160
1208.....84160
1235.....84160

12 CFR

228.....83747
345.....83747
615.....83749
1022.....83749

13 CFR

Proposed Rules:

120.....83837

14 CFR

39 (4 documents) 83751, 83753, 83755, 83759
71 (3 documents) 83762, 83763, 83764

Proposed Rules:

71.....83839

15 CFR

738.....83765
740.....83765
742.....83765
744 (2 documents) 83765, 83793
745.....83765
748.....83765
756.....83793
758.....83765

19 CFR

361.....83804

29 CFR

20.....83816

31 CFR

Proposed Rules:

1010.....83840
1020.....83840
1022.....83840

34 CFR

Proposed Rules:

Ch. II.....83862

40 CFR

19.....83818
83.....84130

Proposed Rules:

52 (2 documents) 83868, 83877
174.....83880
180.....83880

42 CFR

51c.....83822

49 CFR

1002.....83830

Proposed Rules:

13.....83881

50 CFR

635.....83832
679.....83834

Federal Register
Vol. 85, No. 247
Wednesday, December 23, 2020

Presidential Documents

Title 3—

The President

Executive Order 13967 of December 18, 2020

Promoting Beautiful Federal Civic Architecture

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose.* Societies have long recognized the importance of beautiful public architecture. Ancient Greek and Roman public buildings were designed to be sturdy and useful, and also to beautify public spaces and inspire civic pride. Throughout the Middle Ages and the Renaissance, public architecture continued to serve these purposes. The 1309 constitution of the City of Siena required that ''[w]hoever rules the City must have the beauty of the City as his foremost preoccupation . . . because it must provide pride, honor, wealth, and growth to the Sienese citizens, as well as pleasure and happiness to visitors from abroad.'' Three centuries later, the great British Architect Sir Christopher Wren declared that ''public buildings [are] the ornament of a country. [Architecture] establishes a Nation, draws people and commerce, makes the people love their native country . . . Architecture aims at eternity[.]''

Notable Founding Fathers agreed with these assessments and attached great importance to Federal civic architecture. They wanted America's public buildings to inspire the American people and encourage civic virtue. President George Washington and Secretary of State Thomas Jefferson consciously modeled the most important buildings in Washington, DC, on the classical architecture of ancient Athens and Rome. They sought to use classical architecture to visually connect our contemporary Republic with the antecedents of democracy in classical antiquity, reminding citizens not only of their rights but also their responsibilities in maintaining and perpetuating its institutions.

Washington and Jefferson personally oversaw the competitions to design the Capitol Building and the White House. Under the direction and following the vision of these two founders, Pierre Charles L'Enfant designed the Nation's capital as a classical city. The promise of his design for the city was fulfilled by the 1902 McMillan Plan, which created the National Mall and the Monumental Core as we know them.

For approximately a century and a half following America's founding, America's Federal architecture continued to be characterized by beautiful and beloved buildings of largely, though not exclusively, classical design. Examples include the Second Bank of the United States in Philadelphia, Pennsylvania, the Pioneer Courthouse in Portland, Oregon, and the Thurgood Marshall United States Courthouse in New York City, New York. In Washington, DC, classical buildings such as the White House, the Capitol Building, the Supreme Court, the Department of the Treasury, and the Lincoln Memorial have become iconic symbols of our system of government. These cherished landmarks, built to endure for centuries, have become an important part of our civic life.

In the 1950s, the Federal Government largely replaced traditional designs for new construction with modernist ones. This practice became official policy after the Ad Hoc Committee on Federal Office Space proposed what became known as the Guiding Principles for Federal Architecture (Guiding Principles) in 1962. The Guiding Principles implicitly discouraged classical and other traditional designs known for their beauty, declaring instead that the Government should use ''contemporary'' designs.

The Federal architecture that ensued, overseen by the General Services Administration (GSA), was often unpopular with Americans. The new buildings ranged from the undistinguished to designs even GSA now admits many in the public found unappealing. In Washington, DC, new Federal buildings visibly clashed with the existing classical architecture. Some of these structures, such as the Hubert H. Humphrey Department of Health and Human Services Building and the Robert C. Weaver Department of Housing and Urban Development Building, were controversial, attracting widespread criticism for their Brutalist designs.

In 1994, GSA responded to this widespread criticism that the buildings it had been commissioning lacked distinction by establishing the Design Excellence Program. The GSA intended that program to advance the Guiding Principles' mandate that Federal architecture ''provide visual testimony to the dignity, enterprise, vigor, and stability of the American Government.'' Unfortunately, the program has not met this goal.

Under the Design Excellence Program, GSA has often selected designs by prominent architects with little regard for local input or regional aesthetic preferences. The resulting Federal architecture sometimes impresses the architectural elite, but not the American people who the buildings are meant to serve. Many of these new Federal buildings are not even visibly identifiable as civic buildings.

For example, GSA selected an architect to design the San Francisco Federal Building who describes his designs as ''art-for-art's-sake'' architecture, intended primarily for architects to appreciate. While elite architects praised the resulting building, many San Franciscans consider it one of the ugliest structures in their city. Similarly, GSA selected a modernist architect to design Salt Lake City's new Federal courthouse. The architectural establishment and its professional organizations praised his unique creation, but many local residents considered it ugly and inconsistent with its surroundings. In Orlando, Florida, a coalition of judges, court employees, and civic leaders opposed GSA's preferred modernist design for the George C. Young Federal Courthouse. They believed it lacked the dignity a Federal courthouse should embody. The GSA nonetheless imposed this design over their objections.

With a limited number of exceptions, such as the Tuscaloosa Federal Building and Courthouse and the Corpus Christi Federal Courthouse, the Federal Government has largely stopped building beautiful buildings. In Washington, DC, Federal architecture has become a discordant mixture of classical and modernist designs.

It is time to update the policies guiding Federal architecture to address these problems and ensure that architects designing Federal buildings serve their clients, the American people. New Federal building designs should, like America's beloved landmark buildings, uplift and beautify public spaces, inspire the human spirit, ennoble the United States, command respect from the general public, and, as appropriate, respect the architectural heritage of a region. They should also be visibly identifiable as civic buildings and should be selected with input from the local community.

Classical and other traditional architecture, as practiced both historically and by today's architects, have proven their ability to meet these design criteria and to more than satisfy today's functional, technical, and sustainable needs. Their use should be encouraged instead of discouraged.

Encouraging classical and traditional architecture does not exclude using most other styles of architecture, where appropriate. Care must be taken, however, to ensure that all Federal building designs command respect of the general public for their beauty and visual embodiment of America's ideals.

Sec. 2. *Policy.* (a) Applicable Federal public buildings should uplift and beautify public spaces, inspire the human spirit, ennoble the United States, and command respect from the general public. They should also be visually identifiable as civic buildings and, as appropriate, respect regional architectural heritage. Architecture—with particular regard for traditional and classical architecture—that meets the criteria set forth in this subsection is the preferred architecture for applicable Federal public buildings. In the District of Columbia, classical architecture shall be the preferred and default architecture for Federal public buildings absent exceptional factors necessitating another kind of architecture.

(b) Where the architecture of applicable Federal public buildings diverges from the preferred architecture set forth in subsection (a) of this section, great care and consideration must be taken to choose a design that commands respect from the general public and clearly conveys to the general public the dignity, enterprise, vigor, and stability of America's system of self-government.

(c) When renovating, reducing, or expanding applicable Federal public buildings that do not meet the criteria set forth in subsection (a) of this section, the feasibility and potential expense of building redesign to meet those criteria should be examined. Where feasible and economical, such redesign should be given substantial consideration, especially with regard to the building's exterior.

(d) GSA should seek input from the future users of applicable public buildings and the general public in the community where such buildings will be located before selecting an architectural firm or design style.

Sec. 3. *Definitions.* For the purposes of this order:

(a) ''Applicable Federal public building'' means:

(i) all Federal courthouses and agency headquarters;

(ii) all Federal public buildings in the District of Columbia; and

(iii) all other Federal public buildings that cost or are expected to cost more than $50 million in 2020 dollars to design, build, and finish, but does not include infrastructure projects or land ports of entry.

(b) ''Brutalist'' means the style of architecture that grew out of the early 20th-century modernist movement that is characterized by a massive and block-like appearance with a rigid geometric style and large-scale use of exposed poured concrete.

(c) ''Classical architecture'' means the architectural tradition derived from the forms, principles, and vocabulary of the architecture of Greek and Roman antiquity, and as later developed and expanded upon by such Renaissance architects as Alberti, Brunelleschi, Michelangelo, and Palladio; such Enlightenment masters as Robert Adam, John Soane, and Christopher Wren; such 19th-century architects as Benjamin Henry Latrobe, Robert Mills, and Thomas U. Walter; and such 20th-century practitioners as Julian Abele, Daniel Burnham, Charles F. McKim, John Russell Pope, Julia Morgan, and the firm of Delano and Aldrich. Classical architecture encompasses such styles as Neoclassical, Georgian, Federal, Greek Revival, Beaux-Arts, and Art Deco.

(d) ''Deconstructivist'' means the style of architecture generally known as ''deconstructivism'' that emerged during the late 1980s that subverts the traditional values of architecture through such features as fragmentation, disorder, discontinuity, distortion, skewed geometry, and the appearance of instability.

(e) ''General public'' means members of the public who are not:

(i) artists, architects, engineers, art or architecture critics, instructors or professors of art or architecture, or members of the building industry; or

(ii) affiliated with any interest group, trade association, or any other organization whose membership is financially affected by decisions involving the design, construction, or remodeling of public buildings.

(f) ''Officer'' has the meaning given that term in section 2104 of title 5, United States Code.

(g) ''Public building'' has the meaning given that term in section 3301(a)(5) of title 40, United States Code.

(h) ''Traditional architecture'' includes classical architecture, as defined herein, and also includes the historic humanistic architecture such as Gothic, Romanesque, Pueblo Revival, Spanish Colonial, and other Mediterranean styles of architecture historically rooted in various regions of America.

(i) ''2020 dollars'' means dollars adjusted for inflation using the Bureau of Economic Analysis's Gross Domestic Product price deflator and using 2020 as the base year.

Sec. 4. *President's Council on Improving Federal Civic Architecture.* (a) There is hereby established the President's Council on Improving Federal Civic Architecture (Council).

(b) The Council shall be composed of:

(i) all of the members of the Commission of Fine Arts;

(ii) the Secretary of the Commission of Fine Arts;

(iii) the Architect of the Capitol;

(iv) the Commissioner of the GSA Public Building Service;

(v) the Chief Architect of GSA;

(vi) other officers or employees of the Federal Government as the President may, from time to time, designate; and

(vii) up to 20 additional members appointed by the President from among citizens from outside the Federal Government to provide diverse perspectives on the matters falling under the Council's jurisdiction.

(c) The Council shall be chaired by a member of the Commission of Fine Arts designated by the President. The Chair may designate a vice-chair and may establish subcommittees.

(d) The members of the Council shall serve without compensation for their work on the Council. However, members of the Council, while engaged in the work of the Council, may receive travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service, pursuant to sections 5701 through 5707 of title 5, United States Code.

(e) To the extent permitted by law and within existing appropriations, the Administrator of General Services (Administrator) shall provide such funding and administrative and technical support as the Council may require. The Administrator shall, to the extent permitted by law, direct GSA staff to provide any relevant information the Council requests and may detail such staff to aid the work of the Council, at the request of the Council.

(f) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the Council, any functions of the President under that Act, except that of reporting to the Congress under section 6 of that Act, shall be performed by the Administrator in accordance with the guidelines and procedures established by the Administrator.

(g) The Council shall terminate on September 30, 2021, unless extended by the President. Members appointed under subsections (b)(vi) and (b)(vii) of this section shall serve until the Council terminates and shall not be removed except for inefficiency, neglect of duty, or malfeasance.

Sec. 5. *Responsibilities of the Council.* The Council shall:

(a) submit a report to the Administrator, recommending updates to GSA's policies and procedures to incorporate the policies of section 2 of this order and advance the purposes of this order. The report shall explain how the recommended changes accomplish these purposes. The report shall be submitted prior to September 30, 2021.

(b) recommend to the Administrator changes to GSA policies for situations in which the agency participates in a design selection pursuant to the Commemorative Works Act (chapter 89 of title 40, United States Code), in furtherance of the purposes of this order and consistent with applicable law.

Sec. 6. *Agency Actions.* (a) The Administrator shall adhere to the policies set forth in section 2 of this order.

(b) In the event the Administrator proposes to approve a design for a new applicable Federal public building that diverges from the preferred architecture set forth in subsection 2(a) of this order, including Brutalist or Deconstructivist architecture or any design derived from or related to these types of architecture, the Administrator shall notify the President through the Assistant to the President for Domestic Policy not less than 30 days before GSA could reject such design without incurring substantial expenditures. Such notification shall set forth the reasons the Administrator proposes to approve such design, including:

(i) a detailed explanation of why the Administrator believes selecting such design is justified, with particular focus on whether such design is as beautiful and reflective of the dignity, enterprise, vigor, and stability of the American system of self-government as alternative designs of comparable cost using preferred architecture;

(ii) the total expected cost of adopting the proposed design, including estimated maintenance and replacement costs throughout its expected lifecycle; and

(iii) a description of the designs using preferred architecture seriously considered for such project and the total expected cost of adopting such designs, including estimated maintenance and replacement costs throughout their expected lifecycles.

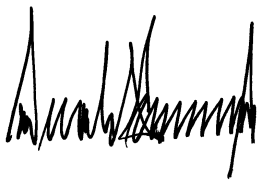
Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
December 18, 2020.

[FR Doc. 2020–28605
Filed 12–22–20; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 13968 of December 18, 2020

Promoting Redemption of Savings Bonds

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose.* Since 1935, the Department of the Treasury (Department) has issued savings bonds to the American public. Backed by the full faith and credit of the United States Government, these bonds are extremely safe investments that were designed to be accessible even to inexperienced investors. Indeed, over the years, savings bonds have proved to be a popular birthday or graduation gift, helping introduce younger Americans to the rewards of investing in our country's future. Among other things, savings bonds provided the United States with a critical source of financing during World War II.

By law, savings bonds never expire, and there is no deadline for owners to redeem them. It is currently estimated that more than 75 million matured savings bonds, issued as far back as 1935, remain unredeemed. The total value of these unredeemed savings bonds is approximately $27 billion.

Above and beyond any legal requirements applicable to savings bonds, the Department should take all appropriate action to make sure that those Americans who invested in the future success of their country have the opportunity to receive the remuneration to which they are lawfully entitled. Under my Administration, the Department has already undertaken significant measures to reunite matured savings bonds with their rightful owners. For example, the Department in 2019 released an online tool known as ''Treasury Hunt'' to help individuals determine if they are the owners of matured unredeemed savings bonds. This order is the next step in ensuring that owners of matured savings bonds have a full opportunity to redeem their bonds.

Sec. 2. *Updating Records.* The Department shall work to digitize and make electronically searchable sufficient information to identify the registered owner of any matured unredeemed savings bond, including the name and registered address of such owner and of any registered beneficiaries. In particular, the Department shall complete its ongoing pilot project to assess the feasibility and cost of digitizing and making these records searchable and accessible, which is being carried out in conjunction with multiple vendors, before the end of calendar year 2020. If the pilot project is successful, a vendor shall be selected to begin digitizing savings bond records. When digitizing records, the Department shall, to the extent feasible, focus first on the bond-issuance years that represent the highest percentage of matured unredeemed debt.

Sec. 3. *Information Accessibility.* Within 30 days of beginning to receive data from the digitization of records described in section 2 of this order, the Department shall incorporate into the data accessible through Treasury Hunt information collected from the digitized records, in a secure manner and consistent with applicable law, including the Privacy Act. The Department shall work to ensure that this information can be used through Treasury Hunt to help individuals determine if they are the owners of matured unredeemed savings bonds.

Sec. 4. *Customer Research.* The Department shall conduct customer research to determine why individuals do not redeem savings bonds upon maturity, any barriers individuals encounter when they do attempt to redeem their

bonds, and the feasibility of modifying redemption methods or developing alternative redemption methods in order to mitigate, overcome, or avoid any such barriers.

Sec. 5. *Collaboration with States.* The Department shall engage with States and State associations to obtain additional data and information to help the Department identify owners of unredeemed bonds, to learn best practices employed by the States regarding the redemption of mature bonds, and to encourage the States to add direct links to Treasury Hunt to States' unclaimed property websites or other appropriate State publications or information portals.

Sec. 6. *Public Reporting.* Within 6 months of the date of this order, the Secretary of the Treasury shall publish a report on actions and initiatives undertaken by the Department to implement this order.

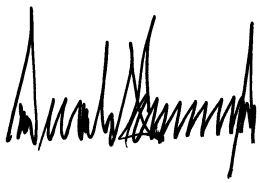
Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
December 18, 2020.

[FR Doc. 2020–28606
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Billing code 3295–F1–P

Rules and Regulations

Federal Register
Vol. 85, No. 247
Wednesday, December 23, 2020

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1735]

RIN 7100–AG05

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AF68

Community Reinvestment Act Regulations

AGENCY: Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint final rule; technical amendment.

SUMMARY: The Board and the FDIC (collectively, the Agencies) are amending their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define ''small bank'' and ''intermediate small bank.'' As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W).

DATES: *Effective Date:* January 1, 2021.

FOR FURTHER INFORMATION CONTACT:

Board: Amal S. Patel, Counsel, (202) 912–7879, or Cathy Gates, Senior Project Manager, (202) 452–2099, Division of Consumer and Community Affairs; or Gavin L. Smith, Senior Counsel, (202) 452–3474, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) contact (202) 263–4869.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–6859; or Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background and Description of the Joint Final Rule

The Agencies' CRA regulations establish CRA performance standards for small and intermediate small banks. The CRA regulations define small and intermediate small banks by reference to asset-size criteria expressed in dollar amounts, and they further require the Agencies to publish annual adjustments to these dollar figures based on the year-to-year change in the average of the CPI–W, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million. 12 CFR 228.12(u)(2) and 345.12(u)(2). This adjustment formula was first adopted for CRA purposes by the Board, the Office of the Comptroller of the Currency (OCC), and the FDIC on August 2, 2005, effective September 1, 2005. 70 FR 44256 (Aug. 2, 2005). At that time, the Agencies noted that the &CPI–W is also used in connection with other federal laws, such as the Home Mortgage Disclosure Act. *See* 12 U.S.C. 2808; 12 CFR 1003.2. On March 22, 2007, and effective July 1, 2007, the former Office of Thrift Supervision (OTS), the agency then responsible for regulating savings associations, adopted an annual adjustment formula consistent with that of the other federal banking agencies in its CRA rule previously set forth at 12 CFR part 563e. 72 FR 13429 (Mar. 22, 2007).

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[1] effective July 21, 2011, CRA rulemaking authority for federal and state savings associations was transferred from the OTS to the OCC, and the OCC subsequently republished, at 12 CFR part 195, the CRA regulations applicable to those institutions.[2] In addition, the Dodd-Frank Act transferred responsibility for supervision of savings and loan holding companies and their non-depository subsidiaries from the OTS to the Board, and the Board subsequently amended its CRA regulation to reflect this transfer of supervisory authority.[3]

On May 20, 2020, the OCC issued a CRA final rule establishing a revised CRA regulatory framework[4] and has determined that it will adjust the asset-size criteria for institutions that are subject to OCC-issued CRA regulations, including national banks and federal and state savings associations, by a means separate from this rulemaking process.

The threshold for small banks was revised most recently in December 2019 and became effective January 1, 2020. 84 FR 71738 (Dec. 30, 2019). The current CRA regulations provide that banks that, as of December 31 of either of the prior two calendar years, had assets of less than $1.305 billion are small banks. Small banks with assets of at least $326 million as of December 31 of both of the prior two calendar years and less than $1.305 billion as of December 31 of either of the prior two calendar years are intermediate small banks. 12 CFR 228.12(u)(1) and 345.12(u)(1). This joint final rule revises these thresholds.

During the 12-month period ending November 2020, the CPI–W increased by 1.29 percent. As a result, the Agencies are revising 12 CFR 228.12(u)(1) and 345.12(u)(1) to make this annual adjustment. Beginning January 1, 2021, banks that, as of December 31 of either of the prior two calendar years, had assets of less than $1.322 billion are small banks. Small banks with assets of at least $330 million as of December 31 of both of the prior two calendar years and less than $1.322 billion as of December 31 of either of the prior two calendar years are intermediate small banks. The Agencies also publish current and historical asset-size thresholds on the website of the Federal Financial Institutions Examination Council at *http://www.ffiec.gov/cra/.*

Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* OCC interim final rule, 76 FR 48950 (Aug. 9, 2011).

[3] *See* Board interim final rule, 76 FR 56508 (Sept. 13, 2011).

[4] 85 FR 34734 (June 5, 2020). The final rule is effective October 1, 2020. Institutions subject to the final rule must comply with its provisions by October 1, 2020, January 1, 2023, or January 1, 2024, as applicable. *Id.* at 34784.

statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The amendments to the regulations to adjust the asset-size thresholds for small and intermediate small banks result from the application of a formula established by a provision in the respective CRA regulations that the Agencies previously published for comment. *See* 70 FR 12148 (Mar. 11, 2005), 70 FR 44256 (Aug. 2, 2005), 71 FR 67826 (Nov. 24, 2006), and 72 FR 13429 (Mar. 22, 2007). As a result, §§ 228.12(u)(1) and 345.12(u)(1) of the Agencies' respective CRA regulations are amended by adjusting the asset-size thresholds as provided for in §§ 228.12(u)(2) and 345.12(u)(2).

Accordingly, the Agencies' rules provide no discretion as to the computation or timing of the revisions to the asset-size criteria. For this reason, the Agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

The effective date of this joint final rule is January 1, 2021. Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. Because this rule adjusts asset-size thresholds consistent with the procedural requirements of the CRA rules, the Agencies conclude that it is not substantive within the meaning of the APA's delayed effective date provision. Moreover, the Agencies find that there is good cause for dispensing with the delayed effective date requirement, even if it applied, because their current rules already provide notice that the small and intermediate small asset-size thresholds will be adjusted as of December 31 based on 12-month data as of the end of November each year.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking when a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the Agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies have determined that this final rule does not create any new, or revise any existing, collections of information pursuant to the Paperwork Reduction Act. Consequently, no information collection request will be submitted to the OMB for review.

Riegle Community Development and Regulatory Improvement Act of 1994

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) (12 U.S.C. 4802) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[5] In addition, new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[6]

Because the final rule does not impose additional reporting, disclosure, or other requirements on IDIs, section 302 of RCDRIA does not apply. Nevertheless, the requirements of section 302 of RCDRIA, and the administrative burdens and benefits of the final rule, were considered as part of the overall rulemaking process.

Congressional Review Act

FDIC

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[7] If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[8]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[9] As required by the Congressional Review Act, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects

12 CFR Part 228

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

Federal Reserve System

12 CFR Chapter II

For the reasons set forth in the common preamble, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 2. Section 228.12 is amended by revising paragraph (u)(1) to read as follows:

§ 228.12 Definitions.

* * * * *

(u) * * * (1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years,

[5] 12 U.S.C 4802(a).

[6] 12 U.S.C 4802(b).

[7] 5 U.S.C. 801 *et seq.*

[8] 5 U.S.C. 801(a)(3).

[9] 5 U.S.C. 804(2).

had assets of less than $1.322 billion. *Intermediate small bank* means a small bank with assets of at least $330 billion as of December 31 of both of the prior two calendar years and less than $1.322 billion as of December 31 of either of the prior two calendar years.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the common preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 3. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2908, 3103–3104, and 3108(a).

■ 4. Section 345.12 is amended by revising paragraph (u)(1) to read as follows:

§ 345.12 Definitions.

* * * * *

(u) * * * (1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.322 billion. *Intermediate small bank* means a small bank with assets of at least $330 million as of December 31 of both of the prior two calendar years and less than $1.322 billion as of December 31 of either of the prior two calendar years.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on December 15, 2020.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2020–28116 Filed 12–22–20; 8:45 am]

BILLING CODE 6210–01–P; 4810–33–P; 6714–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AD35

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investment Eligibility

AGENCY: Farm Credit Administration.

ACTION: Notification of effective date.

SUMMARY: The Farm Credit Administration (FCA or we) issued a final rule that amends its investment regulations to authorize Farm Credit System (FCS or System) associations to purchase in the secondary market and hold as investments, portions of loans that non-FCS lenders originate, and that the United States Department of Agriculture (USDA) fully and unconditionally guarantees or insures as to the timely payment of principal and interest. In accordance with statute, the effective date of the final rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both House of Congress are in session.

DATES: The final rule regulation amending 12 CFR part 615 published on October 6, 2020 (85 FR 62945), and corrected on November 6, 2020 (85 FR 62949), is effective as of December 23, 2020.

FOR FURTHER INFORMATION CONTACT:

Technical information: David J. Lewandrowski, Senior Policy Analyst, Finance & Capital Market Team, Office of Regulatory Policy, (703) 883–4414, TTY (703) 883–4056, *lewandrowskid@fca.gov.*

Legal information: Richard A. Katz, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056, *katzr@fca.gov.*

SUPPLEMENTARY INFORMATION: On August 13, 2020, the FCA issued a final rule that amended § 615.5140(b) so FCS associations are authorized to purchase in the secondary market and hold as investments, portions of loans that non-System lenders originate, and the USDA fully and unconditionally guarantees as to the payment of principal and interest. The final rule was published in the **Federal Register** on October 6, 2020.

In accordance with 12 U.S.C. 2252(c)(1), the effective date of the final rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulation is December 23, 2020.

Dated: December 7, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2020–27144 Filed 12–22–20; 8:45 am]

BILLING CODE 6705–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1022

Fair Credit Reporting Act Disclosures

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule amending an appendix for Regulation V, which implements the Fair Credit Reporting Act (FCRA). The Bureau is required to calculate annually the dollar amount of the maximum allowable charge for disclosures by a consumer reporting agency to a consumer pursuant to FCRA section 609; this final rule establishes the maximum allowable charge for the 2021 calendar year.

DATES: This final rule is effective January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Willie Williams, Paralegal Specialist; Rachel Ross, Attorney-Advisor; Office of Regulations, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Bureau is amending appendix O for Regulation V, which implements the FCRA, to establish the maximum allowable charge for disclosures by a consumer reporting agency to a consumer for 2021. The maximum allowable charge will be $13.00 for 2021.

I. Background

Under section 609 of the FCRA, a consumer reporting agency must, upon a consumer's request, disclose to the consumer information in the consumer's file.[1] Section 612(a) of the FCRA gives consumers the right to a free file disclosure upon request once every 12 months from the nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies.[2] Section 612 of the FCRA also gives consumers the right to a free file disclosure under certain other, specified

[1] 15 U.S.C. 1681g.

[2] 15 U.S.C. 1681j(a).

circumstances.[3] Where the consumer is not entitled to a free file disclosure, section 612(f)(1)(A) of the FCRA provides that a consumer reporting agency may impose a reasonable charge on a consumer for making a file disclosure. Section 612(f)(1)(A) of the FCRA provides that the charge for such a disclosure shall not exceed $8.00 and shall be indicated to the consumer before making the file disclosure.[4]

Section 612(f)(2) of the FCRA also states that the $8.00 maximum amount shall increase on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.[5] Such increases are based on the Consumer Price Index for All Urban Consumers (CPI–U), which is the most general Consumer Price Index and covers all urban consumers and all items.

II. Adjustment

For 2021, the ceiling on allowable charges under section 612(f) of the FCRA will be $13.00, an increase of fifty cents from 2020. The Bureau is using the $8.00 amount set forth in section 612(f)(1)(A)(i) of the FCRA as the baseline for its calculation of the increase in the ceiling on reasonable charges for certain disclosures made under section 609 of the FCRA. Since the effective date of section 612(a) was September 30, 1997, the Bureau calculated the proportional increase in the CPI–U from September 1997 to September 2020. The Bureau then determined what modification, if any, from the original base of $8.00 should be made effective for 2021, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2020, the CPI–U increased by 61.464 percent from an index value of 161.2 in September 1997 to a value of 260.28 in September 2020. An increase of 61.464 percent in the $8.00 base figure would lead to a figure of $12.92. However, because the statute directs that the resulting figure be rounded to the nearest $0.50, the maximum allowable charge is $13.00. The Bureau therefore determines that the maximum allowable charge for the year 2021 will increase to $13.00.

[3] 15 U.S.C. 1681j(b)-(d). The maximum allowable charge announced by the Bureau does not apply to requests made under section 612(a)–(d) of the FCRA. The charge does apply when a consumer who orders a file disclosure has already received a free annual file disclosure and does not otherwise qualify for an additional free file disclosure.

[4] 15 U.S.C. 1681j(f)(1)(A).

[5] 15 U.S.C. 1681j(f)(2).

III. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[6] Pursuant to this final rule, in Regulation V, appendix O is amended to update the maximum allowable charge for 2021 under section 612(f). The amendments in this final rule are technical and non-discretionary, as they merely apply the method previously established in Regulation V for determining adjustments to the thresholds. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. The amendments therefore are adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). At a minimum, the Bureau believes the amendments made by this rule fall under the third exception to section 553(d). The Bureau finds that there is good cause to make this rule effective on January 1, 2021. The amendments made by this rule are technical and non-discretionary, and apply the method previously established in the Bureau's regulations for automatic adjustments to the threshold.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[7]

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[8] the Bureau reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

D. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

[6] 5 U.S.C. 553(b)(B).

[7] 5 U.S.C. 603(a), 604(a).

[8] 44 U.S.C. 3506; 5 CFR part 1320.

IV. Signing Authority

The Acting Associate Director for Research, Markets and Regulations, Dan S. Sokolov, having reviewed and approved this document, is delegating the authority to electronically sign this document to Grace Feola, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1022

Banks, banking, Consumer protection, Credit unions, Holding companies, National banks, Privacy, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation V, 12 CFR part 1022, as set forth below:

PART 1022—FAIR CREDIT REPORTING (REGULATION V)

■ 1. The authority citation for part 1022 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1681a, 1681b, 1681c, 1681c–1, 1681e, 1681g, 1681i, 1681j, 1681m, 1681s, 1681s–2, 1681s–3, and 1681t; Sec. 214, Pub. L. 108–159, 117 Stat. 1952.

■ 2. Appendix O is revised to read as follows:

Appendix O to Part 1022—Reasonable Charges for Certain Disclosures

Section 612(f) of the FCRA, 15 U.S.C. 1681j(f), directs the Bureau to increase the maximum allowable charge a consumer reporting agency may impose for making a disclosure to the consumer pursuant to section 609 of the FCRA, 15 U.S.C. 1681g, on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents. The Bureau will publish notice of the maximum allowable charge each year by amending this appendix. For calendar year 2021, the maximum allowable charge is $13.00. For historical purposes:

1. For calendar year 2012, the maximum allowable disclosure charge was $11.50.

2. For calendar year 2013, the maximum allowable disclosure charge was $11.50.

3. For calendar year 2014, the maximum allowable disclosure charge was $11.50.

4. For calendar year 2015, the maximum allowable disclosure charge was $12.00.

5. For calendar year 2016, the maximum allowable disclosure charge was $12.00.
6. For calendar year 2017, the maximum allowable disclosure charge was $12.00.
7. For calendar year 2018, the maximum allowable disclosure charge was $12.00.
8. For calendar year 2019, the maximum allowable disclosure charge was $12.50.
9. For calendar year 2020, the maximum allowable disclosure charge was $12.50.
10. For calendar year 2021, the maximum allowable disclosure charge is $13.00.

Dated: December 18, 2020.

Grace Feola,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020–28409 Filed 12–22–20; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0841; Product Identifier 2020–NM–087–AD; Amendment 39–21366; AD 2020–26–11]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A300 F4–605R airplanes and Model A310–324 airplanes. This AD was prompted by a report that certain emergency locator transmitter (ELT) lithium batteries lack protection against current injection. This AD requires modification of the airplane circuit connecting the ELT battery, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 27, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 27, 2021.

ADDRESSES: 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–2020–0841.

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–2020–0841; 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: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3225; email: *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0108, dated May 14, 2020 (EASA AD 2020–0108) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus SAS Model A300–600 series airplanes and Model A310 series airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A300 F4–605R airplanes and Model A310–324 airplanes. The NPRM published in the **Federal Register** on September 16, 2020 (85 FR 57802). The NPRM was prompted by a report that certain ELT lithium batteries lack protection against current injection. The NPRM proposed to require modification of the airplane circuit connecting the ELT battery, as specified in a EASA AD.

The FAA is issuing this AD to address ELT lithium batteries lacking protection against current injection, which could induce a local battery fire, even after a significant delay, and could result in damage to the airplane and injury to occupants. See the MCAI for additional background information.

Comments

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

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

EASA AD 2020–0108 describes procedures for modification of the airplane circuit connecting the ELT battery by installing a diode. 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 6 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	$50	$220	$1,320

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

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:

2020–26–11 Airbus SAS: Amendment 39–21366; Docket No. FAA–2020–0841; Product Identifier 2020–NM–087–AD.

(a) Effective Date

This airworthiness directive (AD) is effective January 27, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) and (2) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0108, dated May 14, 2020 (''EASA AD 2020–0108'').

(1) Model A300 F4–605R airplanes.

(2) Model A310–324 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Reason

This AD was prompted by a report that certain emergency locator transmitter (ELT) lithium batteries lack protection against current injection. The FAA is issuing this AD to address ELT lithium batteries lacking protection against current injection, which could induce a local battery fire, even after a significant delay, and could result in damage to the airplane and injury to 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 2020–0108.

(h) Exceptions to EASA AD 2020–0108

(1) Where EASA AD 2020–0108 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0108 does not apply to this AD.

(3) Where paragraph (1) of EASA AD 2020–0108 specifies to ''modify the airplane,'' the modification includes the testing required in paragraph 3.E. of the Accomplishment Instructions of the service information specified in paragraph (1) of EASA AD 2020–0108.

(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 (i)(2) and (h)(3) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3225; email: *dan.rodina@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 2020–0108, dated May 14, 2020.

(ii) [Reserved]

(3) For EASA AD 2020–0108, 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 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–2020–0841.

(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 December 9, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–28269 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0844; Product Identifier 2020–NM–100–AD; Amendment 39–21364; AD 2020–26–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by a report of cracks found in fastener holes at a certain station of the center wing box. This AD requires repetitive external surface high frequency eddy current (HFEC) inspections and repetitive external surface ultrasonic inspections; or repetitive internal detailed inspections; of a certain station of the center wing box for any cracking, and repair if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 27, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 27, 2021.

ADDRESSES: For 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.* 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–2020–0844.

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–2020–0844; 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: Wayne Ha, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5238; email: *Wayne.Ha@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 all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The NPRM published in the **Federal Register** on September 22, 2020 (85 FR 59449). The NPRM was prompted by a report of cracks found in fastener holes at a certain station of the center wing box. The NPRM proposed to require repetitive external surface HFEC inspections and repetitive external surface ultrasonic inspections; or repetitive internal detailed inspections; of a certain station of the center wing box for any cracking, and repair if necessary.

The FAA is issuing this AD to address any cracking found in fastener holes at the center wing box, which could result in inability of a principal structural element to sustain limit load and could adversely affect the structural integrity of the airplane.

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

Jason Carrig and Boeing stated their support for the NPRM.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing Supplemental Type Certificate (STC) ST01219SE does not affect the actions specified in the proposed AD.

The FAA concurs with the commenter. The FAA has redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD and added paragraph (c)(2) to this AD to state that installation of STC ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

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 changes 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 Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–57A1348 RB, dated June 1, 2020. The service information describes procedures for repetitive external surface HFEC inspections and repetitive external surface ultrasonic inspections; or repetitive internal detailed inspections; of the center wing box, station 663.75 rear spar, lower skin, and lower chord between left buttock line 31.83 and right buttock line 31.83, for any cracking, and repair if necessary. 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 141 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive external HFEC and external ultrasonic inspections.	3 work-hours × $85 per hour = $255 per inspection cycle.	$0	$255 per inspection cycle.	Up to $35,955 per inspection cycle.
Repetitive internal detailed inspections.	28 work-hours × $85 per hour = $2,380 per inspection cycle.	$0	$2,380 per inspection cycle.	Up to $335,580 per inspection cycle.

The FAA has received no definitive data that would enable providing cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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:

2020–26–09 The Boeing Company: Amendment 39–21364 ; Docket No. FAA–2020–0844; Product Identifier 2020–NM–100–AD.

(a) Effective Date

This AD is effective January 27, 2021.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report of cracks found in fastener holes at the center wing box, station 663.75 rear spar, of the lower skin located at left buttock line 6.50. The FAA is issuing this AD to address any cracking found in fastener holes at the center wing box, which could result in inability of a principal structural element to sustain limit load and could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions for Group 1 Airplanes

For airplanes identified as Group 1 in Boeing Alert Requirements Bulletin 737–57A1348 RB, dated June 1, 2020: Within 120 days after the effective date of this AD, inspect the airplane and do all applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(h) Required Actions for Group 2 Airplanes

For airplanes identified as Group 2 in Boeing Alert Requirements Bulletin 737–57A1348 RB, dated June 1, 2020, except as specified by paragraph (i) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–57A1348 RB, dated June 1, 2020, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–57A1348 RB, dated June 1, 2020.

Note 1 to paragraph (h): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–57A1348, dated June 1, 2020, which is referred to in Boeing Alert Requirements Bulletin 737–57A1348 RB, dated June 1, 2020.

(i) Exceptions to Service Information Specifications

(1) Where Boeing Alert Requirements Bulletin 737–57A1348 RB, dated June 1, 2020, uses the phrase ''the original issue date of Requirements Bulletin 737–57A1348 RB,'' this AD requires using ''the effective date of this AD,'' except where Boeing Alert Requirements Bulletin 737–57A1348 RB, dated June 1, 2020, uses the phrase ''the original issue date of Requirements Bulletin 737–57A1348 RB'' in a note or flag note.

(2) Where Boeing Alert Requirements Bulletin 737–57A1348 RB, dated June 1, 2020, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in

accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles 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 (k)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(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) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

(1) For more information about this AD, contact Wayne Ha, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5238; email: *Wayne.Ha@faa.gov.*

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

(l) 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 737–57A1348 RB, dated June 1, 2020.

(ii) [Reserved]

(3) For 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) 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.

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

Issued on December 9, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–28270 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0465; Product Identifier 2020–NM–074–AD; Amendment 39–21363; AD 2020–26–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for The Boeing Company Model 787–8, 787–9, and 787–10 airplanes powered by Rolls Royce Trent 1000 engines. This AD was prompted by reports of damage to the inner fixed structure (IFS) forward upper fire seal and damage to thermal insulation blankets in the forward upper area of the thrust reverser (TR). This AD requires repetitive inspections of the IFS forward upper fire seal and thermal insulation blankets in the forward upper area of the TR for damage and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 27, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 27, 2021.

ADDRESSES: For 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.* 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–2020–0465.

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–2020–0465; 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: Tak Kobayashi, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA; phone: 206–231–3553; email: *Takahisa.Kobayashi@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 The Boeing Company Model 787–8, 787–9, and 787–10 airplanes powered by Rolls Royce Trent 1000 engines. The NPRM published in the **Federal Register** on June 16, 2020 (85 FR 36352). The NPRM was prompted by reports of damage to the IFS forward upper fire seal and damage to thermal insulation blankets in the forward upper area of the TR. The NPRM proposed to require repetitive inspections of the IFS forward upper fire seal and thermal insulation blankets in the forward upper area of the TR for damage and applicable on-condition actions.

The FAA is issuing this AD to address damage to the IFS forward upper fire seal and the thermal insulation blankets of the TR due to airflow through structural gapping that could occur at the interface between the leading edge of the IFS and the engine splitter structure during flight. Failure of the IFS forward upper fire seal could cause the loss of seal pressurization and degrade the ability to detect and extinguish an engine fire, resulting in an uncontrolled fire. Damage to the TR insulation blanket could result in thermal damage to the TR inner wall, the subsequent release of engine exhaust components, and consequent damage to critical areas of the airplane. Furthermore, damage to the TR inner wall and IFS forward upper fire seal could compromise the integrity of the firewall and its ability to contain an engine fire, resulting in an uncontrolled fire.

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 for Clarification on Whether the Unsafe Condition is Likely To Exist on Other New Products

An individual commenter asked how likely it is that the same unsafe condition addressed in the proposed AD is to occur on other new products that are currently being evaluated for certification by the FAA, including the Boeing Model 777X. The commenter stated that the use of an electric thruster instead of a hydraulically-driven thrust reverser actuator would reduce the maintenance of a hydraulic system, and eliminate potential corrosion and fire risk.

The FAA agrees to clarify. As required by 14 CFR 21.21(b)(2), to certify an aircraft, the FAA must find that no feature or characteristic makes the aircraft unsafe. If the unsafe condition identified in this AD is determined to exist on any product that has not been certified by the FAA, the unsafe condition must be adequately addressed prior to FAA certification of that product. No change to this final rule is necessary in this regard.

Request for Explanation Regarding Timing of AD Action

The individual commenter asked why there was a 36 month period after August 27, 2018 (the effective date of AD 2018–15–03 Amendment 39–19335 (83 FR 34753, July 23, 2018) (AD 2018–15–03)), to take action on Boeing Alert Service Bulletin B787–81205–SB780033–00, Issue 001, dated November 1, 2017, which is required by AD 2018–15–03. The FAA infers that the commenter is referring to the 36-month compliance time for accomplishing the actions described in Boeing Alert Service Bulletin B787–81205–SB780033–00, Issue 001, dated November 1, 2017. The FAA also infers that the commenter is concerned regarding the time it took the FAA to take AD action to address the unsafe condition.

The FAA agrees to provide clarification regarding the timing of the publication of AD 2018–15–03 and the relationship between AD 2018–15–03 and this final rule. In the preamble of the NPRM preceding this final rule, the FAA stated that the proposed AD would not supersede or terminate any requirement of AD 2018–15–03. AD 2018–15–03 and this final rule both address damage to the IFS forward upper fire seal and damage to the thrust reverser thermal blanket. However, the damage to these areas is the result of two different causes. When the FAA developed AD 2018–15–03, that AD addressed the cause of damage that was identified at that time. The FAA assessed the level of risk and the compliance time, so that mandatory actions would be accomplished as soon as reasonably practical while maintaining an acceptable level of safety during the compliance period. The FAA determined that a compliance time of 36 months was adequate to address the unsafe condition identified in AD 2018–15–03.

After AD 2018–15–03 was issued, Boeing identified an additional cause of the unsafe condition that was different from the one specified in AD 2018–15–03. This newly identified cause could similarly result in damage to the IFS forward upper fire seal and the thrust reverser thermal blanket. This final rule addresses the newly identified cause of the unsafe condition that was identified after AD 2018–15–03 was issued. As discussed in the preamble of the NPRM and the preamble of this final rule, the actions required by this final rule are interim action and the FAA may consider further rulemaking when a final corrective action becomes available.

No change to this final rule is necessary in regard to this comment.

Request for Clarification Regarding Inspection Personnel

The individual commenter also asked for clarification regarding what type of inspector would perform the inspections of the IFS forward upper fire seal and thermal blanket specified in the proposed AD. The commenter asked if the inspections would be performed by flight line inspectors or FAA inspectors.

The FAA agrees to provide clarification. The inspections required by this AD will be performed by qualified and certified maintenance personnel employed by airlines and airplane operators. No change to this final rule is necessary in this regard.

Request To Clarify the Unsafe Condition

Boeing requested that the Discussion section and paragraph (e) of the proposed AD be revised to clarify the unsafe condition. The commenter stated that the unsafe condition statement in the proposed AD was not accurate. However, the commenter did not provide an explanation as to why the unsafe condition statement was not accurate.

The commenter indicated that in both the Discussion section and paragraph (e) of the proposed AD the explanation of the unsafe condition should be changed by removing the phrase ''the loss of seal pressurization'' from ''Failure of the IFS forward upper fire seal could cause the loss of seal pressurization and degrade the ability to detect and extinguish an engine fire, resulting in an uncontrolled fire,'' and replace it with the phrase ''excessive airflow into the core compartment firezone.''

The commenter also requested that in both the Discussion section and paragraph (e) of the proposed AD the explanation of the unsafe condition be changed by removing the phrase ''the subsequent release of engine exhaust components, and consequent damage to critical areas of the airplane'' from ''Damage to the TR insulation blanket could result in thermal damage to the TR inner wall, the subsequent release of engine exhaust components, and consequent damage to critical areas of the airplane,'' and replace it with the phrase ''compromising the integrity of the firewall barrier which would increase the risk of an uncontained fire.''

The FAA agrees with the commenter's request to clarify that damage to the TR inner wall could increase the risk of an uncontained fire. The FAA concurs that, depending on the level of damage to the TR inner wall and IFS forward upper fire seal, the capability of the firewall to contain an engine fire could be compromised, and therefore, it could result in an uncontrolled fire. The FAA also considers that damage to the IFS forward upper fire seal has the same effect. Although the FAA has already identified the potential for an uncontrolled fire as part of the unsafe condition addressed by this AD, the FAA has revised the Discussion section and paragraph (e) of this AD to provide additional clarification on this point.

The FAA disagrees with the commenter's request to remove the reference to ''loss of seal pressurization and'' from the description of the unsafe condition. This final rule addresses structural gapping that could occur between the leading edge of the IFS and the engine splitter structure during flight. Airflow through this structural gapping could damage the IFS forward upper fire seal and the thrust reverser thermal blanket. When the IFS forward fire seal is damaged, airflow can pass through the damaged areas of the IFS forward fire seal in addition to airflow through structural gapping, and this condition could further degrade the

ability to detect and extinguish an engine fire, and also damage the TR thermal blanket. The FAA's intent was to explain the effect of airflow through the damaged IFS forward fire seal due to loss of seal pressurization caused by the failure of the IFS forward upper fire seal. The FAA has not revised this AD in this regard.

The FAA also disagrees with the commenter's request to remove ''the subsequent release of engine exhaust components, and consequent damage to critical areas of the airplane'' from the description of the unsafe condition. The FAA has identified the potential of engine components departing the airplane due to damage to the TR inner wall as part of the unsafe condition addressed in this AD. This failure effect has been similarly discussed and addressed in a number of previously issued ADs including AD 2018–15–03, which is related to this AD. This AD has not been revised in this regard.

Request To Revise the Proposed Cost Estimates

Boeing requested that the cost estimate in the NPRM be revised. Boeing stated that it initially communicated to the FAA that the manpower estimate of 0.5 man-hour for fire seal inspection and 0.5 man-hour for thermal blanket inspection was meant to be per engine, instead of per thrust reverser half as the FAA considered under the estimated cost provided in the NPRM. Boeing explained that the corrected manpower estimate for the fire seal inspection should be 0.25 man-hour per thrust reverser half, and the corrected manpower estimate for the thermal blanket inspection should be 0.25 man-hour per thrust reverser half. Boeing recommended that instead of 4 work-hours × $85 per hour = $340 per inspection cycle, the FAA update the labor cost for the inspection to 2 work-hours for a cost of $170 per inspection cycle. Boeing asserted that this would change the cost on U.S. operators to $2,380 per inspection cycle, based on 14 U.S. airplanes.

The FAA agrees with Boeing's observation that the cost estimate in the NPRM was incorrect based upon information that was incorrectly communicated from Boeing to the FAA. The FAA has revised the Costs of Compliance in this final rule.

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 changes 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 Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB780041–00 RB, Issue 001, dated March 31, 2020. The service information describes procedures for repetitive inspections of the IFS forward upper fire seal and thermal insulation blankets of the TR for damage and applicable on-condition actions. Damage to a forward upper fire seal includes cuts, splits, nicks, punctures, and missing sections. Damage to an upper thermal blanket includes tears, cuts, missing metal skin, missing insulation, and over-temperature conditions shown by discoloration or scorching. The on-condition actions include replacing any damaged forward upper fire seal with a new fire seal having an appropriate part number, and replacing any damaged forward upper thermal blanket with a new thermal blanket. 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.

Interim Action

The FAA considers this AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this AD affects 14 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	2 work-hours × $85 per hour = $170 per inspection cycle.	$0	$170 per inspection cycle	$2,380 per inspection cycle.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product
Fire seal replacement ..	2 work-hours × $85 per hour = $170 per TR half.	$1,365 per TR half	$1,535 per TR half (4 TR halves per airplane).
Thermal blanket replacement.	1 work-hour × $85 per hour = $85 per TR half.	$17,855 per TR half ...	$17,940 per TR half (4 TR halves per airplane).

According to the manufacturer, some or all of the costs of this AD may be covered under warranty by Goodrich, 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):

2020–26–08 The Boeing Company: Amendment 39–21363; Docket No. FAA–2020–0465; Product Identifier 2020–NM–074–AD.

(a) Effective Date

This AD is effective January 27, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category, powered by Rolls Royce Trent 1000 engines.

(d) Subject

Air Transport Association (ATA) of America Code 78, Engine Exhaust.

(e) Unsafe Condition

This AD was prompted by reports of damage to the inner fixed structure (IFS) forward upper fire seal and damage to thermal insulation blankets in the forward upper area of the thrust reverser (TR). The FAA is issuing this AD to address the damage to the IFS forward upper fire seal and the thermal insulation blankets of the TR due to airflow through structural gapping that could occur at the interface between the leading edge of the IFS and the engine splitter structure during flight. Failure of the IFS forward upper fire seal could cause the loss of seal pressurization and degrade the ability to detect and extinguish an engine fire, resulting in an uncontrolled fire. Damage to the TR insulation blanket could result in thermal damage to the TR inner wall, the subsequent release of engine exhaust components, and consequent damage to critical areas of the airplane. Furthermore, damage to the TR inner wall and IFS forward upper fire seal could compromise the integrity of the firewall and its ability to contain an engine fire, resulting in an uncontrolled fire.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB780041–00 RB, Issue 001, dated March 31, 2020, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB780041–00 RB, Issue 001, dated March 31, 2020.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB780041–00, Issue 001, dated March 31, 2020, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB780041–00 RB, Issue 001, dated March 31, 2020.

(h) Exceptions to Service Information Specifications

Where Boeing Alert Requirements Bulletin B787–81205–SB780041–00 RB, Issue 001, dated March 31, 2020, uses the phrase ''the Issue 001 date of Requirements Bulletin B787–81205–SB780041–00 RB,'' this AD requires using ''the effective date of this AD.''

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle 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 (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(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) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Tak Kobayashi, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA; phone: 206–231–3553; email: *Takahisa.Kobayashi@faa.gov.*

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

(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 the AD specifies otherwise.

(i) Boeing Alert Requirements Bulletin B787–81205–SB780041–00 RB, Issue 001, dated March 31, 2020.

(ii) [Reserved]

(3) For 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.* You may view this referenced 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.

(4) 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.

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

Issued on December 9, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–28268 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0458; Product Identifier 2020–NM–029–AD; Amendment 39–21348; AD 2020–25–06]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–100–1A10 airplanes. This AD was prompted by a report that corrosion was found on the shock strut cylinders during unscheduled maintenance of the nose landing gear (NLG). This AD requires a modification of the NLG shock strut cylinder. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 27, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 27, 2021.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.* 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–2020–0458.

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–2020–0458; 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: Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2019–43, dated November 8, 2019 (''AD CF–2019–43'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model BD–100–1A10 airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0458.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD–100–1A10 airplanes. The NPRM published in the **Federal Register** on June 3, 2020 (85 FR 34141). The NPRM was prompted by a report that corrosion was found on the shock strut cylinders during unscheduled maintenance of the NLG. The NPRM proposed to require a modification of the NLG shock strut cylinder. The FAA is issuing this AD to address corrosion of the NLG, which could result in structural failure of the NLG. 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 comment received on the NPRM and the FAA's response to that comment.

Request To Revise Certain Compliance Language in the Proposed AD

Flexjet stated that where the compliance section of Bombardier Service Bulletin 100–32–33, Revision 02, dated September 30, 2019, and Figure 1 to paragraph (g) of the proposed AD, specify the compliance time for NLG assemblies with more than 96 months time since new (TSN), the compliance time does not take into account that the NLG cylinders with part number (P/N) 40640–3 and P/N 40640–5 serialized (next higher assembly P/N 40640–105 and subcomponents) are life-limited items with a 7,500 flight cycle discard interval. Flexjet commented that during the first 96 month inspection, if the operator has high flight cycles, it may elect to replace the cylinder at that time. Flexjet also commented that the compliance section of Bombardier Service Bulletin 100–32–33, Revision 02, dated September 30, 2019, does not take into account that a new cylinder could be installed at the 96-month inspection and it also does not address if the cylinder was replaced for another reason after the 96-month inspection.

Flexjet stated that the proposed AD needs to be specific on applying to the nose gear cylinder and sleeve part numbers and not the nose gear or nose gear strut assembly part numbers. Flexjet also stated that the nose gear cylinder and sleeve are the parts with corrosion and the primary reason for the service information. Flexjet pointed out that the sleeve is cut off for inspection of the cylinder and the same part number sleeve goes back on following the inspection. The FAA infers that Flexjet was requesting that the language in paragraphs (g)(1) and (2) of this AD specify that the actions apply to airplanes with NLG assemblies having NLG cylinder assemblies and sleeves with certain part numbers.

The FAA disagrees with the comment. While NLG cylinder assemblies and their subcomponents can be replaced before or after the 96-month interval inspection, paragraphs 2.B. and 2.C. of the Accomplishment Instructions of Bombardier Service Bulletin 100–32–33, Revision 02, dated September 30, 2019, ensure the proper corrective actions are taken to prevent corrosion with those replaced components when reassembled on the NLG assembly. This is why the identification on the NLG assembly modplate is required. In addition, paragraph (f) of this AD specifies to, ''Comply with this AD within the compliance times specified, unless already done.'' Therefore, if some of the specified corrective actions are already

complied with, only the remaining corrective actions in the AD need to be completed to comply with this AD. The FAA has not changed this AD in this regard.

Conclusion

The FAA reviewed the relevant data, considered the comment 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 Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 100–32–33, Revision 02, dated September 30, 2019; and Service Bulletin 350–32–009, Revision 02, dated September 30, 2019. This service information describes procedures for modification of the NLG shock strut cylinder. These documents are distinct since they apply to different airplane serial numbers. 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 560 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
Up to 54 work-hours × $85 per hour = Up to $4,590	$43,999	Up to $48,589	Up to $27,209,840

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):

2020–25–06 Bombardier, Inc.: Amendment 39–21348; Docket No. FAA–2020–0458; Product Identifier 2020–NM–029–AD.

(a) Effective Date

This AD is effective January 27, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category, serial numbers (S/Ns) 20003 through 20767 inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by a report that corrosion was found on the shock strut cylinders during unscheduled maintenance of the nose landing gear (NLG). The FAA is issuing this AD to address corrosion of the NLG, which could result in structural failure of the NLG.

(f) Compliance

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

(g) Modification for Airplanes With S/N 20003 Through 20500 Inclusive

For Bombardier, Inc., Model BD–100–1A10 airplanes with S/N 20003 through 20500 inclusive: At the applicable compliance time specified in paragraph (g)(1) or (2) of this AD, do the modification in paragraph (g)(1) or (2) of this AD, as applicable.

(1) For airplanes with NLG assemblies with 96 months or less time since new (TSN) as of the effective date of this AD: At the NLG 96-month scheduled inspection, do a modification of the NLG shock strut cylinder, in accordance with paragraph 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 100–32–33, Revision 02, dated September 30, 2019.

(2) For airplanes with NLG assemblies with more than 96 months TSN as of the effective date of this AD: At the applicable compliance time specified in figure 1 to paragraph (g) of this AD, do a modification of the NLG shock strut cylinder, in accordance with paragraph 2.C. of the Accomplishment Instructions of Bombardier Service Bulletin 100–32–33, Revision 02, dated September 30, 2019.

Figure 1 to paragraph (g) – *Compliance time*

NLG Assemblies with TSN as of the effective date of this AD	Compliance time from the effective date of this AD
More than 96 months, but less than 108 months	Within 56 months
108 months or more, but less than 120 months	Within 50 months
120 months or more, but less than 132 months	Within 44 months
132 months or more, but less than 144 months	Within 36 months
144 months or more, but less than 156 months	Within 27 months
156 months or more, but less than 174 months	Within 18 months
174 months or more, but less than 192 months	At 192-month overhaul

(h) Modification for Airplanes With S/N 20501 Through 20767 Inclusive

For Bombardier, Inc., Model BD–100–1A10 airplanes with S/N 20501 through 20767 inclusive: At the NLG 96-month scheduled inspection, do a modification of the NLG shock strut cylinder, in accordance with paragraph 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 350–32–009, Revision 02, dated September 30, 2019.

(i) Parts Installation Limitation

As of the effective date of this AD, no person may install, on any airplane, an NLG shock strut assembly with part number (P/N) 40630–111, P/N 40630–113, or P/N 44630–101, unless it has been modified in accordance with paragraphs 2.B. or 2.C. of the Accomplishment Instructions of Bombardier Service Bulletin 100–32–33, Revision 02, dated September 30, 2019; or paragraph 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 350–32–009, Revision 02, dated September 30, 2019; as applicable.

(j) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using paragraph 2.B. or 2.C., as applicable, of Bombardier Service Bulletin 100–32–33, dated October 31, 2018; or Bombardier Service Bulletin 100–32–33, Revision 01, July 31, 2019.

(2) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using paragraph 2.B. of Bombardier Service Bulletin 350–32–009, dated October 31, 2018; or Bombardier Service Bulletin 350–32–009, Revision 01 dated July 31, 2019; provided that the NLG shock strut assembly with P/N 44630–101 was removed in lieu of P/N 44610–101, as specified in paragraph 2.B.(1) of the Accomplishment Instructions of Bombardier Service Bulletin 350–32–009, dated October 31, 2018; or Bombardier Service Bulletin 350–32–009, Revision 01 dated July 31, 2019.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York 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 ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2019–43, dated November 8, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0458.

(2) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

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

(m) 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) Bombardier Service Bulletin 100–32–33, Revision 02, dated September 30, 2019.

(ii) Bombardier Service Bulletin 350–32–009, Revision 02, dated September 30, 2019.

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.*

(4) 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.

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

Issued on December 1, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–28282 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0878; Airspace Docket No. 20–AGL–35]

RIN 2120–AA66

Amendment of Class E Airspace; Warroad, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Warroad International Memorial Airport, Warroad, MN. This action is the result of an airspace review caused by the decommissioning of the Baudette VHF omnidirectional range (VOR) navigation aid as part of the VOR Minimum Operational Network (MON) Program. The name and geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

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.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Warroad International Memorial Airport, Warroad, MN, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 67322; October 22, 2020) for Docket No. FAA–2020–0878 to amend the Class E airspace extending upward from 700 feet above the surface at Warroad International Memorial Airport, Warroad, MN. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace extending upward from 700 feet above the surface to within a 6.6-mile (decreased from a 7-mile) radius of Warroad International Memorial Airport, Warroad, MN; removes the exclusionary language from the airspace legal description as it is no longer required; and updates the name (previously Warroad International-Swede Carlson Field) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Baudette VOR, which provided navigation information for the instrument procedures this airport, as part of the VOR MON Program.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

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

* * * * *

AGL MN E5 Warroad, MN [Amended]

Warroad International Memorial Airport, MN
(Lat. 48°56′29″ N, long. 95°20′55″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Warroad International Memorial Airport.

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

Steven T. Phillips,

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

[FR Doc. 2020–28189 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–1001; Airspace Docket No. 18–AWP–24]

RIN 2120–AA66

Revocation of Class E3 Airspace; Fresno, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class E airspace extending upward from the surface designated as an extension to a Class C surface area at Fresno Yosemite International Airport, Fresno, CA, as it is no longer needed. This action will support the operation of Instrument Flight Rules (IFR) under standard instrument approach and departure procedures in the National Airspace System.

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.

ADDRESSES: FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA).

For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code (U.S.C.). Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it will remove Class E airspace extending upward from the surface designated as an extension to a Class C surface area for the Fresno Yosemite International Airport, Fresno, CA, to support IFR operations in standard instrument approach and departure procedures at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 64424; October 13, 2020) for Docket No. FAA–2018–1001 to remove the Class E airspace extending upward from the surface designated as an extension to a Class C surface area for the Fresno Yosemite International Airport, Fresno, CA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E3 airspace designations are published in paragraph 6003 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 E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by removing the Fresno Yosemite International Airport Class E3 airspace extending upward from the surface of the earth. The Clovis VORTAC was decommissioned and requires the legal descriptions in FAA Order 7400.11E be rewritten to eliminate reference to this navigational aid. In addition, during review of the Class E airspace extending upward from the surface as an extension to the Class C surface area, it was identified that the airspace is no longer needed to support approaches into the airport. This action will support the operation of Instrument Flight Rules (IFR) under standard instrument approach and departure procedures in the National Airspace System.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July, 21, 2020 and effective September 15, 2020, is amended as follows:

Paragraph 6003. Class E Airspace Areas Designated as an Extension.

The Class E airspace areas listed below consist of airspace extending upward from the surface designated as an extension to a Class C surface area.

* * * * *

AWP CA E3 Fresno, CA [Remove]

Fresno Air Terminal, CA
(Lat. 36°46′34″ N, long. 119°43′06″ W)
Clovis VORTAC
(Lat. 36°53′04″ N, long. 119°48′55″ W)

Issued in Seattle, Washington, on December 14, 2020.

Byron Chew,

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

[FR Doc. 2020–28219 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0880; Airspace Docket No. 20–AGL–37]

RIN 2120–AA66

Amendment of Class D and Class E Airspace and Establishment of Class E Airspace; Marquette, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D and Class E airspace and establishes a Class E airspace area designated as an extension to Class D and Class E surface areas at Sawyer International Airport, Marquette, MI. This action is the result of an airspace review caused by the decommissioning of the Iron Mountain VHF omnidirectional range (VOR) navigation aid as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

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.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class D airspace, the Class E surface area, and the Class E airspace extending upward from 700 feet above the surface and establishes a Class E airspace area designated as an extension to a Class D and Class E surface area at Sawyer International Airport, Marquette, MI, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 67320; October 22, 2020) for Docket No. FAA–2020–0880 to amend the Class D and Class E airspace and establish a Class E airspace area designated as an extension to Class D and Class E surface areas at Sawyer International Airport, Marquette, MI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

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

Amends the Class D airspace at Sawyer International Airport, Marquette, MI, by updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; removes the city associated with the airport to comply with changes to FAA Order 7400.2M, Procedures for Handling Airspace Matters; and replaces the outdated term ''Airport/Facility Directory'' with ''Chart Supplement'';

Amends the Class E surface airspace at Sawyer International Airport by updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; removes the city associated with the airport to comply with changes to FAA Order 7400.2M; and replaces the outdated term ''Airport/Facility Directory'' with ''Chart Supplement'';

Establishes a Class E airspace area designated as an extension to Class D and Class E surface areas within 2.4 miles each side of the 022° bearing from the Sawyer VOR extending from the 4.6-mile radius of the Sawyer International Airport to 7 miles north of the Sawyer VOR;

And amends the Class E airspace extending upward from 700 feet above the surface at Sawyer International Airport by updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and removes the airspace extending upward from 1,200 feet above the surface and the exclusionary language as they are no longer required.

This action is the result of an airspace review caused by the decommissioning of the Iron Mountain VOR, which provided navigation information for the instrument procedures this airport, as part of the VOR MON Program.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 5000. Class D Airspace.

* * * * *

AGL MI D Marquette, MI [Amended]

Sawyer International Airport, MI
(Lat. 46°20′57″ N, long. 87°23′47″ W)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 4.6-mile radius of the Sawyer International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AGL MI E2 Marquette, MI [Amended]

Sawyer International Airport, MI
(Lat. 46°20′57″ N, long. 87°23′47″ W)

That airspace extending upward from the surface within a 4.6-mile radius of the Sawyer International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AGL MI E4 Marquette, MI [Establish]

Sawyer International Airport, MI
(Lat. 46°20′57″ N, long. 87°23′47″ W)

Sawyer VOR
(Lat. 46°21′32″ N, long. 87°23′51″ W)

Within 2.4 miles each side of the 022° bearing from the Sawyer VOR extending from the 4.6-mile radius of Sawyer International Airport to 7 miles north of the Sawyer VOR.

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

* * * * *

AGL MI E5 Marquette, MI [Amended]

Sawyer International Airport, MI
(Lat. 46°20′57″ N, long. 87°23′47″ W)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of the Sawyer International Airport.

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

Steven T. Phillips,

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

[FR Doc. 2020–28188 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, 742, 744, 745, 748, and 758

[Docket No. 201215–0345]

RIN 0694–AI17

Removal of Hong Kong as a Separate Destination Under the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to remove the People's Republic of China (PRC or China) Special Administrative Region of Hong Kong from the list of destinations in the EAR.

The amendments implement Sections 2 and 3 of Executive Order 13936 of July 14, 2020, in response to new security measures imposed on Hong Kong by the government of China. These new measures fundamentally undermine Hong Kong's autonomy increasing the risk sensitive U.S. technology and items will be diverted to unauthorized end uses and end users in China.

DATES: This rule is effective December 23, 2020.

FOR FURTHER INFORMATION CONTACT: Tracy Patts, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, by email at *Foreign.Policy@bis.doc.gov,* or by phone at 202–482–4252.

SUPPLEMENTARY INFORMATION:

Background

This rule represents the culmination of a rapid escalation of tensions over several months between the United States and China over the Hong Kong Special Administrative Region (Hong Kong or HKSAR). A brief timeline follows below.

On May 21, a spokesperson for the PRC's National People's Congress (NPC) announced the body would consider a resolution authorizing the adoption of national security legislation for the HKSAR.

On May 27, the Secretary of State submitted the 2020 Hong Kong Policy Act Report to Congress, certifying that the HKSAR ''does not continue to warrant treatment under U.S. laws in the same manner as U.S. laws were applied to Hong Kong before July 1997.'' The Secretary's certification was issued pursuant to sections 205 and 301 of the United States-Hong Kong Policy Act of 1992 (HKPA).

On May 29, the President announced the Administration would ''begin the process'' of revoking the HKSAR's separate treatment from mainland China under U.S. laws, a status afforded to the HKSAR under the HKPA.

In June 2020, China followed through on imposing national security legislation on Hong Kong, and on further denying Hong Kong's autonomy and freedoms promised by China to the people of Hong Kong under the 1984 Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong (Joint Declaration). This national security legislation fundamentally undermined autonomy in Hong Kong, thereby increasing the risk that sensitive U.S. technology and items will be diverted to unauthorized end uses and end users in China or elsewhere. BIS announced on its website on June 30, 2020, and subsequently published in the **Federal Register** on July 31 at 85 FR 45998, a notice suspending the availability of all license exceptions for Hong Kong that provide differential treatment as compared to those available to the PRC. A license exception is an authorization allowing exports, reexports, or transfers (in-country) under stated conditions of items subject to the EAR that would otherwise require a license.

On July 14, the President signed Executive Order (E.O.) 13936 (85 FR 43413, 7/17/2020).

The amendments in this rule relative to Hong Kong implement E.O. 13936 with regard to its effect on the Export Control Reform Act of 2018 (ECRA) and the EAR. Section 2 of E.O. 13936 suspends the application of section 201(a) of the HKPA, to a variety of statutes, including ECRA. Section 3 of E.O. 13936 directs the heads of relevant agencies to ''commence all appropriate actions [within 15 days] to further the purposes'' of E.O. 13936, including by amending any regulations implementing statutes specified in section 2 that provide different treatment for Hong Kong as compared to China.

Summary of the Changes Proposed and Their Impact

Pursuant to E.O. 13936, BIS amends the EAR to remove provisions that provide differential and preferential treatment for exports to Hong Kong, reexports to Hong Kong and transfers (in-country) within Hong Kong of all items subject to the EAR when compared to the treatment for such transactions to or within China. As a result of this rule, Hong Kong will be treated the same as China under the EAR except in certain circumstances that do not provide preferential treatment. The references to Hong Kong that remain in the EAR support U.S. national security and foreign policy objectives, and recognize certain differences that remain in how trade is processed within and through Hong Kong. Specifically, in this rule, BIS amends:

PART 738—COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY CHART

Supplement No. 1 to Part 738—Commerce Country Chart by removing the entry for Hong Kong from the Commerce Country Chart. License requirements for Hong Kong will now be governed by the Commerce Country Chart entry for China.

PART 740—LICENSE EXCEPTIONS

On July 31, 2020, BIS published a final rule amending the EAR to suspend the availability of all license exceptions to Hong Kong that provide differential and preferential treatment as compared to those available to China (See: 85 FR 45998). The changes implemented in this final rule are consistent with and in addition to the amendments of the July 31, 2020 final rule. License exceptions made unavailable to Hong Kong and listed by that rule in paragraph (23) of § 740.2(a) of the EAR remain unavailable. However, because Hong Kong is being removed as a separate destination on the Commerce Country Chart and in other places in the EAR, and will fall under the destination of China, this rule removes paragraph (23) of § 740.2(a) of the EAR, which is no longer necessary to bring license exception availability for Hong Kong in line with license exception availability for China.

In addition, in order to remove specific references to Hong Kong in Part 740, BIS amends:

Section 740.7—Computers (APP) by removing Hong Kong from the list of Computer Tier 1 destinations in paragraph (c). Hong Kong will now be considered a part of China, in Computer Tier 3.

Section 740.11—Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV) by removing Hong Kong from the description of 'Cooperating governments' in paragraph (c)(1). This paragraph of License Exception GOV is not available for China, and thus is not available for Hong Kong.

Section 740.16—Additional permissive reexports (APR) by removing Hong Kong from paragraphs (a) (formerly titled Reexports from Country Group A:1 and Hong Kong) and (b)—Reexports to and among specified countries. These paragraphs of License Exception APR are not available for reexports from China, and paragraph (b) is not available for reexports to China, and thus these paragraphs are not available for similar transactions to or from Hong Kong. However, as part of China in Country Group D:1, Hong Kong will now be an eligible destination for reexports consistent with the provisions of paragraph (a).

Supplement No. 1 to Part 740—Country Groups by removing the entry for Hong Kong from Country Group A:6, and from Country Group B. Hong Kong will no longer appear separately within the Country Groups but will instead be

considered a part of China. China is currently in Country Groups D:1, D:3, D:4, and D:5, and limitations or authorizations that apply to transactions involving China as part of those country groups will now also apply to transactions involving Hong Kong. This includes any limitations that apply to China as a result of its placement in Country Group D:5, consistent with the State Department's determination that the arms embargo on China also applies to Hong Kong.

PART 742—CONTROL POLICY—CCL BASED CONTROLS

Section 742.6—Regional stability by removing and reserving paragraph (a)(6)—RS requirement that applies to Hong Kong—a license requirement. This license requirement, for Export Control Classification Number 6A003.b.4.b, already applies to China, so removal of this provision specific to Hong Kong will not change a license requirement in the EAR.

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

Supplement No. 4 to Part 744—Entity List by removing the entries of entities under the separate entry for ''Hong Kong'' and merging, alphabetically, those entities under the entry for ''China, the People's Republic of''.

Supplement No. 6 to Part 744—Unverified List by removing the entries of entities under the separate entry for ''Hong Kong'' and merging, alphabetically, those entities under the entry for ''China, the People's Republic of''.

PART 745—CHEMICAL WEAPONS CONVENTION REQUIREMENTS

Supplement No. 2 to Part 745—States Parties to the Convention on the Prohibition of the Development, Production, Stockpiles, and Use of Chemical Weapons and on Their Destruction by amending the first sentence with an asterisk that refers to Hong Kong at the end of the Supplement. This provision previously stated that Hong Kong was considered a part of China for CWC purposes only, but now it is considered a part of China for purposes of the EAR more generally.

PART 748—APPLICATIONS (CLASSIFICATION, ADVISORY, AND LICENSE) AND DOCUMENTATION

Section 748.10—People's Republic of China (PRC) End-User Statement by adding a NOTE 5 to paragraph (a) of the section to clarify for the public that a PRC-issued End User Statement is not required for license applications for exports or reexports to Hong Kong, even though Hong Kong is considered a part of China elsewhere in the EAR. As stated in Note 1 to paragraph (b) in § 748.9 of the EAR, BIS may still request end-user statements or other support documents for license applications involving Hong Kong on a case-by-case basis.

PART 758—EXPORT CLEARANCE REQUIREMENTS

BIS adds a note to paragraph (b)(10) of § 758.1 (*The Electronic Export Information (EEI) Filing to the Automated Export System (AES))* stating that the EEI filing requirement for China described in paragraph (b)(10) applies to exports to Hong Kong for purposes of the EAR, even if the AES requirements state that the destination filed in EEI is to be listed as Hong Kong.

In removing Hong Kong as a separate destination for purposes of export controls under the EAR, it is treated as part of China for export control purposes and, thereby, is subject to the same license requirements, license exceptions and other applicable provisions under the EAR. Certain EAR provisions, however, retain references to Hong Kong because Hong Kong still operates a separate customs system and a separate export control system.

This rule implements a significant change for Hong Kong, which had previously been in different country groups, eligible for different license exceptions, and subject to different license requirements than China throughout the EAR. A notable change for those engaging in trade with or through Hong Kong will be that Hong Kong, as part of China, will now effectively fall in Country Group D, which will affect license exception availability. However, the impact of this change should be consistent with the impact of the July 31 rule suspending certain license exception eligibility for Hong Kong (see 85 FR 45998) and the earlier notice on the BIS website that accomplished the same purpose.

Certain licensing policies applicable specifically to China will now apply to license applications for transactions to Hong Kong, including policies described in §§ 742.3(b), 742.4(b), and 742.6(b).

In addition, treatment of Hong Kong as part of China, and thus in Country Group D:1, as a result of this rule will result in restrictions on the export, reexport, and transfer (in-country) of certain microprocessors to military end uses and end users in Hong Kong, pursuant to § 744.17, Restrictions on certain exports, reexports, and transfers (in-country) of microprocessors and associated ''software'' and ''technology'' for 'military end uses' and to 'military end users.' Similarly, as it is no longer distinguished as a separate destination from China under the EAR, exports to persons in Hong Kong are subject to the military end-use and end-user provisions of § 744.21—Restrictions on certain 'military end use' or 'military end user' in the People's Republic of China, Russia, or Venezuela.

For Hong Kong, as part of China, placement in Country Group D:1 will expand the licensing requirements for reexports of the foreign-produced direct product of U.S.-origin technology and software to Hong Kong pursuant to § 736.2(b)(3), General Prohibition Three.

As part of China, Hong Kong will also be subject to restrictions due to its placement in Country Group D:5—U.S. Arms Embargoed Countries, consistent with the State Department's interpretation that Hong Kong is now considered to be included in the entry for China for purposes of the International Traffic in Arms Regulations (ITAR) § 126.1.

End users in Hong Kong are now eligible to be added as validated end users in Supplement No. 7 to Part 748 of the EAR. The procedures for the addition of such end users is described more fully in § 748.15 of the EAR.

Export Control Reform Act of 2018

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

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866.

2. Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a

collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves a collection currently approved by OMB under control number 0694–0088, Simplified Network Application Processing System. This collection includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours. BIS expects the burden hours associated with this collection to increase slightly by 4 hours for an estimated cost increase of $120. This increase is not expected to exceed the existing estimates currently associated with OMB control number 0694–0088.

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

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

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

6. This final rule is not subject to the requirements of Executive Order 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States. Hong Kong's current lack of autonomy increases the risk sensitive U.S. technology and items will be illegally diverted to unauthorized end uses and end users in the PRC or to unauthorized destinations such as Iran or North Korea. As the U.S. Government finds it can no longer distinguish between the export of controlled items to Hong Kong and the PRC, Executive Order 13936 and this subsequent rulemaking are meant to counteract actions taken by the PRC. The PRC's actions pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and its allies. Based on the current situation, Hong Kong no longer warrants treatment under certain United States laws, including export control laws, in the same manner as United States laws were applied to Hong Kong before July 1, 1997.

Therefore, the cost-benefit analysis required pursuant to Executive Orders 12866 and 13563 indicates this rule is intended to improve national security as its primary direct benefit. Accordingly, this rule meets the requirements set forth in the April 5, 2017 OMB guidance implementing Executive Order 13771 (82 FR 9339, February 3, 2017) regarding what constitutes a regulation issued ''with respect to a national security function of the United States,'' and is, therefore, exempt from the requirements of Executive Order 13771.

Savings Clause

Shipments of items that may no longer be made under No License Required (NLR) as a result of this action and were on dock for loading, on lighter, laden aboard an exporting or transferring carrier, or en route aboard a carrier to a port of export or reexport on December 23, 2020, pursuant to actual orders for export to Hong Kong, reexport to Hong Kong, or transfer within Hong Kong may proceed to their destination under NLR January 22, 2021.

List of Subjects

15 CFR Parts 738

Exports.

15 CFR Parts 740, 748, and 758

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 738, 740, 742, 744, 745, 748, and 758 of the Export Administration Regulations (15 CFR parts 730 –774) are amended as follows:

PART 738—COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY CHART

■ 1. The authority citation for part 738 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

Supplement No. 1 to Part 738—[Amended]

■ 2. The table in supplement no. 1 to part 738 is amended by removing the entry for ''Hong Kong''.

PART 740—LICENSE EXCEPTIONS

■ 3. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

§ 740.2 [Amended]

■ 4. Section 740.2 is amended by removing paragraph (a)(23).

§ 740.7 [Amended]

■ 5. Section 740.7 is amended by removing ''Hong Kong'' from paragraph (c)(1).

■ 6. Section 740.11 is amended by revising paragraph (c)(1) introductory text to read as follows:

§ 740.11 Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV).

* * * * *

(c) *Cooperating governments and the North Atlantic Treaty Organization*—(1) *Scope.* The provisions of this paragraph (c) authorize exports, reexports, and transfers (in-country) of the items listed in paragraph (c)(2) of this section to agencies of cooperating governments or agencies of the North Atlantic Treaty Organization (NATO). 'Agency of a cooperating government' includes all civilian and military departments, branches, missions, and other governmental agencies of a cooperating national government. 'Cooperating governments' are the national governments of countries listed in Country Group A:1 (see supplement no. 1 to this part) and the national governments of Singapore and Taiwan.

* * * * *

■ 7. Section 740.16 is amended by revising paragraphs (a) and (b) to read as follows:

§ 740.16 Additional permissive reexports (APR).

* * * * *

(a) *Reexports from Country Group A:1.* Reexports may be made from

countries in Country Group A:1, provided that:

(1) The reexport is made in accordance with the conditions of an export authorization from the government of the reexporting country;

(2) The commodities being reexported are not controlled for NP, CB, MT, SI, or CC reasons or described in ECCNs 0A919, 3A001.b.2 or b.3 (except those that are being reexported for use in civil telecommunications applications), 6A002, 6A003; or commodities classified under a 0x5zz ECCN; and

(3) The reexport is destined to *either:*

(i) A country in Country Group B that is not also included in Country Group D:2, D:3, or D:4; and the commodity being reexported is both controlled for national security reasons and not controlled for export to Country Group A:1; or

(ii) A country in Country Group D:1 (National Security) (see Supplement No. 1 to part 740), other than North Korea and the commodity being reexported is controlled for national security reasons.

(b) *Reexports to and among specified countries.* (1) Eligible commodities may be reexported to and among destinations in Country Group A:1 for use or consumption within a destination in Country Group A:1 (see supplement no. 1 to part 740), or for reexport from such country in accordance with other provisions of the EAR.

(2) Commodities not eligible for reexport under paragraph (b)(1) of this section are:

(i) Commodities controlled for nuclear nonproliferation or missile technology reasons;

(ii) Commodities in 3A001.b.2 or b.3 (except those that are being reexported for use in civil telecommunications applications);

(iii) ''Military commodities'' described in ECCN 0A919;

(iv) Commodities described in ECCN 0A504 that incorporate an image intensifier tube;

(v) Commodities described in ECCN 6A002; or

(vi) Commodities classified under a 0x5zz ECCN.

(3) Cameras described in ECCNs 6A003 may be exported or reexported to and among countries in Country Group A:1 (see supplement no. 1 to this part) if:

(i) Such cameras are fully packaged for use as consumer ready civil products; or

(ii) Such cameras with not more than 111,000 elements are to be embedded in civil products.

* * * * *

Supplement No. 1 to Part 740 [Amended]

■ 8. Supplement no. 1 to part 740 is amended in the Country Group A and B tables by removing the entries for ''Hong Kong''.

PART 742—CONTROL POLICY—CCL BASED CONTROLS

■ 9. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

§ 742.6 [Amended]

■ 10. Section 742.6 is amended by removing and reserving paragraph (a)(6).

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

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

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 18, 2020, 85 FR 59641 (September 22, 2020); Notice of November 12, 2020, 85 FR 72897 (November 13, 2020).

Supplement No. 4 to Part 744 [Amended]

■ 11. Supplement no. 4 to part 744 is amended:

■ a. Under CHINA, PEOPLE'S REPUBLIC OF:

■ i. By adding in alphabetical order entries for ''32Group China Ltd.,'' ''ACTeam Logistics Ltd.,'' ''Action Global,'' ''Amaze International,'' ''Anvik Technologies Sdn. Bhd.,'' ''Babak Jafarpour,'' ''Bako Cheung,'' ''Bing Lu,'' ''Biznest, LTD,'' ''Calvin Law,'' ''Caprice Group Ltd.,'' ''Centre Bright Electronics Company Limited,'' ''Channel Rich Electronics Company Limited,'' ''Cho-Man Wong,'' ''CLC Holdings Limited,'' ''Cloudminds (Hong Kong) Limited,'' ''Corad Technology Limited,'' ''Dick Kuo, Ltd.,'' ''Dick Leung,'' ''Exodus Microelectronics Company Limited,'' ''FOC (HK) Technology Co., Ltd.,'' ''Fortune Source Electronics Co. Ltd.,'' ''Giant Base Asia Limited,'' ''Giovan Ltd.,'' ''Hang Tat Electronics Enterprises Co.,'' ''Hansen Technologies Limited,'' ''Hong Chun Tai,'' ''Hong Kong Fung Tak Enterprise,'' ''Hua Ying Management Co. Limited,'' ''Huawei Cloud Hong Kong,'' ''Huawei Device (Hong Kong) Co., Limited,'' ''Huawei International Co., Limited,'' '' Huawei Tech. Investment Co., Limited,'' ''Huawei Technologies Co. Ltd.,'' ''Infinity Wise Technology Limited,'' ''Jadeshine Engineering (HK) Co.,'' ''Jason Shuai,'' ''JLD Technology, Hong Kong Co., Ltd.,'' ''Joe Shih,'' ''Joinus Freight Systems (H.K.) Limited,'' ''K Logistics (China) Limited,'' ''Kitronix Display,'' ''Kong Fat Electronic Trading Limited,'' ''LHI Technology (H.K.) Company Limited,'' ''Lim Kow Seng,'' ''OEM Hub Co Ltd,'' ''OnTime Electronics Technology Company,'' ''Panda Semiconductor,'' ''Pinky Trading Co., Ltd.,'' ''Ray Hui,'' ''Reekay Technology Ltd.,'' ''Sau Luen Chan,'' ''Sergey Koynov,'' ''Serko Limited,'' ''Signet Express Co., Ltd.,'' ''Sik Yin Ngai,'' ''Sinovac Technology Limited,'' ''Siu Ching Ngai,'' ''Skylinks FZC,'' ''Smartcom (Hong Kong) Co., Limited,'' ''SMIC Hong Kong International Company Limited,'' ''Synergy Express Ltd.,'' ''Sysdynamic Limited,'' ''Tam Shue Ngai,'' ''Tam Wai Tak,'' ''Technopole Ltd.,'' ''Tex-Co Logistics Ltd.,'' ''Victory Wave Holdings Limited,'' ''Well Smart (HK) Technology,'' ''Wise Smart (HK) Electronics Limited,'' ''Wong Wai Chung,'' ''Wong Yung Fai,'' ''Y-Sing Components Limited,'' ''Yeraz, LTD,'' and ''ZM International Company Ltd.,'' and

■ ii. By revising the entries for ''Avin Electronics Technology Co., Ltd. (AETC),'' ''Beijing Lion Heart International Trading Company,'' ''BVI Electronics,'' ''Chitron Electronics Company Ltd,'' ''Comsum Technologies (Group) Ltd.,'' ''Corezing International,'' ''Foang Tech Inc.,'' ''HWA Create,'' ''Jadeshine Engineering HK Co.,'' ''JCN (HK) Technology Co., Ltd.,'' ''Kinglead Electronics Co., Ltd.,'' ''Luo Jie,'' ''Multi-Mart Electronics Technology Co, Ltd.,'' ''Oriental Logistics Group LTD,'' ''Peaceful Vision (Lianyungang) Electronic Co., Ltd.,'' ''PRC Lode Technology Company,'' ''Sky Rise Technology Ltd.,'' ''Su Bin,'' ''Taihe Electric (Hong Kong) Limited,'' ''Tenco Technology Company Ltd.,'' ''TiMi

Technologies Co., Ltd.'' ''Wang Wei,'' ''Xian Semi Electronic Co., Ltd.,'' ''Xianfa Lin,'' ''Yutron Technology Co. Ltd.,'' and ''Zhou Zhenyong'';

■ b. By removing the entry for HONG KONG and all of the Hong Kong entities;

■ c. Under INDIA, by revising the entries for ''Giovan Ltd.'' and ''Technopole Ltd.'';

■ d. Under IRAN, by revising the entries for ''Anvik Technologies Sdn. Bhd.'' and ''Babak Jafarpour'';

■ e. Under MALAYSIA, by revising the entries for ''Anvik Technologies Sdn. Bhd.'' and ''Babak Jafarpour'';

■ f. Under RUSSIA, by revising the entry for ''Sergey Koynov'';

■ g. Under SINGAPORE, by revising the entries for ''Action Global,'' ''Amaze International,'' ''Corezing International,'' and ''Lim Kow Seng'';

■ h. Under TAIWAN, by revising the entry for ''Infinity Wise Technology Limited''; and

■ i. Under UNITED ARAB EMIRATES, by revising the entry for ''Skylinks FZC''.

The additions and revisions read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* * *	*	* *	*
CHINA, PEOPLE'S REPUBLIC OF.	32Group China Ltd., Room 1905, 19/F, Nam Wo Hong Bldg., 148 Wing Lok Street, Sheung Wang, Hong Kong; *and* Room 1119, 11/F, Block B, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	80 FR 69856, 11/12/15. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	* * *	*	* *	*
	ACTeam Logistics Ltd., Unit B1–B3, 21/F, Block B, Kong Nam Industrial Building, 603–609 Castle Peak Road, Tsuen Wan, N.T., Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 7359, 2/19/10. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Action Global, a.k.a., the following one alias: —Action Global Co., Limited. C/O Win Sino Flat 12, 9/F, PO Hong Centre, 2 Wang Tung Street, Kowloon Bay, KLN, Hong Kong; *and* Flat/RM 1510A, 15/F Ho King COMM Ctr, 2–16 Fa Yuen Street, Mongkok KL, Hong Kong (See alternate address under Singapore).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR 67062, 10/31/11. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	* * *	*	* *	*
	Amaze International, Flat/Rm D, 11/F 8 Hart Avenue 8–10 Hart Avenue, Tsim Sha Tsui KL, Hong Kong (See alternate address under Singapore).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR 67062, 10/31/11. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Anvik Technologies Sdn. Bhd., a.k.a., the following eight aliases: —Anvik Technologies; —Cason Technologies; —Henan Electronics; —Hixton Technologies; —Hudson Technologies, Ltd.; —Hudson Engineering (Hong Kong) Ltd.; —Madison Engineering Ltd.; *and* —Montana Advanced Engineering. Level 19, Two International Finance Centre, 8 Finance Street, Central, Hong Kong (See alternate addresses under Iran and Malaysia).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 75463, 12/12/13. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	* * *	*	* *	*
	Avin Electronics Technology Co., Ltd. (AETC), Room 401, Yuepeng Building, Jiabin Road, Luohu District, Shenzhen, Guangdong, China; *and* 1019 Jiabin Road, Luohu Qu, Shenzhen Shi, Guangdong, China; *and* 10F, Kras Asia Industrial Bldg., No. 79 Hung To Road, Kwun Kowloon, Hong Kong, 999077.	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR 21236, 5/14/19. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Babak Jafarpour, a.k.a., the following five aliases: —Bob Jefferson; —Peter Jay; —Sam Lee;	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 75463, 12/12/13. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].

Country	Entity	License requirement	License review policy	Federal Register citation
	—Samson Lee; *and* —David Lee. Unit 501, 5/F, Global Gateway, 168 Yeung HK Road, Tsuen Wan, Hong Kong; *and* 9/F, Henan Building, 19 Luard Road, Wanchai, Hong Kong; *and* Level 19, Two International Finance Centre, 8 Finance Street, Central, Hong Kong (See alternate addresses under Iran and Malaysia).			
	Bako Cheung, Unit 803, Fourseas Building, 208–212 Nathan Road, Kowloon, Hong Kong; *and* Room 803, Fourseas Bldg 208–212 Nathan Rd, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 56003, 9/18/14. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	* *	*	* *	*
	Beijing Lion Heart International Trading Company, a.k.a., the following one alias: —Wei Lai Xi Tong Ltd. Suite number 1819, The International Center of Times, Number 101, Shoa Yao Ju BeiLi, Chaoyang District, Beijing, China; *and* Room 1318–20, 13F, Hollywood Plaza, 610 Nathan Road, Mongkok Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 56003, 9/18/14. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	* *	*	* *	*
	Bing Lu, Room 804 Sino Center, 582–592 Sino Center Road, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 32445, 6/5/14. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Biznest, LTD, Room 927 9/F Far East Consortium Building, 121 Des Voeux Road C, Central District, Hong Kong; *and* 4/F, Hong Kong Trade Centre, 161 167 Des Voeux Road, Central, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR 44259, 7/25/11. 80 FR 69856, 11/12/15. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	* *	*	* *	*
	BVI Electronics, B28 10/F Nanfang Da Sha, XIDI Ernalu GangZhou, China 511486; *and* G/F Far East FAC Building No. 334–336 Kwun Tong road, Kwun Tong Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 32445, 6/5/14. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Calvin Law, Flat 2808, 28/F, Asia Trade Centre, 79 Lei Muk Road, Kwai Chung, N.T., Hong Kong; *and* Units 801–803 and 805, Park Sun Building, No. 97–107 Wo Yi Hop Road, Kwai Chung, N.T., Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR 44824, 9/4/18. 84 FR 40241, 8/14/19. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Caprice Group Ltd., Room 1119, 11/F, Block B1, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong; *and* Unit B1, G/F Pioneer Building, 213 Wai Yip St., Kwun Tong, Kowloon, Hong Kong; *and* Unit A, G/F, Pioneer Building, 213 Wai Yip St., Kwun Tong, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	80 FR 69856, 11/12/15. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	* *	*	* *	*
	Centre Bright Electronics Company Limited, Unit 7A, Nathan Commercial Building 430–436 Nathan Road, Kowloon, Hong Kong; *and* Room D, Block 1, 6/F International Industrial Centre, 2–8 Kwei Tei Street, Shatin New Territories, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 1701, 1/13/10. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	* *	*	* *	*

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Channel Rich Electronics Company Limited, Unit 803, Fourseas Building, 208–212 Nathan Road, Kowloon, Hong Kong; *and* Room 803, Fourseas Bldg 208–212 Nathan Rd, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 56003, 9/18/14. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	* *	*	* *	*
	Chitron Electronics Company Ltd, a.k.a., the following one alias: —Chi-Chuang Electronics Company Ltd (Chitron-Shenzhen). 2127 Sungang Rd, Huatong Bldg, 19/F, Louhu Dist, Shenzhen, China 518001; *and* 169 Fucheng Rd, Fenggu Bldg., 7/F, Mianyang, China 621000; *and* Zhi Chun Rd, No 2 Bldg of Hoajing jiayuan, Suite #804, Haidian Dist, Beijing, China 100086; *and* 40 North Chang'an Rd, Xi'an Electronics Plaza Suite #516, Xi'an, China 710061; *and* 9 Huapu Rd, Chengbei Electronics & Apparatus Mall, 1/F Suite #39, Chengdu, China 610081; *and* 2 North Linping Rd Bldg 1. Suite #1706, Hongkou Dist, Shanghai, China 200086; *and* 6 Shing Yip St. Prosperity Plaza 26/F, Suite #06, Kwun Tong, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 1701, 1/13/10. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Cho-Man Wong, Room 2608, Technology Plaza 29–35 Sha Tsui Road Tsuen Wan, Hong Kong; *and* Unit 803, Fourseas Building, 208–212 Nathan Road, Kowloon, Hong Kong; *and* Room 803, Fourseas Bldg 208–212 Nathan Rd, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR 63184, 10/12/11. 79 FR 56003, 9/18/14. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	* *	*	* *	*
	CLC Holdings Limited, a.k.a., the following one alias: —CLC Xpress. Flat 2808, 28/F, Asia Trade Centre, 79 Lei Muk Road, Kwai Chung, N.T., Hong Kong; *and* Units 801–803 and 805, Park Sun Building, No. 97–107 Wo Yi Hop Road, Kwai Chung, N.T., Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR 44824, 9/4/18. 84 FR 40241, 8/14/19. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Cloudminds (Hong Kong) Limited, 10/F Massmutual Twr 33, Lockhart Rd, Wan Chai, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR 34497, 6/5/20. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	* *	*	* *	*
	Comsum Technologies (Group) Ltd., Room 408, Unit 6, Xin Qi Dian Jia Yan, 5 Chang Qiao Road, Beijing, 100089, China; *and* Room 1005, 10/F Carnarvon Plaza, 20 Carnarvon Road, TST, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 75463, 12/12/13. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Corad Technology Limited, a.k.a., the following one alias: —Corad Technology (China) Limited. Unit 1306, 13/F, Nanyang Plaza 57 Hung To Road Kwun Tong, Hong Kong; *and* Room K, 5/F, Winner Factory Building No. 55 Hung To Road, Kwun Tong Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR 40241, 8/14/19. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Corezing International, a.k.a., the following five aliases: —CoreZing Electronics; —Corezing International Group Company; —Corezing International Pte Ltd;	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR 67062, 10/31/11. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].

Country	Entity	License requirement	License review policy	Federal Register citation
	—Corezing Technology Pte Ltd; *and* —Core Zing. Room 1007, Block C2, Galaxy Century Bldg., CaiTian Rd., FuTian District, Shenzhen, China; *and* Room 1702, Tower B, Honesty Building, Humen, Dongguan, Guangdong, China; *and* G/F, No. 89, Fuyan Street, Kwun Tong, Hong Kong; *and* Flat 12, 9F Po Hong Kong, 2 Wang Tung Street, Kowloon Bay, Hong Kong; *and* Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road KL, Hong Kong; *and* FlatiRM 2309, 23/F, Ho King COMM Center, 2–16 Fa Yuen Street, Mongkok KLN, Hong Kong (See alternate address under Singapore).			
	* *	*	* *	*
	Dick Kuo, Ltd., Room 9–11, 5/F, Block B, Hoplite Industrial Centre, 3–5 Wang Tai Road, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 7359, 2/19/10. 85 FR [INSERT FR PAGE NUMBER AND DATE OF 12/23/20].
	Dick Leung, GF Seapower Industrial Building 177, Hoi Bun Road, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 7359, 2/19/10. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	* *	*	* *	*
	Exodus Microelectronics Company Limited, Unit 9B, Nathan Commercial Building 430–436 Nathan Road, Kowloon, Hong Kong; and Unit 6B, Block 1, International Centre 2–8 Kwei Tei Street, Shatin, New Territories, Hong Kong; and Unit 6B, Block 1, International Industrial Centre, 2–8 Kwei Tei Street, Shatin, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 1701, 1/13/10. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	* *	*	* *	*
	Foang Tech Inc., a.k.a., the following one alias: —Ofogh Electronics Co. 52F, Shun Hing Square, Unit 1–8 Di Wang Commercial Center, Shenzhen, China; *and* Flat/RM 1701-Ricky CTR, 36 Chowg Yip Street, Kwun Tong, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR 40178, 6/21/16. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	FOC (HK) Technology Co., Ltd., Room 8, 6/F, Shun On Commercial Building, 112–114 Des Voeux Road, Central, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 75463, 12/12/13. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Fortune Source Electronics Co. Ltd., Unit A, 7/F Capri Building, 130 Austin Road, KLN, Hong Kong; *and* Unit A7/F Capri Building, 130 Austin Road, KLN, Hong Kong; *and* Unit 803, Fourseas Building, 208–212 Nathan Road, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 56003, 9/18/14. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	* *	*	* *	*
	Giant Base Asia Limited, Room 2205, 22/F, Kowloon Building, 555 Nathan Road, Hong Kong; *and* Flat E, Block 1, 12/F, Superluck Industrial Centre, Tsuen Wan, New Territories, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 18808, 03/28/13. 80 FR 69856, 11/12/15. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Giovan Ltd., Suite 1505–6, Albion Plaza, 2–6 Granville Road, TsimShatSui, Kowloon, Hong Kong (See alternate address under India).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR 61601, 9/7/16. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	* *	*	* *	*

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Hang Tat Electronics Enterprises Co., Room 2608, Technology Plaza 29–35 Sha Tsui Road, Tsuen Wan, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR 63186, 10/12/11. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	* *	*	* *	*
	Hansen Technologies Limited, Unit 501, 5/F, Global Gateway, 168 Yeung HK Road, Tsuen Wan, Hong Kong; *and* 9/F, Henan Building, 19 Luard Road, Wanchai, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 75463, 12/12/13. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Hong Chun Tai, Unit 27B, Block 8, Monte Vista, 9 Sha On Street, Ma On Shan New Territories, Hong Kong; *and* Unit 7A, Nathan Commercial Building, 430–436 Nathan Road Kowloon, Hong Kong; *and* Room D, Block 1, 6/F International Industrial Centre, 2–8 Kwei Tei Street, Shatin, New Territories, Hong Kong; *and* Unit 9B, Nathan Commercial Building, 430–436 Nathan Road Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 1701, 1/13/10. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Hong Kong Fung Tak Enterprise, FLAT/RM A 30, 9/F Silvercorp International Tower, 707–713, Nathan Road, Mongkok, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR 59421, 9/22/20. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Hua Ying Management Co. Limited, Tsim Sha Tsui, Kowloon, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Huawei Cloud Hong Kong, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	85 FR 51603, 8/20/20. 85 FR 52901, 8/27/20. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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Country	Entity	License requirement	License review policy	Federal Register citation
	Huawei Device (Hong Kong) Co., Limited, Tsim Sha Tsui, Kowloon, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Huawei International Co., Limited, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Huawei Tech. Investment Co., Limited, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	Huawei Technologies Co. Ltd., Tsim Sha Tsui, Kowloon, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	HWA Create, 5/F, Xinshidai Building/New Era Mansion, 7 Huayuan Rd., Beijing, China; *and* No. B3 Huayuan Rd., Beijing, China, *and* Unit 1001–1002, 10F, Chinachem Building, 34–37 Connaught Rd., Hong Kong; *and* Unit A 5th Floor, Cheong Commercial Building, 19–25 Jervois St, Hong Kong; *and* Unit B, 6/F, Dah Sing Life Building, 99—1–5 Des Voeux Rd, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 36202, 6/26/14. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Infinity Wise Technology Limited, 7/F One Kowloon, 1 Wang Yuen Street, Kowloon Bay, Kowloon, Hong Kong; *and* Room 1213 Chui King House, Choi Hung Estate, Kowloon, Hong Kong (See alternate addresses under Taiwan).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR 40178, 6/21/16. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Jadeshine Engineering (HK) Co., Room 702, Boss Commercial Centre, Ferry Street 38, Kowloon, Hong Kong; *and* G/F BLK C 255 Sai Tau Wai DD 123 Lot 1307 Yuen Long, NT, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 18808, 03/28/13. 80 FR 69856, 11/12/15. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Jadeshine Engineering HK Co., Shanghai, China; *and* Langfang, China; *and* G/F Blk C, 255 Tau Wai, DD 123 Lot, Yuen Long, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 18811, 03/28/13. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Jason Shuai, a.k.a., the following one alias: —Jason Shine. Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 18811, 3/28/13. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	JCN (HK) Technology Co., Ltd., Room 8D Block A, Guanghao International Center, Meilong Road, Longhua District, Shenzhen, Guangdong, China; *and* Unit 1516 Block B, Guanghao International Center, Meilong Road, Longhua District, Shenzhen, Guangdong, China; *and* Rm. 502, Arion Centre, 2–12 Queen's Rd West, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR 34497, 6/5/20. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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Country	Entity	License requirement	License review policy	Federal Register citation
	JLD Technology, Hong Kong Co., Ltd., Room 1237, Pacific Trade Centre, No. 2 Kai Hing Road, Kowloon Bay, Hong Kong; *and* Room 301–2, Hang Seng Wanchai Building, 3rd Floor, No. 200 Hennessy Road, Wanchai, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 32441, 6/5/14. 80 FR 69856, 11/12/15. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Joe Shih, Room 9–11, 5/F, Block B, Hoplite Industrial Centre, 3–5 Wang Tai Road, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 7359, 2/19/10. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Joinus Freight Systems HK Ltd, a.k.a., the following two aliases: —JFS Global Logistics; *and* —Joinus Freight Systems Global Logistics Limited. Unit 07–07, 25F, Tower B, Regent Centre, 63 Wo Yi Hop Road, Kwai Chung, N.T. Hong Kong *and* Units 801–803 and 805, Park Sun Building, No. 97–107 Wo Yi Hop Road, Kwai Chung, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR 14958, 3/21/16. 83 FR 44824, 9/4/18. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	K Logistics (China) Limited, a.k.a., the following one alias: —K Logistics Hong Kong. Unit A, 4/F., China Fen Hin Building, No. 5 Cheung Yue St., Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR 34497, 6/5/20. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Kinglead Electronics Co., Ltd., a.k.a., the following four aliases: —Kinglead International Trading; —Kinglead International Trading Limited; —Kinglead Trading; *and* —Phonide Electronics Limited. 15H Office Building Buji, Central Plaza, Jihua Road, Buji, Longgang, Shenzhen, China; *and* Room 1041 Pacific Trade Center, No. 2 Kai Hing Road, Kowloon Bay, Hong Kong; *and* B5–3, 29/F, Legend Tower, 7 Shing Yip Street, Kwun Tong, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 32445, 6/5/14. 80 FR 69856, 11/12/15. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Kitronix Display, Unit B1, G/F, Pioneer Building, 213 Wai Yip St., Kwun Tong, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	80 FR 69856, 11/12/15. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Kong Fat Electronic Trading Limited, Unit 5, 1/F, Block A, Hoplite Industrial Centre, 3–5 Wang Tai Rd., Kowloon Bay, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54503, 9/22/08. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	LHI Technology (H.K.) Company Limited, Units 801–803 and 805, Park Sun Building, No. 97–107 Wo Yi Hop Road, Kwai Chung, N.T., Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR 44824, 9/4/18. 84 FR 40241, 8/14/19. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Lim Kow Seng, a.k.a., the following five aliases: —Alvin Stanley; —Eric Lim; —James Wong; —Mike Knight; *and* —Seng Lim Kow. Flat/Rm 3208 32/F, Central Plaza, 18 Harbour Road, Wanchai, Hong Kong; *and* Flat/RM 2309, 23/F, Ho King COMM Center, 2–16 Fa Yuen Street, Mongkok KLN, Hong Kong (See alternate addresses under Singapore).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR 67062, 10/31/11. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	Luo Jie, a.k.a., the following three aliases: —Cherry; —Ivy Luo; *and* —Jie Luo. Room 1007, Block C2, Galaxy Century Bldg., CaiTian Rd., FuTian District, Shenzhen, China; *and* Room 1702, Tower B, Honesty Building, Humen, Dongguan, Guangdong, China; *and* Flat/RM 1510A, 15/F Ho King COMM Ctr, 2–16 Fa Yuen Street, Mongkok KL, Hong Kong; *and* C/O Win Sino Flat 12, 9/F, PO Hong Centre, 2 Wang Tung Street, Kowloon Bay, KLN, Hong Kong; *and* Flat/Rm D, 11/F 8 Hart Avenue, 8–10 Hart Avenue, Tsim Sha Tsui KL, Hong Kong; *and* G/F, No. 89, Fuyan Street, Kwun Tong, Hong Kong; *and* Flat 12, 9F Po Hong Kong, 2 Wang Tung Street, Kowloon Bay, Hong Kong; *and* Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road, KL, Hong Kong; *and* Flat/Rm 3208 32/F Central Plaza, 18 Harbour Road, Wanchai, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR 67062, 10/31/11. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Multi-Mart Electronics Technology Co, Ltd., 5/F Blk 37A, 3 Qiaogao Road, Nanhai, Guangdong, Foshan, China; *and* 29J King Palace Plaza, 55 King Yip Street, Kwun Tong, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR 21236, 5/14/19. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	OEM Hub Co Ltd, Rm 3208 32/F Central Plaza, 18 Harbour Road, Wanchai, Hong Kong; *and* Flat/RM 2309, 23/F, Ho King COMM Center, 2–16 Fa Yuen Street, Mongkok KLN, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR 67062, 10/31/11. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	OnTime Electronics Technology Company, Room 609–610 6/F Boss Commercial Center, 28 Ferry Street, Jordon, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 36519, 6/28/10. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Oriental Logistics Group LTD, a.k.a., the following one alias: —Oriental Air Transport Service Ltd. Room 2114, 21/F., Shenhua Commercial, Bldg, No. 2018 Jiabin Rd, Luo Hu District, Shenzhen, China 518001 *and;* Unit B, 10th Floor, United Overseas Plaza, No. 11, Lai Yip Street, Kwun Tong, Kowloon, Hong Kong; *and* 10/F, Union Bldg, 112 How Ming, Kwun Tong, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR 59421, 9/22/20. 85 FR [INSERT FR PAGE NUMBER ND 12/23/20].
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	Panda Semiconductor, Room 2, Unit A 14/F Shun on Commercial building, 112–114 Des Voeux Road, Central, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR 40178, 6/21/16. 85 FR [INSERT FR PAGE NUMBER ND 12/23/20].
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	Peaceful Vision (Lianyungang) Electronic Co., Ltd., a.k.a., the following two aliases: —Hangxing Electronics (Lianyungang) Co., Ltd; *and* —Peaceful Vision Co., Ltd.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	85 FR 52901, 8/27/20. 85 FR [INSERT FR PAGE NUMBER ND 12/23/20].

Country	Entity	License requirement	License review policy	Federal Register citation
	No. 1 Changxing Road, Song Economic High-tech Zone, Lianyungang, Jiangsu, China; *and* No. 1 Changxing Road, Songtiao Hi-Tech Industrial Development Zone, Lianyungang, Jiangsu, China; and 20K, West Building, Science *and* Technology Capital, 668 Beijing East Road, Huangpu District, Shanghai, China; *and* Room 601, Unit 4, Building 5, Yufu Jiayuan, Yuquan Road, Haidian District, Beijing, China; *and* 4201A, 42/F, SEG Plaza, Shennan Middle Road, Shenzhen, China; *and* Room 813 8/F Hung Hom Commercial Center Block A 39 Ma Tau Wai Road, Hung Hom, Kowloon, Hong Kong.			
	Pinky Trading Co., Ltd., 338 Queen's Road, Central, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR 40178, 6/21/16. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	PRC Lode Technology Company, a.k.a., the following the following five aliases: —Lode International Limited; —Lode Technology Company; —Beijing Lode Technology Company, Ltd.; —Beijing Nuodian Keji Youxian Gongsi; *and* —Beijing Nuodian Technology.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 44683, 8/1/14. 80 FR 69856, 11/12/15. 81 FR 14958, 3/21/16. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Room 8306 Kelun Building, 12A Guanghua Road, Chaoyang, Beijing 100020, China; *and* Room 801, Unit 1, Building 8 Caiman Street, Chaoyang Road, Beijing 100025, China; *and* Building 1–1, No. 67 Caiman Str., Chaoyang Road, Beijing 100123, China; *and* Room A407 Kelun Building, 12A Guanghua Road, Chaoyang, Beijing 100020, China; *and* Rm 602, 5/F, No. 106 NanHu Road, ChaoYang District, Beijing, China; *and* Suite 801, Unit 1, Building 8 Caiman Street Finance & Economics Center, Chaoyang Road, Chaoyang District, Beijing; *and* Suite 306, Lianhua Building No. 159 Tianzhou Road, Xuhui District, Shanghai 200233; *and* Suite 6B3, Building 15, No. 300 Tianlin Road, Xuhui District, Shanghai 200233; *and* Suite 1901, Unit 1, Block 8, District E, Ziwei Garden City, Chang'an Technological Garden, Xi'an, 710119; *and* Suite 2002, Unit 4, Building 1 Zhongda Junyue Jinsha Phase 3 No. 15 Jinxiang Road, Qingyang District, Chengdu, 610031; Suite 1506, Building 4, Dachengxiaoshi, No. 10 Qingjiang Zhong Road, Qingyang District, Chengdu 610072; *and* Suite 904, Building A6, Shunfeng Emerald Garden, No. 168 Zhaofeng Road, Shijing, Baiyun District, Guangzhou, 510410; *and* No. 1263 Airport Road, Baiyun District, Guangzhou; *and* Suite 201, Tower A, Building 14, Qianxihe Garden Center, Nanchang, 330002; *and* Room 1019—1020 Nan Fung Centre, 264—298 Castle Peak Road, Tsuen Wan New Territories, Hong Kong; *and* Room 1522 Nan Fung Centre, 264—298 Castle Peak Road, Tsuen Wan New Territories, Hong Kong.			
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	Ray Hui, Units 801–803 and 805, Park Sun Building, No. 97–107 Wo Yi Hop Road, Kwai Chung, N.T., Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR 44824, 9/4/18. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Reekay Technology Ltd., a.k.a., the following one alias: —Reekay Technology. Suite 502, 5th Floor Arion Commercial Centre, No. 2–12 Queens Road West, Sheung Wan, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	80 FR 69856, 11/12/15. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Sau Luen Chan, Unit 803, Fourseas Building, 208–212 Nathan Road, Kowloon, Hong Kong; *and* Room 803, Fourseas Bldg 208–212 Nathan Rd, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 56003, 9/18/14. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Sergey Koynov, a.k.a., the following one alias: —Sergey V. Coyne. Room 704 7/F, Landwide Commercial Building, 118–120 Austin Rd, Tsim Sha Tsui, Hong Kong (See alternate address in Russia).	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	77 FR 61256, 10/9/12. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].

Country	Entity	License requirement	License review policy	Federal Register citation
	Serko Limited, Room 704 7/F, Landwide Commercial Building, 118–120 Austin Rd, Tsim Sha Tsui, Hong Kong; *and* Room 1509, Unit A, 15th Floor, Mai Shun Industrial Building, No. 18–24 Kwai Cheong Road, New Territories, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	77 FR 61249, 10/9/12. 80 FR 69856, 11/12/15. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Signet Express Co., Ltd., Room 9–11, 5/F, Block B, Hoplite Industrial Centre, 3–5 Wang Tai Road, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 7359, 2/19/10. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Sik Yin Ngai, a.k.a., the following one alias: —Spencer Ngai. Unit 401, Harbour Ctr., Tower 2, 8 Hok Cheung Street, Hung Hom, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR 35799, 7/21/09. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Sinovac Technology Limited, Rm 804 Sino Center, 582–592 Sino Center Road, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 32445, 6/5/14. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Siu Ching Ngai, a.k.a. the following one alias: —Terry Ngai. Unit C, 9/F Neich Tower, 128 Gloucester Road, Wanchai, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR 35799, 7/21/09. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Sky Rise Technology Ltd., a.k.a., the following one alias: —Sky Rise Tech. 4–4–2301 Xinyi Jiayuan, Chongwenmen, Dongcheng, Beijing, China; *and* Room 1905, 19/F, Nam Wo Hong Bldg., 148 Wing Lok Street, Sheung Wang, Hong Kong; *and* Room 1118, 11/F, Block B1, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong; Room 1119, 11/F, Block B, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	80 FR 69856, 11/12/15. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Skylinks FZC, a.k.a., the following two aliases: —Skylinks; *and* —Skylinks Satellite Comm. RM 1905, 19/F, Nam Wo Hong Bldg., 148 Wing Lok Street, Sheung Wang, Hong Kong (See alternate addresses under U.A.E.).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR 14958, 3/21/16. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Smartcom (Hong Kong) Co., Limited, Sheung Wan, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR 51603, 8/20/20. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].

Country	Entity	License requirement	License review policy	**Federal Register** citation
	SMIC Hong Kong International Company Limited, a.k.a., the following one alias: —SMIC Hong Kong. Suite 3003, 30th Floor, No. 9 Queen's Road Central Hong Kong.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometer and below, including extreme ultraviolet technology). Case by case for all other items.	85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Su Bin, a.k.a., the following two aliases: —Stephen Subin; *and* —Steve Su. Room 8306 Kelun Building, 12A Guanghua Road, Chaoyang, Beijing 100020, China; *and* Room 801, Unit 1, Building 8 Caiman Street, Chaoyang Road, Beijing 100025, China; *and* Building 1–1, No. 67 Caiman Str., Chaoyang Road, Beijing 100123, China; *and* Room A407 Kelun Building, 12A Guanghua Road, Chaoyang, Beijing 100020, China; *and* Rm 602, 5/F, No. 106 NanHu road, ChaoYang District, Beijing, China; *and* Rm 1019–1020 Nan Fung Centre, 264–298 Castle Peak Road, Tsuen Wan New Territories, Hong Kong; *and* Room 1522 Nan Fung Centre, 264–298 Castle Peak Road, Tsuen Wan New Territories, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 44683, 8/1/14. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20]. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Synergy Express Ltd., Room 1237, Pacific Trade Centre, No. 2 Kai Hing Road, Kowloon Bay, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 32445, 6/5/14. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Sysdynamic Limited, Unit 716A, 7/F Enterprise Place (Building 9), No. 5 Science Park West Avenue, Hong Kong Science Park, Shatin, New Territories, Hong Kong; *and* Unit 401, Harbour Ctr., Tower 2, 8 Hok Cheung Street Hung Hom, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR 35799, 7/21/09. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Taihe Electric (Hong Kong) Limited, Room No. 2002, 20th Floor, Building B, Jinsha Winera Plaza, No. 1, Shujin Road, Qingyang District, Chengdu, Sichuan, 610091, P.R. China; *and* MOWA 2188, Rm. 1007, 10/F., Ho King Ctr., No. 2–16 Fa Yuen Street, Mongkok, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	See § 744.2(d) of the EAR	85 FR 52901, 8/27/20. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Tam Shue Ngai, Unit C, 9/F Neich Tower, 128 Gloucester Road, Wanchai, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR 35799, 7/21/09. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Tam Wai Tak, a.k.a., the following one alias: —Thomsom Tam. Room 609–610 6/F, Boss Commercial Center, 28 Ferry Street, Jordon, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 36519, 6/28/10. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Technopole Ltd., Suite 1505–6, Albion Plaza, 2–6 Granville Road, TsimShatSui, Kowloon, Hong Kong (See alternate address under India).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR 61601, 9/7/16. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].

Country	Entity	License requirement	License review policy	Federal Register citation
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	Tenco Technology Company Ltd., a.k.a., the following three aliases: —Tenco International Co., Ltd.; —Shenzhen Tenco Technology Co., Ltd.; *and* Rm. 2709, Block A, Jiahe Huaqiang Building, Shennan Middle Rd., F Shenzhen, Guangdong 518007, China; *and* Room 2709, Block A, Jiahe Building, Shennan Mid Road, Futian District, Shenzhen, 518000, China; *and* Room 311 3F Genplas Industrial Building, 56 Hoi Yuen Road, Kwun Kowloon, Hong Kong; *and* Room 15, 6F Corporation Square, 8 Lam Lok Street, Kowloon Bay, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR 21236, 5/14/19. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20]. —Shenzhen Shengfaweiye Electronic Co., Ltd.
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	Tex-Co Logistics Ltd., a.k.a., the following one alias: —Tex-Co Hongxin Logistics Limited. GF Seapower Industrial Building 177, Hoi Bun Road, Kowloon, Hong Kong, *and* Room 2202, 22F, Causeway Bay Plaza 1, 489 Hennessey Road, Causeway Bay, Hong Kong, *and* Room B03, 6/F, Cheong Wah Factory Building, 39–41 Sheung Heung Road, Tokwawan, Kowloon, Hong Kong; *and* Room G, 6/F Winner Building, 36 Man Yue Street, Hung Hom, Kowloon.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 7358, 2/19/10. 80 FR 69856, 11/12/15. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	TiMi Technologies Co., Ltd., a.k.a., the following two aliases: —TiMi Technology Co. Ltd.; *and* —TiMi Tech. F/10, A-Tower, Nongke Building, 11/Shu Guang Hua Yuan Zhong Lu, Haidian District, Beijing, China, 100097; *and* Nanhai Avenue, Nanshan District, 518054, Shenzhen, China; *and* Room 1119, 11/F, Block B, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong; *and* Room 1118, 11/F, Block B1, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong; *and* Unit A, G/F, Pioneer Building, 213 Wai Yip St., Kwun Tong, Kowloon, Hong Kong; *and* Room 1905, 19/F, Nam Wo Hong Bldg., 148 Wing Lok Street, Sheung Wang, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	80 FR 69856, 11/12/15. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Victory Wave Holdings Limited, Unit 2401 A, Park-In Commercial Centre, 56 Dundas Street, Hong Kong; *and* Unit 2401A, 24/F Park-In Commercial Centre, 56 Dundas Street, Mongkok, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 1701, 1/13/10. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Wang Wei, a.k.a., the following one alias: —Jack Wang. 4–4–2301 Xinyi Jiayuan, Chongwenmen, Dongcheng, Beijing, China; *and* F/10, A-Tower, Nongke Building, 11/Shu Guang Hua Yuan Zhong Lu, Haidian District, Beijing, China, 100097; *and* Room 1905, 19/F, Nam Wo Hong Bldg., 148 Wing Lok Street, Sheung Wang, Hong Kong; *and* Room 1118, 11/F, Block B, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong; *and* Room 1119, 11/F, Block B, Yau Tong Industrial City, 17 Ko Fai Road, Yau Tong, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	80 FR 69856, 11/12/15. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Well Smart (HK) Technology, Room 604, Kalok Building, 720 Nathan Road, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR 40178, 6/21/16. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Wise Smart (HK) Electronics Limited, Room 1213, Chui King House, Choi Hung Estate, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR 40178, 6/21/16. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Wong Wai Chung, a.k.a., the following one alias: —David Wong. Unit 27B, Block 8, Monte Vista, 9 Sha On Street, Ma On Shan, New Territories, Hong Kong; *and* Unit 7A, Nathan Commercial Building 430–436 Nathan Road, Kowloon, Hong Kong; *and* Room D, Block 1, 6/F International Industrial Centre, 2–8 Kwei Tei Street, Shatin, New Territories, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 1701, 1/13/10. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Wong Yung Fai, a.k.a., the following one alias: —Tonny Wong. Unit 27B, Block 8, Monte Vista, 9 Sha On Street, Ma On Shan, New Territories, Hong Kong; *and* Unit 1006, 10/F Carnarvon Plaza, 20 Carnarvon Road, TST, Kowloon, Hong Kong; *and* Unit 7A, Nathan Commercial Building, 430–436 Nathan Road, Kowloon, Hong Kong; *and* Room D, Block 1, 6/F International Industrial Centre, 2–8 Kwei Tei Street, Shatin, New Territories, Hong Kong; *and* Unit 9B, Nathan Commercial Building 430–436 Nathan Road, Kowloon, Hong Kong; *and* Unit 2401A, 24/F Park-In Commercial Centre 56 Dundas Street, Mongkok, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 1701, 1/13/10. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Xian Semi Electronic Co., Ltd., a.k.a., the following three aliases: —Semi Electronics Co.; —Semi Electronics International Co. Limited; *and* —Exodus Microelectronics Co., Ltd.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR 71869, 11/21/11. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].

Country	Entity	License requirement	License review policy	Federal Register citation
	Room 24F, Duhui 100 Building Block B, ZhongHang Road, Futian District, Shenzhen City GuangDong Province, China; Room 1810 Lang Chen Building, No. 13 Gaoxin Road, High Technology Development Zone, Xian, China; Room 24F–27E Duhui B, Zhonghang Road, Futian District, Shenzhen City, China; *and* Room 1802 Xigema Building No. 25, Gaoxin Road, High-Tech Development Zone, Xian, China; *and* CAMDY, F1, 6/F BR3 Lanzhou Ind., No. 20–30 Jiangyuan, Yantian, Hong Kong; *and* Room 611 6/F Ricky CTR 36 Chong Yip St., Kwun Tong Kowloon, Hong Kong.			
	Xianfa Lin, a.k.a., the following one alias: —Alpha Lam. 15H Office Building, Buji Central Plaza, Jihua Road, Buji Longgang, Shenzhen, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 32445, 6/5/14. 82 FR 24245, 5/26/17. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Y-Sing Components Limited, Unit 401, Harbour Ctr., Tower 2, 8 Hok Cheung Street, Hung Hom, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54503, 9/22/08. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Yeraz, LTD, a.k.a., the following one alias: —Mikrocity HK Limited. Room 927 9/F Far East Consortium Building, 121 Des Voeux Road C, Central District, Hong Kong; *and* Room 402–403, 4/F, Hong Kong Trade Centre, 161–167 Des Voeux Road, Central, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR 44259, 7/25/11. 80 FR 69856, 11/12/15. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Yutron Technology Co. Ltd., Room 201–203, Building 7B, International Business Center, 1001 Honghua Road, Futian Free Trade Zone, Shenzhen, China; *and* Suite B, 11/F, Foo Cheong Building, 82–86 Wing Lok Street, Sheung Wan, Hong Kong; *and* 24–28 5F, Topsail Plaza, 11 On Sum Street, Shaitin, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR 21236, 5/14/19. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Zhou Zhenyong, a.k.a., the following two aliases: —Benny Zhou; *and* —Zhenyong Zhou. Room 1007, Block C2, Galaxy Century Bldg., CaiTian Rd., FuTian District, Shenzhen, China; and Room 1702, Tower B, Honesty Building, Humen, Dongguan, Guangdong, China; *and* G/F, No. 89, Fuyan Street, Kwun Tong, Hong Kong; *and* Flat 12, 9F Po Hong Kong 2 Wang Tung Street, Kowloon Bay, Hong Kong; *and* Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road, KL, Hong Kong; *and* Flat/RM 2309, 23/F, Ho King COMM Center, 2–16 Fa Yuen Street, Mongkok KLN, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR 67062, 10/31/11. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	ZM International Company Ltd., 4/F Enterprise Bldg 228–238, Queen's Road Central, Hong Kong; *and* Room C, 22/F, 235 Wing Lok Street, Trade Centre, Sheung Wan, N.T., Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR 44824, 9/4/18. 84 FR 40241, 8/14/19. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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INDIA	* *	*	* *	*
	Giovan Ltd., C–16A, New Multan Nagar, Surya Enclave, New Rohtak Road 099 Paschim Vihar, New Delhi, India 110056 (See alternate address under China).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR 61601, 9/7/16. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Technopole Ltd., D–79, New Multan Nagar, Surya Enclave, New Rohtak Road 099 Paschim Vihar, New Delhi, India 110056 (See alternate address under China).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR 61601, 9/7/16. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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IRAN	* *	*	* *	*
	Anvik Technologies Sdn. Bhd., a.k.a., the following eight aliases: —Anvik Technologies; —Cason Technologies; —Henan Electronics; —Hixton Technologies; —Hudson Technologies, Ltd.; —Hudson Engineering (Hong Kong) Ltd.; —Madison Engineering Ltd.; *and* —Montana Advanced Engineering. F10, No. 21, 9th Alley, Vozara Ave., Tehran, Iran (See alternate addresses under China and Malaysia).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 75463, 12/12/13. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Babak Jafarpour, a.k.a., the following five aliases: —Bob Jefferson; —Peter Jay; —Sam Lee; —Samson Lee; *and* —David Lee. F10, No. 21, 9th Alley, Vozara Ave., Tehran, Iran (See alternate addresses under China and Malaysia).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 75463, 12/12/13. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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MALAYSIA	* *	*	* *	*
	Anvik Technologies Sdn. Bhd., a.k.a., the following eight aliases: —Anvik Technologies; —Cason Technologies, —Henan Electronics; —Hixton Technologies; —Hudson Technologies, Ltd.; —Hudson Engineering (Hong Kong) Ltd.; —Madison Engineering Ltd.; *and* —Montana Advanced Engineering.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 75463, 12/12/13. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].

Country	Entity	License requirement	License review policy	Federal Register citation
	Level 36, Menara Citibank, 165 Jalan Ampang, Kuala Lumpur, Malaysia, 50450; *and* Level 20, Menara Standard Chartered, 30 Jalan Sultan Ismail, Kuala Lumpur, Malaysia, 50250 (See alternate addresses under China and Iran).			
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	Babak Jafarpour, a.k.a., the following five aliases: —Bob Jefferson; —Peter Jay; —Sam Lee; —Samson Lee; *and* —David Lee. Level 36, Menara Citibank, 165 Jalan Ampang, Kuala Lumpur, Malaysia, 50450; *and* Level 20, Menara Standard Chartered, 30 Jalan Sultan Ismail, Kuala Lumpur, Malaysia, 50250; *and* Level 26, Tower 2, Etiqa Twins 11, Jalan Pinang, Kuala Lumpur, Malaysia 50450; *and* M–3–19 Plaza Damas, Sri Hartamas, Kuala Lumpur, Malaysia 50480 (See alternate addresses under China and Iran).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	78 FR 75463, 12/12/13. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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RUSSIA	* *	*	* *	*
	Sergey Koynov, a.k.a., the following one alias: —Sergey V. Coyne. 106 Kuybyshev Str, Office 68, Yekaterinburg, Russia (see alternate address in China).	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	77 FR 61256, 10/9/12. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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SINGAPORE	Action Global, a.k.a., the following one alias: —Action Global Co., Limited. 520 Sims Avenue, #02–04, Singapore 387580 (See alternate addresses under China).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR 67062, 10/31/11. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
	Amaze International, Block 1057 Eunos Avenue 3, #02–85, Singapore 409848 (See alternate address under China).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR 67062, 10/31/11. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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	Corezing International, a.k.a., the following five aliases: —CoreZing Electronics; —Corezing International Group Company; —Corezing International Pte Ltd; —Corezing Technology Pte Ltd; *and* —Core Zing. 2021 Bukit Batok Street 23, #02–212, Singapore 659626; *and* 111 North Bridge Road, #27–01 Peninsula Plaza, Singapore 179098; *and* 50 East Coast Road, #2–70 Roxy Square, Singapore 428769; *and* Block 1057 Eunos Avenue 3, #2–85, Singapore 409848 (See alternate address under China).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR 67062, 10/31/11. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	Lim Kow Seng, a.k.a., the following five aliases: —Alvin Stanley; —Eric Lim; —James Wong; —Mike Knight; *and* —Seng Lim Kow. Blk 751 Woodlands Circle, #10–592, Singapore 730751; *and* 520 Sims Avenue, #02–04, Singapore 387580; *and* 2021 Bukit Batok Street 23, #02–212 Singapore 659626; *and* 111 North Bridge Road, #27–01 Peninsula Plaza, Singapore 179098; *and* 50 East Coast Road, #2–70 Roxy Square, Singapore 428769; *and* Block 1057 Eunos Avenue 3, #02–85, Singapore 409848 (See alternate addresses under China).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR 67062, 10/31/11. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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TAIWAN	* *	*	* *	*
	Infinity Wise Technology Limited, Flat/RMA 6/F, Man Wing Building 503–507 Nathan Road Yaumate 1, Taiwan; *and* 8F, No. 431, Da-You Road Taoyuan, Taiwan (See alternate addresses under China).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR 40178, 6/21/16. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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UNITED ARAB EMIRATES	* *	*	* *	*
	Skylinks FZC, a.k.a., the following two aliases: —Skylinks; *and* —Skylinks Satellite Comm. P.O. Box 28515, Dubai, U.A.E.; *and* 202 B Sama Tower Sheikh Tayed Road #3 Dubai, U.A.E., P.O. Box 16048; *and* BC2–414, RAK Free Trade Zone P.O. Box 16048 Ras Al Khaimah, U.A.E.; *and* G1/RAK Free Trade Zone RAK—U.A.E.; *and* G–17 Sheikh Tayed Road #3 Ras Al Khaimah Free Trade Zone, Dubai, U.A.E.; *and* P.O. Box 10559 Ras Al Khaimah, U.A.E.; *and* P.O. Box 25344 Bur Dubai, Dubai, U.A.E.; *and* Suite 608 Atrium Center, Bank St., Bur Dubai, Dubai, U.A.E., P.O. Box 16048; *and* Suite 706 Atrium Center Bank Street, Bur Dubai, Dubai U.A.E. 3 (See alternate address under China).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR 14958, 3/21/16. 85 FR [INSERT FR PAGE NUMBER AND 12/23/20].
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■ 13. Supplement no. 6 to part 744 is amended:

■ a. Under CHINA:

■ i. By adding in alphabetical order entries for ''Able Supply Chain Limited'', ''AW Industrial Ltd.'', ''Boqur International Ltd.'', ''Boson Technology Co., Limited.'', ''Brilliance Technology Ltd'', ''Carry Goldstar Ltd.'', ''Central Right Investments Ltd.'', ''CST Source Industrial Co., Ltd.'', ''Daystar Electric (HK) Ltd.'', ''E-Chips Technology'', ''Emax Technology Co. Ltd.'', ''Fortune International Trading'', ''Fussion Electronics Co., Ltd.'', ''Globe Communication (HK) Ltd.'', ''Haofeng Industrial Co., Ltd.'', ''HK Hengyu

Storage Logistics Limited'', ''Hong Kong Engy Technology Co.'', ''Hong Kong Haimao Info-Tec Development Co Ltd'', ''Hongbo Industrial Technology'', ''Jin Yan Technology & Development Co., Ltd.'', ''Kenwoo International Trade Company'', ''KingV Ltd.'', ''Lianqi (HK) Electronics Co Ltd'', ''Ling Ao Electronic Technology Co. Ltd'', ''Lion Chip Electronics Ltd'', ''Maipu Communication Technology Co Ltd'', ''Master-Uni Industry Co.'', ''Nano Tech International Co Ltd'', ''Narpel Technology Co., Limited'', ''Phonai Electronics Ltd.'', ''Powersun Electronics'', ''Rising Logistics Company Limited'', ''Scitech International Express Co. Limited'', ''Selective Components Ltd.'', ''Suke Logistics Ltd.'', ''Sun Wing Ltd.'', ''Sur-Link Technology (HK) Ltd.'', ''Swelatel Technology Limited'', ''Toptech Electronics Ltd.'', ''Universe Market Limited'', ''Winthought Company Ltd.'', ''Xiang Cheng Gao Trading (HK) Ltd.'', ''Yashen (HK) Electronics'', ''Yield Best International'', ''Yogone Electronics Co.'', ''ZDAS (HK) Company'', ''ZhongJie Electronics''

■ b. By removing the entry for HONG KONG and all of the Hong Kong entities

The additions read as follows:

Supplement No. 6 to Part 744—Unverified List

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Country	Listed person and address	**Federal Register** citation and date of publication
*	* * * * *	*
CHINA	Able Supply Chain Limited, Rm 511, 5/F, Corporation Park, 1 On Lai Street, Sha Tin, New Territories, Hong Kong; and Rm 605, 6/F, Corporation Park, 1 On Lai Street, Sha Tin, New Territories, Hong Kong; and Unit C, 9/F, Winning House, No. 72–76 Wing Lok Street, Sheung Wan, Hong Kong.	84 FR 14610, April 11, 2019.
	* * * * * *	*
	AW Industrial Ltd., Room A, 3/F Hung Fook Industrial Building, No 60 Hung To Road, Kwun Tong, Kowloon, Hong Kong;. *and* D1 6/F Kras Asia Industrial Building, No 79 Hung To Road, Kwung Tong, Hong Kong.	85 FR [INSERT **Federal Register** PAGE NUMBER AND 12/23/20].
	Boqur International Ltd., Room 1203, 12/F, International Trade Centre, 11–19 Sha Tsui Road, Tsuen Wan, New Territories, Hong Kong; *and* Room 19C, Lockhart Centre, 301–307 Lockhart Road, Wan Chai, Hong Kong.	81 FR 40171, June 21, 2016.
	Boson Technology Co., Limited., Unit 22, 10/F, Nan Fung Commercial Centre, 19 Lam Lok Street, Kowloon, Kwun Tong, Hong Kong; *and* Room 1907, 19/F, Lee Garden One, 33 Hysan Avenue, Causeway Bay, Hong Kong; *and* Room 1501 (462), 15/F., SPA Centre, 53–55 Lockhart Road, Wan Chai, Hong Kong.	84 FR 14610, April 11, 2019.
	Brilliance Technology Ltd, a.k.a., Brilliance Technology Group, Flat A, 11/F, Adolfo Mansion, 114–116 Austin Road, Tsim Sha Tsui, Yau Tsim Mong, Hong Kong; and Rm. 1203, 12/F, Hip Kwan Commercial Bldg., 38 Pitt Street, Yau Ma Tei, Yau Tsim Mong, Hong Kong.	79 FR 34220, June 16, 2014; 82 FR 16732, April 6, 2017.
	Carry Goldstar Ltd., 15A, 15/F, Cheuk Nang Plaza, 250 Hennessy Road, Wan Chai, Hong Kong	81 FR 40171, June 21, 2016.
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	Central Right Investments Ltd., Room 1019, 10/F, 1 Hung To Road, Kwun Tong, Hong Kong	81 FR 40171, June 21, 2016.
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	CST Source Industrial Co., Ltd., Rooms 5–15, 13/F, South Tower, World Finance Centre, Harbour City, 17 Canton Road, Tsim Sha Tsui, Kowloon, Hong Kong.	81 FR 40171, June 21, 2016.
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	Daystar Electric (HK) Ltd., Flat D, 19/F, Waylee Industrial Centre, 30–38 Tsuen King Circuit, Tsuen Wan, New Territories, Hong Kong; *and* 9/F Kam Chung Commercial Building, 19–21 Hennessy Road, Wanchai, Hong Kong.	80 FR 4781, January 29, 2015.
	E-Chips Technology, Unit 4, 7/F, Bright Way Tower, No. 33 Mong Kok Road, Mong Kok, Kowloon, Hong Kong; *and* Flat 1205, 12/F, Tai Sang Bank Building, 130–132 Des Voeux Road Hong Kong.	80 FR 4779, January 29, 2015; 80 FR 60532, October 7, 2015.
	Emax Technology Co. Ltd. HK, Room 19C, Lockhart Centre, 301–307 Lockhart Road, Wan Chai, Hong Kong; *and* Rm 2017, Lippo Centre Tower 2, 89 Queensway, Admiralty, Hong Kong.	85 FR [INSERT **Federal Register** PAGE NUMBER AND 12/23/20].
	Fortune International Trading, Room 1701(017) 17/F Henan Bldg, No. 90 Jaffee Rd, Wanchai, Hong Kong; *and* Room 1907, 19/F, Lee Garden One, 33 Hysan Avenue, Causeway Bay, Hong Kong.	85 FR [INSERT **Federal Register** PAGE NUMBER AND 12/23/20].
	Fussion Electronics Co., Ltd., 11/F, International Trade Centre, 11–19 Sha Tsui Road, Tsuen Wan, New Territories, Hong Kong.	81 FR 40171, June 21, 2016.
	Globe Communication (HK) Ltd., Flat 01A2, 10/F, Carnival Commercial Building, 18 Java Road, North Point, Hong Kong; *and* Flat C, 9/F, Winning House, 72–74 Wing Lok Street, Sheung Wan, Hong Kong.	81 FR 40171, June 21, 2016.
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	Haofeng Industrial Co., Ltd., Room 1101, 11/F, San Toi Building, 139 Connaught Road, Central, Hong Kong.	81 FR 40171, June 21, 2016.
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Country	Listed person and address	**Federal Register** citation and date of publication
	HK Hengyu Storage Logistics Limited, Rm 2309, 23/F, Ho King Commercial Centre, 2–16 Fayuen St, Mongkok, Kwun Tong, Hong Kong; *and* Flat/Rm B10, 9/F, Mai Hing Factory Building, 16–18 Shing Yip Street, Kowloon, Kwun Tong, Hong Kong; *and* Flat/Rm B11, 12/F Mai Hing Factory Building, 16–18 Shing Yip Street, Kowloon, Kwun Tong, Hong Kong.	84 FR 14610, April 11, 2019.
	Hong Kong Engy Technology Co., a.k.a. Hong Kong Energy Technology Co., a.k.a. SZ Engy Technology Co., a.k.a. SZ Energy Technology Co., Workshop 15, 2/F, Cardinal Industrial Building, 17 On Lok Mun Street, Fanling, New Territories, Hong Kong.	81 FR 40171, June 21, 2016.
	Hong Kong Haimao Info-Tec Development Co Ltd, Rm 1013B, Well Fung Ind. Center, Ta Chuen Ping Street, Kwai Chung, Hong Kong.	79 FR 34220, June 16, 2014.
	Hongbo Industrial Technology, Unit 3, 9/F, Shing Yip Industrial Building, 19–21 Shing Yip Street, Kwun Tong, Kowloon, Hong Kong; *and* Unit 04, 7/F, Bright Way Tower, No. 33, Mong Kok Road, Kowloon, Hong Kong.	80 FR 4781, January 29, 2015.
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	Jin Yan Technology & Development Co., Ltd., Workshop 11, 8/F, Block A, Delya Industrial Centre, 7 Shek Pai Tau Road, Tuen Mun, New Territories, Hong Kong; *and* Room 1, Fook Cheung Building, 42 Ka Shin Street, Tai Kok Tsui, Kowloon, Hong Kong.	81 FR 40171, June 21, 2016.
	Kenwoo International Trade Company, 1907, 19/F, Lee Garden One, 33 Hysan Avenue, Causeway Bay, Hong Kong; *and* Room 517, New City Centre, 2 Lei Yue Mun Road, Kwun Tong, Kowloon, Hong Kong; *and* Flat H, 6/F, Block 2, Golden Dragon Industrial Centre, Tai Lin Pai Road, Kwai Chung, Hong Kong.	85 FR [INSERT **Federal Register** PAGE NUMBER AND 12/23/20].
	KingV Ltd., a.k.a. Jinnway Data Ltd., Room 31, 9/F, Shing Yip Industrial Building, 19–21 Shing Yip Street, Kwun Tong, Kowloon, Hong Kong; *and* 11/F, Front Block, Hang Lok Building, 130 Wing Lok Street, Sheung Wan, Hong Kong.	81 FR 40171, June 21, 2016.
	Lianqi (HK) Electronics Co Ltd, Unit N, 3/F, Hopewell House, 175 Hip Wo Street, KwunTong, Kowloon, Hong Kong.	79 FR 34220, June 16, 2014.
	Ling Ao Electronic Technology Co. Ltd, a.k.a. Voyage Technology (HK) Co., Ltd., a.k.a. Xuan Qi Technology Co. Ltd, Room 17, 7/F, Metro Centre Phase 1, No. 32 Lam Hing St., Kowloon Bay, Kwun Tong, Hong Kong; *and* 15B, 15/F, Cheuk Nang Plaza, 250 Hennessy Road, Wan Chai, Hong Kong; *and* Flat C, 11/F, Block No. 2, Camelpaint Bldg., 62 Hoi Yuen Street, Kwun Tong, Kowloon, Hong Kong; *and* Room C1–D, 6/F, Wing Hing Industrial Building, 14 Hing Yip Street, Kwun Tong, Kowloon, Hong Kong; *and* Flat/Rm. A30, 9/F Silvercorp International Tower, 707–713 Nathan Road, Mongkok, Kowloon, Hong Kong; *and* Room 912A, 9/F. Witty Commercial Building, 1A–1L Tung Choi Street, Mongkok, Kowloon, Hong Kong; *and* Unit A, 7/F, King Yip Factory Bldg., 59 King Yip Street, Kwun Tong, Kowloon, Hong Kong; *and* Unit D, 16/F, One Capital Place, 18 Luard Road, Wan Chai, Hong Kong; *and* Unit B213, 1/F, New East Sun Industrial Bldg., 18 Shing Yip Street, Kowloon, Kwun Tong, Hong Kong.	80 FR 4779, January 29, 2015; 80 FR 60532, October 7, 2015; 82 FR 16733, April 6, 2017; 83 FR 22845, May 17, 2018; 84 FR 14610, April 11, 2019.
	Lion Chip Electronics Ltd, Unit N, 3/F, Hopewell House, 175 Hip Wo Street, KwunTong, Kowloon, Hong Kong.	79 FR 34220, June 16, 2014.
	* * * * * *	
	Maipu Communication Technology Co Ltd, 7/F Kerry Warehouse, 36–42 Shan Mei St, Shatin, Hong Kong.	79 FR 34220, June 16, 2014.
	Master-Uni Industry Co., Ltd., Room 602, 6/F, 168 Queens Road, Central, Hong Kong	81 FR 40171, June 21, 2016.
	* * * * * *	
	Nano Tech International Co Ltd, Unit 5, 27/F, Richmond Commercial Building, 109 Argyle Street, Mongkok, Kowloon, Hong Kong.	79 FR 34220, June 16, 2014.
	Narpel Technology Co., Limited, Unit A, 6/F, Yip Fat Factory Building, Phase 1, No 77 Hoi Yuen Road, Kwun Tong, Kowloon, Hong Kong; *and* Room 4C, 8/F, Sunbeam Centre, 27 Shing Yip Street, Kwun Tong, Kowloon, Hong Kong; *and* Room 1905, Nam Wo Hong Building, 148 Wing Lok Street, Sheung Wan, Hong Kong; *and* 15B, 15/F, Cheuk Nang Plaza, 250 Hennessy Road, Wan Chai, Hong Kong.	79 FR 34217, June 16, 2014; 80 FR 4779 January 29, 2015; 80 FR 60532, October 7, 2015.
	* * * * * *	
	Phonai Electronics Ltd., 51F, Core Building 11, New Territories, Hong Kong	81 FR 40171, June 21, 2016.
	Powersun Electronics, Flat/Rm 502D, Hang Pont Commercial Building, 31 Tonkin Street, Cheung Sha Wan, Kowloon, Hong Kong; *and* G/F and G/M, Winner Godown Building, 1–9 Sha Tsui Road, Tsuen Wan, New Territories, Hong Kong.	79 FR 34217, June 16, 2014; 80 FR 4781, January 29, 2015.
	Rising Logistics Company Limited, Workshop 12, 13/F, Block B, New Trade Plaza, No. 6, On Ping Street, Sha Tin, New Territories, Hong Kong; *and* Unit 208, 2/F, Block B, Hoi Luen Industrial Centre, 55 Hoi Yuen Road, Kowloon, Kwun Tong, Hong Kong; *and* Unit 1105, Hua Qin International Building, 340 Queens Road, Central, Hong Kong Island, Hong Kong.	84 FR 14610, April 11, 2019.
	* * * * * *	
	Scitech International Express Co. Limited, Workshop 11, 8/F, Block A, Delya Industrial Centre, 7 Shek Pai Tau Road, Tuen Mun, New Territories, Hong Kong.	81 FR 40171, June 21, 2016.
	Selective Components Ltd., Room 8, 10/F, International Trade Centre, 11–19 Sha Tsui Road, Tsuen Wan, New Territories, Hong Kong.	81 FR 40171, June 21, 2016.
	* * * * * *	
	Suke Logistics Ltd., Flat 6, 20/F, Mega Trade Centre, 1–9 Mei Wan Street, Tsuen Wan, New Territories, Hong Kong.	80 FR 4781, January 29, 2015.

Country	Listed person and address	Federal Register citation and date of publication
	Sun Wing Ltd., Room 31, 9/F, Shing Yip Industrial Building, 19–21 Shing Yip Street, Kwun Tong, Kowloon, Hong Kong.	81 FR 40171, June 21, 2016.
	Sur-Link Technology (HK) Ltd., a.k.a. Sur-Link International (HK) Ltd., a.k.a. Surlink Group, Flat 6, 20/F, Mega Trade Centre, 1–9 Mei Wan Street, Tsuen Wan, New Territories, Hong Kong.	81 FR 40171, June 21, 2016.
	Swelatel Technology Limited, Rm. 19C, Lockhart Ctr., 301–307 Lockhart Rd., Wan Chai, Hong Kong; *and* Rm. 2107, Lippo Centre Tower 2, 89 Queensway, Admiralty, Wan Chai, Hong Kong.	84 FR 14610, April 11, 2019.
	* * * * * *	
	Toptech Electronics Ltd., 15/F, Hong Kong and Macau Building, 156–157 Connaught Road, Central, Hong Kong.	81 FR 40171, June 21, 2016.
	* * * * * *	
	Universe Market Limited, Unit A, 17/F, Good Will Industrial Building, 36–44 Pak Tin Par Street, Tsuen Wan, New Territories, Hong Kong.	84 FR 14610, April 11, 2019.
	Winthought Company Ltd., Unit E1, 3/F, Wing Tat Commercial Building, 121–125 Wing Lok Street, Sheung Wan, Hong Kong.	81 FR 40171, June 21, 2016.
	* * * * * *	
	Xiang Cheng Gao Trading (HK) Ltd., 1215 Lot, DD 125, Ha Tsuen Road, Ha Tsuen, Ping Shan, Yuen Long, New Territories, Hong Kong.	85 FR [INSERT **Federal Register** PAGE NUMBER AND 12/23/20].
	* * * * * *	
	Yashen (HK) Electronics, Flat R, 15/F, Phase 2, Goldfield Industrial Building, 144–150 Tai Lin Pai Road, Kai Chung, New Territories, Hong Kong; *and* Room N, 3/F, Mongkok Building, 97 Mongkok Road, Kowloon, Hong Kong.	79 FR 34220, June 16, 2014.
	Yield Best International, 6/F, Block H, East Sun Industrial Centre, 16 Shing Yip Street, Kwun Tong, Kowloon, Hong Kong; *and* Unit J, 9/F, King Win Factory Building, 65–67 King Yip Street, Kwun Tong, Hong Kong.	81 FR 40171, June 21, 2016.
	Yogone Electronics Co., Unit 602, 6/F, Silvercord Tower 2, 30 Canton Road, Tsim Sha Tsui, Kowloon, Hong Kong.	80 FR 60532, October 7, 2015.
	* * * * * *	
	ZDAS (HK) Company, G/F, 16 Kwan Tei North Tsuen Leung Yeuk Tau, Sha Tau Kok Road, Fanling, Hong Kong; *and* Room 1609, 16/F, Block B, Veristrong Industrial Center, 34–36 Au Pui Wan Street, FoTaan, Shatin, New Territories, Hong Kong.	79 FR 34220, June 16, 2014.
	ZhongJie Electronics, G/F, 26 Pau Chung Street, Tokwawan, Kowloon, Hong Kong; *and* Rm 2309, 23/F, Ho King Comm Ctr, 2–16 Fayuen St., Mongkok, Kowloon, Hong Kong.	79 FR 34220, June 16, 2014.
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PART 745—CHEMICAL WEAPONS CONVENTION REQUIREMENTS

■ 14. The authority citation for part 745 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950); Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

■ 15. Supplement no. 2 to part 745 is revised to read as follows:

Supplement No. 2 To Part 745—States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction

List of States Parties as of June 1, 2016

Afghanistan
Albania
Algeria
Andorra
Angola
Antigua and Barbuda
Argentina
Armenia
Australia
Austria
Azerbaijan
Bahamas
Bahrain
Bangladesh
Barbados
Belarus
Belgium
Belize
Benin
Bhutan
Bolivia
Bosnia-Herzegovina
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burma
Burundi
Cambodia
Cameroon
Canada
Cape Verde
Central African Republic
Chad
Chile
China *
Colombia
Comoros
Congo (Democratic Republic of the)
Congo (Republic of the)
Cook Islands
Costa Rica
Cote d'Ivoire (Ivory Coast)
Croatia
Cuba
Cyprus
Czech Republic
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
El Salvador
Equatorial Guinea
Eritrea
Estonia
Ethiopia
Fiji
Finland
France
Gabon
Gambia

Georgia
Germany
Ghana
Greece
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Holy See
Honduras
Hungary
Iceland
India
Indonesia
Iran
Iraq
Ireland
Italy
Jamaica
Japan
Jordan
Kazakhstan
Kenya
Kiribati
Korea (Republic of)
Kuwait
Kyrgyzstan
Laos (P.D.R.)
Latvia
Lebanon
Lesotho
Liberia
Libya
Liechtenstein
Lithuania
Luxembourg
Macedonia
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Marshall Islands
Mauritius
Mauritania
Mexico
Micronesia
Moldova (Republic of)
Monaco
Mongolia
Montenegro
Morocco
Mozambique
Namibia
Nauru
Nepal
Netherlands (Kingdom of the) ***
New Zealand
Nicaragua
Niger
Nigeria
Niue
Norway
Oman
Pakistan
Palau
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Samoa
San Marino
Sao Tome and Principe
Saudi Arabia
Senegal
Serbia
Seychelles
Sierra Leone
Singapore
Slovak Republic
Slovenia
Solomon Islands
Somalia
South Africa
Spain
Sri Lanka
Sudan
Suriname
Swaziland
Sweden
Switzerland
Syria
Tajikistan
Tanzania
Thailand
Timor-Leste
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Turkmenistan
Tuvalu
Uganda
Ukraine
United Arab Emirates
United Kingdom
United States
Uruguay
Uzbekistan
Vanuatu
Venezuela
Vietnam
Yemen
Zambia
Zimbabwe

* For CWC purposes only, China includes Macau.

*** For CWC purposes only, the Netherlands (Kingdom of) includes: Aruba, Curaçao, and Saint Maarten (the Dutch two-fifths of the island of Saint Martin).

PART 748—APPLICATIONS (CLASSIFICATION, ADVISORY, AND LICENSE AND DOCUMENTATION)

■ 16. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp. (A), p. 783.

■ 17. Section 748.10 is amended by adding note 5 to paragraph (a) to read as follows:

§ 748.10 People's Republic of China (PRC) End-User Statement.

(a) * * *

Note 5 to paragraph (a): This requirement to obtain an end-user statement from the PRC Ministry of Commerce does not apply to transactions destined to the PRC Special Administrative Region of Hong Kong.

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PART 758—EXPORT CLEARANCE

■ 18. The authority citation for part 758 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 19. Section 758.1 is amended by adding note 1 to paragraph (b)(10) to read as follows:

§ 758.1 The Electronic Export Information (EEI) filing to the Automated Export System (AES)

* * * * *

(b) * * *

(10) * * *

Note 1 to paragraph (b)(10): Paragraph (b)(10) applies to exports to Hong Kong, as this destination is considered a part of the People's Republic of China under the EAR, even if the AES requirements state that the destination filed in EEI is to be listed as Hong Kong.

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Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–28101 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 744 and 756

[Docket No. 201215–0344]

RIN 0694–AI34

Addition of 'Military End User' (MEU) List to the Export Administration Regulations and Addition of Entities to the MEU List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding a new 'Military End User' (MEU) List that includes the first tranche of entities. The U.S. Government has determined that these entities are 'military end users' for purposes of the 'military end user' control in the EAR that applies to specified items for exports, reexports, or transfers (in-country) to the People's Republic of China (China), Russia, and Venezuela when such items are destined for a 'military end user.' The existing 'military end-use' and 'military end user' controls under the EAR, including BIS's authority to inform the public of a license requirement for an item due to an unacceptable risk of diversion to a 'military end user' via amendment to the EAR, are essential for protecting U.S. national security interests. The addition of the new MEU List via amendment to the EAR and this first tranche of entities is also responsive to requests received from the public. This final rule will add one hundred and two 'military end users' to the MEU List consisting of fifty-seven under China and forty-five under Russia. However, the establishment of the MEU List does not imply that other parties, not included on the list, are not subject to the 'military end-use' and 'military end user' controls under the EAR.

DATES: This rule is effective December 23, 2020.

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–0092 or Email: *eileen.albanese@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding the new 'military end user' list as supplement no. 7 to part 744—Military End User (MEU) List. This final rule also adds the first tranche of entities to this new list. This final rule will add one hundred and two 'military end users' to the MEU List consisting of fifty-seven military end users in China and forty-five in Russia. These entities have been determined by the U.S. Government to be 'military end users,' and therefore exports, reexports, or transfers (in-country) of the designated items to these parties are exports, reexports or transfers (in-country) to the national armed services (army, navy, marine, air force, or coast guard), the national guard, the national police, government intelligence or reconnaissance organizations, or a person or entity whose actions or functions are intended to support 'military end-uses' as defined in § 744.21(f).

Section 744.21(a) sets forth a license requirement to exports, reexports, or transfers (in-country) identified in supplement no. 2 to part 744 to China, Russia, and Venezuela, when the exporter, reexporter, or transferor has ''knowledge'' that the item is destined for a 'military end use' (as defined in § 744.21(f)) or 'military end user' (as defined in § 744.21(g)). Additionally, pursuant to § 744.21(b), BIS may inform persons that a license is required for the export, reexport, or transfer (in-country) of any item because there is an unacceptable risk of use in or diversion to such an end use or end user. With the creation of the MEU List described below, BIS 'is informing' exporters, reexporters, and transferors that a license will be required to export, reexport, or transfer (in-country) any item described in supplement no. 2 to part 744 to these 'military end users' that will be identified on the new MEU List.

This rule does not change the scope of § 744.21. The addition of the new MEU List in supplement no. 7 to part 744 and this initial tranche of one hundred and two 'military end users' is part of the § 744.21(b) 'is informed' process and does not imply that other parties, not included on the list, are not subject to the prohibition in § 744.21(a). Adding the new MEU List via an amendment to the EAR is an effective way for BIS to inform all potential exporters, reexporters, and transferors that all exports, reexports, or transfers (in-country) of designated items to these entities represent an unacceptable risk of use in or diversion to a 'military end use' or a 'military end user' for purposes of § 744.21, and therefore require a license. All of the one hundred and two entities added to the MEU List in today's final rule are 'military end users' within the definition of § 744.21(g), and were thus already subject to the 'military end use' and 'military end user' requirements under § 744.21. Prior to this final rule, exporters, reexporters, or transferors were responsible for identifying these entities as 'military end users' themselves, assuming they were not otherwise individually informed pursuant to the 'is informed' process under § 744.21(b). Exporters, reexporters, or transferors will still be responsible for ensuring their transactions are in compliance with the license requirements set forth in § 744.21 because BIS cannot list every 'military end user' or party representing a risk of diversion thereto in the MEU List, or identify all situations which could lead to an item being used for a 'military end use.' The determinations that certain entities are 'military end users' are only relevant to the stated EAR controls and do not apply to exports, reexports, or transfers subject to International Traffic in Arms Regulations (ITAR) or other controls.

The addition of the new MEU list and this first tranche of one hundred and two entities is also responsive to requests received from the public and draws upon decisions made by BIS in reviewing license applications under § 744.21. Specifically, exporters, reexporters, or transferors requested in numerous advisory opinions received by BIS on the application of § 744.21 since April 28, 2020, as well as from BIS's TACs, that BIS identify 'military end users' by name and address in the regulations, where possible, to facilitate compliance. For example, BIS has received over 80 advisory opinions and emailed requests for guidance on the April 28 MEU rule, including requests asking whether 34 specific entities are considered 'military end users' for purposes of § 744.21. In addition, since the revisions to the MEU provisions became effective on June 29, 2020 (the date the April 28, 2020 final rule (85 FR 23459) that expanded the 'military end-use' and 'military end-user' control under § 744.21), there have been several hundred license applications filed under § 744.21 (MEU license applications).

BIS interacts with various exporters, reexporters, or transferors who may provide information on potential 'military end users' in license applications or requests for advisory opinions submitted to BIS, as well as the additional information resources available to the U.S. Government; therefore, as specified in § 744.21(b),

when BIS identifies an entity as a 'military end user,' it may use the 'is informed' process to publish **Federal Register** notices adding these 'military end users' to the new MEU List under supplement no. 7 to part 744. BIS agrees that identifying 'military end users' on the MEU List, where possible, will ease the public's compliance burden and make for a more effective 'military end use' and 'end user' control under § 744.21.

The issuance of a separate public list in the EAR identifying parties previously listed in 'is informed' letters or for whom licenses were denied due to their status as a 'military end user' under the EAR is desirable because individual 'is informed' letters, licensing determinations for specific transactions, and BIS responses to advisory opinion and email requests are private and confidential to the requester. Publishing a list of parties that already have been determined to be 'military end-users' allows the public to be informed of BIS's determinations in these individual cases. Therefore, the most practical and effective approach is to publish a **Federal Register** notice adding these 'military end users' to the MEU List, so all potential exporters, reexporters, or transferors are informed simultaneously.

As described below, BIS is also amending the EAR to provide clarity on the process it follows to add entities to the MEU List, to ensure consistent treatment of those parties, and to allow listed parties to request removal from the list. The initial list of 'military end users' being added to the MEU List in today's rule is not exhaustive, and exporters, reexporters, and transferors must still conduct due diligence for parties not on the list (*see* § 744.21(b) and supplement no. 3 to part 732—BIS's ''Know Your Customer'' Guidance and Red Flags). As a result, compliance remains the obligation of the exporter, reexporter or transferor. Exclusion from the MEU list is not indicative of whether or not a license is required. For example, parties not listed on the MEU List in this final rule, but included on the lists made public pursuant to Section 1237 of the National Defense Authorization Act of Fiscal Year 1999, 50 U.S.C. 1701 note, would raise a Red Flag under the EAR and would require additional due diligence by the exporter, reexporter, or transferor to determine whether a license is required under § 744.21. Additional parties may be added to or deleted from the MEU List pursuant to a determination made by the End-User Review Committee (ERC) as described below.

EAR Changes To Add MEU List

In § 744.21 (Restrictions on certain 'military end use' or 'military end user' in the People's Republic of China, Russia, or Venezuela), this final rule revises paragraph (b) (Additional prohibition on those informed by BIS) by adding a new paragraph (b)(1) (Military End-User' (MEU) List). Under new paragraph (b)(1), this final rule specifies that BIS may designate entities subject to the additional prohibition under paragraph (b) based on a determination by the ERC that the entity is a 'military end user,' and thus inform the public that those entities are subject to the license requirements under paragraph (b). New paragraph (b)(1) specifies that these 'military end users' will be added to the MEU List in supplement no. 7 to part 744 in **Federal Register** notices published by BIS. The introductory text of paragraph (b)(1) also reaffirms that the listing of entities in supplement no. 7 to part 744 is not an exhaustive listing of 'military end users' or entities engaged in 'military end uses' and specifies that exporters, reexporters, or transferors must still conduct their own due diligence for entities not identified on the MEU List to determine whether a license in necessary pursuant to the criteria set forth in § 744.21.

This final rule adds new paragraph (b)(1)(i) (End-User Review Committee), in § 744.21, to identify the member agencies of the End-User Review Committee (ERC) and to specify the role the ERC will play in determining what entities should be added to MEU List, as well as approving any modifications or removals that may be warranted to the MEU List after entities are added. This final rule clarifies in new paragraph (b)(1)(i) that decisions by the ERC for purposes of the MEU List will be made following the procedures identified in § 744.21 and in supplement no. 5 to part 744—Procedures for End-User Review Committee Entity List and 'Military End-User' (MEU) List Decisions. The ERC is an existing interagency group that also makes determinations for the Entity List in supplement no. 4 to part 744 as described in § 744.16 and in supplement no. 5 to part 744. Because of the ERC's expertise in dealing with end users of concern, BIS determined it was warranted to expand the ERC's area of responsibility for parties of concern to also include determinations for the new MEU List.

This final rule adds new paragraph (b)(1)(ii) (License requirement), in § 744.21, to specify the license requirements that apply for entities listed in supplement no. 7 to part 744. This final rule specifies that a license is required to export, reexport, or transfer (in-country) any item listed in supplement no. 2 to part 744 to entities identified on the MEU List, which is in addition to the license requirement applicable to such items intended for any 'military end user' or 'military end use' in China, Russia, or Venezuela which are not on the MEU List, as described in § 744.21(a). BIS is exercising its authority under § 744.21(b) to inform exporters, reexporters, and transferors that entities on the MEU List are 'military end users' for purposes of § 744.21, and thus exports, reexports, or transfers (in country) of the specified items to those entities require a license because they represent an unacceptable risk of use in or diversion to a 'military end use' or 'military end user' in China, Russia, or Venezuela. This final rule under paragraph (b)(1)(ii) also clarifies the scope of the license requirement in § 744.21(b), by specifying that it applies when an entity that is listed on the MEU List is a party to the transaction as described in § 748.5(c) through (f) of any item listed in supplement no. 2 to part 744.

This final rule specifies in the introductory text of supplement no. 7 to part 744 that no EAR license exceptions are available for exports, reexports, or transfers (in-country) to listed entities on the MEU List for items specified in supplement no. 2 to part 744, except license exceptions for items authorized under the provisions of License Exception GOV set forth in § 740.11(b)(2)(i) and (ii) as specified in § 744.21(c).

This final rule clarifies in the introductory text of supplement no. 7 to part 744 that license applications for entities listed on the MEU list will be subject to the license application procedure and license review standards specified in paragraphs (d) and (e) of § 744.21.

This final rule adds a new paragraph (b)(2) (Requests for removal from or modification for 'Military End User' (MEU) List), in § 744.21, to specify the process and method for any entity listed on the MEU List to request that its listing be removed or modified. In the introductory text of new paragraph (b)(2), this final rule specifies that any listed MEU entity may submit a removal or modification request. The introductory text of paragraph (b)(2) specifies these requests must be submitted to the ERC at the address provided. If an entity listed on the MEU List wants to petition BIS for its removal or modification, the entity must address the criteria in § 744.21 of the EAR by addressing, as applicable, why the

entity is not a 'military end user' or involved in 'military end-uses.'

This final rule adds a new paragraph (b)(2)(i) (Review), in § 744.21, to specify that the ERC will review such requests in accordance with the procedures set forth in supplement no. 5 to part 744, which is also consistent with the process for requesting removal or modification of Entity List entries.

The final rule adds a new paragraph (b)(2)(ii) (BIS action), in § 744.21, to specify how an entity that has submitted a removal or modification request will be notified in writing by the Deputy Assistant Secretary for Export Administration once the decision on the request is made. This paragraph (b)(2)(ii) also specifies that the BIS decision will be the final agency action on the request.

In § 756.2 (Appeal from an Administrative Action), as a conforming change for the addition of paragraph (b)(2) in § 744.21, this final rule adds that decisions on requests to remove or modify a MEU List entry to the list of administrative actions are not subject to part 756 appeals under paragraph (a)(3). Paragraph (a)(3) also specifies that requests for removals of modifications from the Entity List and Unverified List are not subject to part 756 appeals, so adding the MEU List to this paragraph will create consistent treatment under this section for these three EAR lists.

This final rule adds new supplement no. 7 to part 744—'Military End User' (MEU) List. As described in detail above, the MEU List identifies entities that have been determined by the ERC to be 'military end users' pursuant to § 744.21 of the EAR. That section imposes additional license requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in-country) to listed entities on the MEU List, as specified in supplement no. 7 to part 744 and § 744.21. Entities will be listed on the new MEU List under the destinations of China, Russia, or Venezuela.

The license review policy for each listed entity is identified in the introductory text of supplement no. 7 to part 744 and in § 744.21(b) and (e). The new MEU List includes introductory text, which specifies the scope of the license requirements, limitations on the use of EAR license exceptions, and the license review policy that applies to the entities. These requirements are also reflected in § 744.21, but for ease of reference, this final rule also includes these in the introductory text of the supplement. The MEU List consists of three columns: Column 1 (Country) identifies the three countries where entities may be listed (China, Russia, Venezuela); column 2 (Entity) identifies the names and addresses of the entities; and column 3 (**Federal Register** citation) identifies the **Federal Register** citation for final rules that added or modified entities on the MEU List. Unlike the Entity List, the license requirements and license review policy are the same for all MEU entities, so there is no need to include those columns in the MEU List. Instead, that information is specified in the introductory text of supplement no. 7 to part 744 and in § 744.21.

This final rule revises existing supplement no. 5 to part 744 (Procedures For End-User Review Committee Entity List Decisions), as a conforming change to add references to the new MEU List in supplement no. 7 to part 744. This final rule also makes other minor conforming changes to supplement no. 5 to part 744 to account for ERC decisions for additions, removals and modifications of MEU List entries, including revising the title of the supplement to reference the MEU List and clarifying the process for how the ERC reviews the Entity List for making modifications by removing a reference to annual reviews and simply stating the ERC reviews the Entity List and the MEU List regularly for identifying needed modifications. This final rule does not make any substantive changes to the ERC procedures, except for expanding the scope of ERC responsibility and procedures, so they also apply to additions, removals and modifications of MEU List entries.

Addition of First Tranche of 'Military End Users'

As described above, the ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the MEU List in supplement no. 7 to part 744. The ERC make all decisions to add an entry to the MEU List by majority vote and all decisions to remove or modify an entry by unanimous vote.

Additions to the MEU List

Under § 744.21(b) of the EAR, BIS may inform persons either individually by specific notice, through amendment to the EAR published in the **Federal Register**, or through a separate notice published in the **Federal Register**, that a license is required for specific exports, reexports, or transfers (in-country) of any item because there is an unacceptable risk of use in or diversion to a 'military end use' or 'military end user' in China, Russia, or Venezuela. Under § 744.21(b)(1) of the EAR, BIS may designate entities subject to this additional prohibition under paragraph (b) that have been determined by the ERC to be a 'military end user' pursuant to § 744.21. These entities will be added to supplement no. 7 to part 744 ('Military End User' (MEU) List) in **Federal Register** notices published by BIS.

This rule implements the decision of the ERC to add one hundred and two entities to the MEU List. These one hundred and two entities will be listed on the MEU List under the destinations of China and Russia, and a reserved category for Venezuela will also be added to the MEU List. The ERC made the decision to add each of the one hundred and two entities described below under the standard set forth in § 744.21 of the EAR, including the criteria for what constitutes a 'military end user' under paragraph (g) and 'military end use' under paragraph (f).

The ERC determined to add the fifty-seven entities identified below, under the destination of China, because the ERC has determined these entities are 'military end users' based on the criteria in § 744.21(g) and (f).

The ERC determined to add the forty-five entities identified below, under the destination of Russia, because the ERC has determined these entities are 'military end users' based on the criteria in § 744.21(g) and (f).

No license exceptions are available for exports, reexports, or transfers (in-country) to listed entities on the MEU List for items specified in supplement no. 2 to part 744, except license exceptions for items authorized under the provisions of License Exception GOV set forth in § 740.11(b)(2)(i) and (ii) of the EAR.

For the one hundred and two entities added to the MEU List by this rule, BIS imposes a license review policy of a presumption of denial as set forth in § 744.21(e).

The acronym ''a.k.a.'' (also known as) is used in entries on the MEU List to identify aliases, thereby assisting exporters, reexporters, and transferors in identifying entities on the MEU List.

For the reasons described above, this final rule adds the following one hundred and two entities to the MEU List:

China

- Academy of Aerospace Solid Propulsion Technology (AASPT);
- The following eight subordinate institutions of Aero-Engine Company of China: AECC Aero Science & Technology Co. Ltd.; AECC Aviation

Power Co. Ltd.; AECC Beijing Institute of Aeronautical. Materials; AECC China Gas Turbine Establishment; AECC Commercial Aircraft Engine Co. Ltd.; AECC Harbin Dongan Engine Co., Ltd.; AECC Shenyang Liming Aero Engine Co., Ltd.; *and* AECC South Industry Company Limited;

- Anhui Yingliu Hangyuan Power;
- The following seven subordinate institutions of Aviation Industry Corporation of China:

AVIC Aircraft Co. Ltd.; AVIC Chengdu Aircraft Industrial (GROUP) Co., Ltd.; AVIC Flight Automatic Control Research Institute (FACRI); AVIC General Aircraft Huanan Industry Co. Ltd.; AVIC General Aircraft Zhejiang Institute Co., Ltd.; AVIC International Holding Corporation; AVIC Leihua Electronic Technology Research Institute (LETRI);

- Baimtec Material Co., Ltd.;
- Beijing Aero Lever Precision Ltd.;
- Beijing Ander Tech. Co., Ltd.;
- Beijing Guang Ming Electronics Co., Ltd.;
- Beijing Siyuan Electronic Co., Ltd.;
- CAST Xi'an Spaceflight Engine Factory;
- Chengdu Holy Aviation Science & Tech;
- China Aviation Ind. Std. Parts;
- CSSC Xijiang Shipbuilding Co., Ltd.;
- Elink Electronic Technology Co. Ltd.;
- Fly Raise International Limited;
- Fuhua Precision Man. Co.;
- Government Flying Service;
- Guangzhou Hangxin Aviation Technology Co., Ltd.;
- Guizhou Aviation Tech. Dev. Nat.;
- Guizhou Liyang Intl Manufacturing Co Ltd.;
- Hafei Aviation Industry Co., Ltd. (HAFEI);
- Hangzhou Bearing Test & Research Center Co., Ltd.;
- Harbin General Aircraft Industry Co., Ltd.;
- Henan Aerospace Precision Mach;
- Hunan South General Aviation Engine Co., Ltd.;
- Hutchison Optel Telecom Technology Co., Ltd.;
- Jiangsu Meilong Aviation Components Co.;
- Jiatai Aircraft Equipment Co., Ltd.;
- Jincheng Group Imp & Exp. Co. Ltd.;
- Laboratory of Toxicant Analysis, Institute of Pharmacology and Toxicology;
- Molecular Devices Shanghai Corporation;
- Nanjing Engineering Institute of Aircraft Systems (NEIAS);
- National Satellite Meteorological Bureau;
- Second Institute of Oceanography, Ministry of Natural Resources;
- Shaanxi Aero Electric Co., Ltd.;
- Shaanxi Aircaft Industry Co Ltd.;
- Shanghai Aerospace Equip. Man.;
- Shanghai Aircraft Design and Research Institute;
- Shanghai Aircraft Manufacturing Co. Ltd. (SAMC);
- Shanghai Tianlang Electronic Science Co., Ltd.;
- Shenyang Academy of Instrumentation Science Co., Ltd.;
- Shenyang Aircraft Corporation;
- Shenyang Xizi Aviation Industry Co., Ltd.;
- Sichuan Hangte Aviation Tech. Co., Ltd.;
- Star Tech Aviation Co., Ltd.;
- Sumec Instruments Equipment Co. Ltd.;
- Suzhou Eric Mechanics and Electronics Co. Ltd.;
- Wuxi Hyatech Co., Ltd.;
- Wuxi Paike New Mat. Tech. Co., Ltd.;
- Wuxi Turbine Blade Co. Ltd.;
- Xac Group Aviation Electronics Import & Export Co. Ltd.;
- XAIC Tech (Xi'an) Industrial Co., Ltd.;
- Xian Aero-Engine Controls Co., Ltd.;
- Xian Aircraft Industrial Company Limited;
- Xi'an Xae Flying Aviation Manufacturing Technology Co., Ltd.;
- Xian Xr Aero-Components Co. Ltd.;
- Yibin Sanjiang Machine Co., Ltd.; *and*
- Zhejiang Perfect New Material Co., Ltd.

Russia

- Admiralty Shipyard JSC;
- Aleksandrov Scientific Research Technological Institute NITI;
- Argut OOO;
- Communication center of the Ministry of Defense;
- Federal Research Center Boreskov Institute of Catalysis;
- Federal State Budgetary Enterprise of the Administration of the President of Russia;
- Federal State Budgetary Enterprise Special Flight Unit Rossiya of the Administration of the President of Russia;
- Federal State Unitary Enterprise Dukhov Automatics Research Institute (VNIIA);
- Foreign Intelligence Service (SVR);
- Forensic Center of Nizhniy Novgorod Region Main Directorate of the Ministry of Interior Affairs;
- Irkut Corporation;
- Irkut Research and Production Corporation Public Joint Stock Company;
- Joint Stock Company Scientific Research Institute of Computing Machinery;
- JSC Central Research Institute of Machine Building (JSC TsNIIMash);
- JSC Rocket and Space Centre—Progress;
- Kamensk-Uralsky Metallurgical Works J.S. Co.;
- Kazan Helicopter Plant PJSC;
- Komsomolsk-na-Amur Aviation Production Organization (KNAAPO);
- Korporatsiya Vsmpo Avisma OAO;
- Ministry of Defence RF;
- Molot Oruzhie;
- NPO High Precision Systems JSC;
- NPO Splav JSC;
- Oboronprom OJSC;
- PJSC Beriev Aircraft Company;
- PJSC Irkut Corporation;
- PJSC Kazan Helicopters;
- POLYUS Research Institute of M.F. Stelmakh Joint Stock Company;
- Promtech-Dubna, JSC;
- Public Joint Stock Company United Aircraft Corporation;
- Radiotechnical and Information Systems (RTI) Concern;
- Rapart Services LLC;
- Rosoboronexport OJSC (ROE);
- Rostec (Russian Technologies State Corporation);
- Rostekh—Azimuth;
- Russian Aircraft Corporation MiG;
- Russian Helicopters JSC;
- Sukhoi Aviation JSC;
- Sukhoi Civil Aircraft;
- Tactical Missiles Corporation JSC;
- Tupolev JSC;
- UEC-Saturn;
- United Aircraft Corporation;
- United Engine Corporation; *and*
- United Instrument Manufacturing Corporation.

Venezuela

This final rule adds and reserves a blank entry listing Venezuela in the Country column, but does not add any 'military end users' to the MEU List under Venezuela at this time. This final rule clarifies here that for purposes of § 744.21, entities of the U.S.-recognized interim government of Venezuela are not considered 'military end users' or engaged in 'military end uses' for purposes of the EAR.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on December 23, 2020, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous

eligibility for a License Exception or export or reexport without a license (NLR).

Export Control Reform Act of 2018

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

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 42.5 minutes for a manual or electronic submission, and OMB control number 0694–0134, Entity List and Unverified List Requests. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule, but are expected to slightly increase under OMB control number 0694–0134 because of the estimated thirteen removal or modification requests for the MEU List that BIS may receive each year. Each removal or modification request is estimated to impose a burden of 15 hours, so 15 × 13 is estimated to result in a burden increase of 195 hours under OMB control number 0694–0134.

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

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4801–4852), this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 756

Administrative practice and procedure, Exports, Penalties.

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

PART 744—[AMENDED]

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

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 18, 2020, 85 FR 59641 (September 22, 2020); Notice of November 12, 2020, 85 FR 72897 (November 13, 2020).

■ 2. Section 744.21 is amended by revising paragraph (b) to read as follows:

§ 744.21 Restrictions on Certain 'Military End Use' or 'Military End User' in the People's Republic of China, Russia, or Venezuela.

* * * * *

(b) *Additional prohibition on those informed by BIS.* BIS may inform you either individually by specific notice, through amendment to the EAR published in the **Federal Register**, or through a separate notice published in the **Federal Register**, that a license is required for specific exports, reexports, or transfers (in-country) of any item because there is an unacceptable risk of use in or diversion to a 'military end use' or 'military end user' in China, Russia, or Venezuela. Specific notice will be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary's designee. The absence of BIS notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section.

(1) 'Military End-User' (MEU) List BIS may inform and provide notice to the public that certain entities are subject to the additional prohibition described under this paragraph (b) following a determination by the End-User Review Committee (ERC) that a specific entity is a 'military end user' pursuant to this section and therefore any exports, reexports, or transfers (in-country) to that entity represent an unacceptable risk of use in or diversion to a 'military end use' or 'military end user' in China, Russia, or Venezuela. Such entities may be added to supplement no. 7 to part 744—'Military End-User' (MEU) List through **Federal Register** notices published by BIS, and will thus be subject to a license requirement for exports, reexports, or transfers (in-country) of items specified in supplement no. 2 to part 744. The listing of entities under supplement no. 7 to part 744 is not an exhaustive listing of 'military end users' for purposes of this section. Exporters, reexporters, and transferors are responsible for determining whether transactions with entities not listed on supplement no. 7 to part 744 are subject to a license requirement under paragraph (a) of this section. The process in paragraph this (b)(1) for placing entities on the MEU List is only one method BIS may use to inform exporters, reexporters, and transferors of license requirements under this section.

(i) *End-User Review Committee (ERC).* The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the MEU List. Decisions by the ERC for

purposes of the MEU List will be made following the procedures identified in this section and in supplement no. 5 to part 744—Procedures for End-User Review Committee Entity List and 'Military End User' (MEU) List Decisions.

(ii) *License requirement for parties to the transaction.* The license requirement for entities listed in supplement no. 7 to part 744 applies to the export, reexport, or transfer (in-country) of any item subject to the EAR listed in supplement no. 2 to part 744 when an entity that is listed on the MEU List is a party to the transaction as described in § 748.5(c) through (f).

(2) *Requests for removal from or modification of 'Military End User' (MEU) List.* Any entity listed on the MEU List may request that its listing be removed or modified. All such requests, including reasons therefor, must be in writing and sent to: Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW, Room 3886, Washington, DC 20230. In order for an entity listed on the MEU List to petition BIS for their removal or modification, as applicable, the entity must address why the entity is not a 'military end user' for purposes of § 744.21.

(i) *Review.* The ERC will review such requests for removal or modification in accordance with the procedures set forth in supplement no. 5 to this part.

(ii) *BIS action.* The Deputy Assistant Secretary for Export Administration will convey the decision on the request to the requester in writing. That decision will be the final agency action on the request.

* * * * *

■ 3. Supplement no. 5 to part 744 is revised to read as follows:

Supplement No. 5 to Part 744—Procedures for End-User Review Committee Entity List and 'Military End User' (MEU) List Decisions

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce, State, Defense, Energy and, where appropriate, the Treasury, will make all decisions to make additions to, removals from or changes to the Entity List and the 'Military End User' (MEU) List. The ERC will be chaired by the Department of Commerce and will make all decisions to add an entry to the Entity List and MEU List by majority vote and all decisions to remove or modify an entry by unanimous vote.

When determining to add an entity to the Entity List or MEU List or to modify an existing entry, the ERC will also specify the section or sections of the EAR that provide the basis for that determination. All additions and modifications to the MEU List are done pursuant to § 744.21(b). The license requirements, the license application review policy, or the availability of license exceptions for entities on the MEU List are specified in § 744.21 under paragraphs (b) to (e). In addition, for the Entity List if the section or sections that form the basis for an addition or modification do not specify the license requirements, the license application review policy, or the availability of license exceptions, the ERC will specify the license requirements, the license application review policy and which license exceptions (if any) will be available for shipments to that entity.

Any agency that participates in the ERC may make a proposal for an addition to, modification of, or removal of an entry from the Entity List or MEU List by submitting that proposal to the chairperson.

The ERC will vote on each proposal no later than 30 days after the chairperson first circulates it to all member agencies unless the ERC unanimously agrees to postpone the vote. If a member agency is not satisfied with the outcome of the vote of the ERC that agency may escalate the matter to the Advisory Committee on Export Policy (ACEP). A member agency that is not satisfied with the decision of the ACEP may escalate the matter to the Export Administration Review Board (EARB). An agency that is not satisfied with the decision of the EARB may escalate the matter to the President.

The composition of the ACEP and EARB as well as the procedures and time frames shall be the same as those specified in Executive Order 12981 as amended by Executive Orders 13020, 13026 and 13117 for license applications. If at any stage, a decision by majority vote is not obtained by the prescribed deadline the matter shall be raised to the next level.

A final decision by the ERC (or the ACEP or EARB or the President, as may be applicable in a particular case) to make an addition to, modification of, or removal of an entry from the Entity List or MEU List shall operate as clearance by all member agencies to publish the addition, modification or removal as an amendment to the Entity List or MEU List even if, in the case of a decision by the ERC to add an entry or any decision by the ACEP or EARB, such decision is not unanimous. Such amendments will not be further reviewed through the regular Export Administration Regulations interagency review process.

A proposal by the ERC to make any change to the EAR other than an addition to, modification of, or removal of an entry from the Entity List or MEU List shall operate as a recommendation and shall not be treated as interagency clearance of an EAR amendment. The chairperson of the ERC will be responsible for circulating to all member agencies proposals submitted to him or her by any member agency. The chairperson will be responsible for serving as secretary to the ACEP and EARB for all review of ERC matters. The chairperson will communicate all final decisions that require Entity List or MEU List amendments, to the Bureau of Industry and Security which shall be responsible for drafting the necessary changes to the Entity List and MEU List. If the ERC decides in a particular case that a party should be informed individually instead of by EAR amendment the chairperson will be responsible for preparing the ''is informed'' letter for the signature of the Deputy Assistant Secretary for Export Administration.

A listed entity may present a request to remove or modify its Entity List or the MEU List entry along with supporting information to the chairman at Room 3886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230. The chairperson shall refer all such requests and supporting information to all member agencies. The member agencies will review and vote on all such requests. The time frames, procedures and right of escalation by a member agency that is dissatisfied with the results that apply to proposals made by a member agency shall apply to these requests. The decision of the ERC (or the ACEP or EARB or the President, as may be applicable in a particular case) shall be the final agency decision on the request and shall not be appealable under part 756 of the EAR. The chairperson will prepare the response to the party who made the request. The response will state the decision on the request and the fact that the response is the final agency decision on the request. The response will be signed by the Deputy Assistant Secretary for Export Administration.

The End-User Review Committee will conduct regular reviews of the Entity List and MEU List for the purpose of determining whether any listed entities should be removed or modified. The review will include analysis of whether the criteria for listing the entity are still applicable and research to determine whether the name(s) and address(es) of

each entity are accurate and complete and whether any affiliates of each listed entity should be added or removed.

■ 4. Add Supplement No. 7 to part 744 to read as follows:

The addition reads as follows:

Supplement No. 7 to Part 744—'Military End-User' (MEU) List

The license requirement for entities listed in supplement no. 7 to part 744 applies to the export, reexport, or transfer (in-country) of any item subject to the EAR listed in supplement no. 2 to part 744. A license is required to export, reexport, or transfer (in-country) any item subject to the EAR listed in supplement no. 2 to part 744 when an entity that is listed on the MEU List is a party to the transaction as described in § 748.5(c) through (f). No license exceptions are available for exports, reexports or transfers (in-country) to listed entities on the MEU List for items specified in supplement no. 2 to part 744, except license exceptions for items authorized under the provisions of License Exception GOV set forth in § 740.11(b)(2)(i) and (ii) of the EAR as specified in § 744.21(c). The license application procedure and license review policy for entities specified in supplement no. 2 to part 744 is specified in § 744.21(d) and (e).

Country	Entity	**Federal Register** citation
CHINA, PEOPLE'S REPUBLIC OF.	Academy of Aerospace Solid Propulsion Technology (AASPT), Tian Wang te Zi #1, Baqiao District, Xian, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	The following eight subordinate institutions of Aero-Engine Company of China: *Subordinate institution:* AECC Aero Science & Technology Co. Ltd., Cheng-fa Industrial Park, ShuLong Road, SanHe Block, Sichuan, Chengdu, China.. AECC Aviation Power Co. Ltd., Xiujia Bay, Weiyong Dt., Xian 710021, China. *Subordinate institution:* AECC Beijing Institute of Aeronautical. Materials, No. 8 Hangcai Avenue, Beijing, Haidian District, China. *Subordinate institution:* AECC China Gas Turbine Establishment, No. 1 Hangkong Road, Mianyang, Sichuan Province, China. *Subordinate institution:* AECC Commercial Aircraft Engine Co. Ltd., No. 3998 South Lianhua Road, Shanghai 200241, Minhang District, China. *Subordinate institution:* AECC Harbin Dongan Engine Co., Ltd., No. 51 Baoguo Street, Haerbin 150036, China. *Subordinate institution:* AECC Shenyang Liming Aero Engine Co., Ltd., No. 6 Dongta Street, Shenyang 110043, China. *Subordinate instituion:* AECC South Industry Company Limited, 95 Xinghua West Road, Zhuzhou 412002, China.	
	Anhui Yingliu Hangyuan Power, 96 West Pihe Rd., Hengshan Town, Jiangxi, Shangrao, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	The following seven subordinate institutions of Aviation Industry Corporation of China: *Subordinate instituion:* AVIC Aircraft Co. Ltd., No. 1 Xifei Avenue, Xian 710089, Yanliang District, China. *Subordinate instituion:* AVIC Chengdu Aircraft Industrial (GROUP) Co., Ltd., No. 88 Weiyi Road, Huang Tianba, Chengdu 610091, China. *Subordinate instituion:* AVIC Flight Automatic Control Research Institute (FACRI), No. 92 Dianzi 1st Road, AVIC No 618 Institute, Xian 710065, China. *Subordinate instituion:* AVIC General Aircraft Huanan Industry Co. Ltd., No. 999, Jinhai Middle Road, Jinwan District, Building 201Z Huhai 519040, Guangdong Province, China. *Subordinate instituion:* AVIC General Aircraft Zhejiang Institute Co., Ltd., Floor 9, Building 1, 48 KeYuan Road, ZheJiang, China. *Subordinate instituion:* AVIC International Holding Corporation, No. 18 Beichen East Road, Beijing 100101 Chaoyang District, China. *Subordinate instituion:* AVIC Leihua Electronic Technology Research Institute (LETRI), No. 796 Liangxi Road, Binhu District 214063, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Baimtec Material Co., Ltd., No 5, Yongxiang North Road, Yongfeng Ind, Beijing 100094, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Beijing Aero Lever Precision Ltd., Houju St No. 3 Changping, High Tec Park, Beijing 102200, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Beijing Ander Tech. Co., Ltd. No. C22, Yu An Rd., Area B, Tianzhu, Beijing 101318, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].

Country	Entity	**Federal Register** citation
	Beijing Guang Ming Electronics Co., Ltd., No. 41 Yu Qiao Bei Li, Tongzhou District, Beijing 101100, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Beijing Siyuan Electronic Co., Ltd., Satellite Building, No. 63 Zhichun Road, Haidian District, Beijing 100086, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	CAST Xi'an Spaceflight Engine Factory, a.k.a., the following one alias: —7103 Factory. 7103 Factory No 6 Academy No 69, Shenzhou Second Road, Aerospace Base, Xian, China..	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Chengdu Holy Aviation Science & Tech, No. 220, Tongjiang Road, Pengzhou City, Sichuan 611936, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	China Aviation Ind. Std. Parts No. 355, Baiyun S. Road, Baiyun Dist, Gui Yang 550014, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	CSSC Xijiang Shipbuilding Co., Ltd., No. 133 Fenghuang Road, Liuzhou City, Guangxi 572000, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Elink Electronic Technology Co. Ltd., Room 717, Building 41, No. 8633 Zhongchun Road, Minhang District, Shanghai, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Fly Raise International Limited, Unit 04 7/F Bright Way Tower, No. 33 Mong Kok Road, Kowloon 999077, Hong Kong.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Fuhua Precision Man. Co, Fanhua Ave and Wanfoshan Rd, Taohua Ind. Park, Hefei City, Jingkai Dist, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Government Flying Service, 18 South Perimeter Road, Hong Kong Int'l Airport, Lantau, Hong Kong	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Guangzhou Hangxin Aviation Technology Co., Ltd., No. 1 Guangbao Road, Guangzhou Luogang District, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Guizhou Aviation Tech. Dev. Nat., Shangbashan Road, Guiyang City, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Guizhou Liyang Intl Manufacturing Co Ltd., No. 1 Gaotie Road, Anshun City 561102 Guizhou, China ...	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Hafei Aviation Industry Co., Ltd. (HAFEI), Nancheng Rd No. 2, HARBIN 150066, Heilongjiang Province, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Hangzhou Bearing Test & Research Center Co., Ltd., No. 333 Hua Feng Road, Hangzhou, Zhejiang, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Harbin General Aircraft Industry Co., Ltd., a.k.a., the following one alias: —Harbin Hafei Aviation Industry Co. Ltd. 15 Youxie Street, Harbin 150066, Pingfang District, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Henan Aerospace Precision Mach, 15 Xinnan Road, Xinyang 464000, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Hunan South General Aviation Engine Co., Ltd., Dongjiaduan, Hi-Tech Industry Zone, Zhuzhou, Hunan 412000, Lusong District, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Hutchison Optel Telecom Technology Co., Ltd., G–3, No. 67–1, Ke Yuan 3th Road, Chongqing Hitech Industrial Development Zone, Chongqing 400041, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Jiangsu Meilong Aviation Components Co., No. 88 Wufengshang Road, Suzhou, Zhenjiang 212132, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Jiatai Aircraft Equipment Co., Ltd., No. 1 ZhongHang Ave., Fancheng District, Xiangyang City, Hubei Province, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Jincheng Group Imp & Exp. Co. Ltd. Floor 26th Jincheng Plaza, 216 Middle Longpan Road, Nanjing, Jiangsu 210002, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Laboratory of Toxicant Analysis, Institute of Pharmacology and Toxicology, No. 27 Taiping Road, Beijing, Haidian District, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].

Country	Entity	Federal Register citation
	Molecular Devices Shanghai Corporation, No. 239 GangAo Road, WaiGaoQiao Free Trade Zone, Room 318, 3F, Building 2, Shanghai, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Nanjing Engineering Institute of Aircraft Systems (NEIAS), 33 Shuige Road, Jiangning Economic Development Zone, Nanjing 211106, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	National Satellite Meteorological Bureau, No. 46 Baishiqiao Road, HaiDian District, Beijing 100081, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Second Institute of Oceanography, Ministry of Natural Resources, No. 36 Baochubei Road, Hangzhou 310012, Hangzhou Xihu District, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Shaanxi Aero Electric Co., Ltd., 17th, Jinye 2 Road, Xian High Tech Zone Xian, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Shaanxi Aircaft Industry Co Ltd., P.O. 34, Hanzhong City 723213, Shaanxi Province, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Shanghai Aerospace Equip. Man., No. 100 Huaning Road, Shanghai 200245, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Shanghai Aircraft Design and Research Institute, No. 5 Yun Jin Road, Shanghai 200232, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Shanghai Aircraft Manufacturing Co. Ltd. (SAMC), No. 919 Shangfei Road, Shanghai 201324, Pudong New District, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Shanghai Tianlang Electronic Science Co., Ltd., 1500 Qinjiagang Road, Room 112 & 6, Shanghai, Pudong New Area, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Shenyang Academy of Instrumentation Science Co., Ltd., No. 242, Baihai Street, Shenyang 110043, Dadong District, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Shenyang Aircraft Corporation, 1 Lingbei Street, Shenyang 110000, Huanggu District, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Shenyang Xizi Aviation Industry Co., Ltd., 76–43 Shenbei Road, Shenyang 110136, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Sichuan Hangte Aviation Tech. Co., Ltd., No. 269, 3rd Tengfei Road, Southwest Airport Economy Development Zone, Chengdu 61000, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Star Tech Aviation Co., Ltd., Unit E1, 15/F, 41–43 Au Pui Wan Street, On Wah IND Bldg, Shatin, New Territories, Hong Kong 999077, Hong Kong.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Sumec Instruments Equipment Co. Ltd., 198 Changjiang Road, 14/F Nanjing 210018, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Suzhou Eric Mechanics and Electronics Co. Ltd., No. 8 Huqiao Road, Suzhou, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Wuxi Hyatech Co., Ltd., No. 35 Xindong an Road, Wuxi, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Wuxi Paike New Mat. Tech. Co., Ltd., No. 22 Lianhe Rd., Hudai Ind. Park, Wuxi Binhu District, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Wuxi Turbine Blade Co. Ltd., 1800 Huishan Ave., Economic Zone, Wuxi 214174, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Xac Group Aviation Electronics Import & Export Co. Ltd., 70# West Ave of Renmin, Xian 710089, Yanliang District, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	XAIC Tech (Xi'an) Industrial Co., Ltd. No. 1 Xifei Road, Xian Yanliang District, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Xian Aero-Engine Controls Co., Ltd., 750 Daqing Road, Xian, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Xian Aircraft Industrial Company Limited, No. 1 Xifei Avenue, Shanxi, Yanliang District, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].

Country	Entity	**Federal Register** citation
	Xi'an Xae Flying Aviation Manufacturing Technology Co., Ltd., No.12 Fengcheng Road, Xian 710018, Weiyang District, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Xian Xr Aero- Components Co. Ltd., Hongqi East Road, Xian 710021, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Yibin Sanjiang Machine Co., Ltd., No. 72 MinJiangBei Road, Yibin 64407, Sichuan, China	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Zhejiang Perfect New Material Co., Ltd., No. 28, Dingsheng Road, Leidian Town, Deqing County, HuZhou City, China.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
RUSSIA	Admiralty Shipyard JSC, 203, Fontanka Emb., 190121, St. Peterburg, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Aleksandrov Scientific Research Technological Institute NITI, Koporskoe Highway, House 72, Sosnovy Bor, Russia.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Argut OOO, 6 Mnevniki str end 6 fl, Moscow 123308, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Communication center of the Ministry of Defense, Bolshoi Znamenskiy per. 21, Moscow, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Federal Research Center Boreskov Institute of Catalysis, pr. Lavrentieva 5, Novosibirsk 630090, Russia.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Federal State Budgetary Enterprise of the Administration of the President of Russia, 1-ya Reysovaya Street, 1, Moscow 119027, Russia.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Federal State Budgetary Enterprise Special Flight Unit Rossiya of the Administration of the President of Russia, 1-ya Reysovaya Street, 1, Moscow 119027, Russia.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Federal State Unitary Enterprise Dukhov Automatics Research Institute (VNIIA), 22, Sushchevskaya Ul, Moscow 127055RU.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Foreign Intelligence Service (SVR), Yasenevo 11 Kolpachny, Moscow, 0101000	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Forensic Center of Nizhniy Novgorod Region Main Directorate of the Ministry of Interior Affairs, Gorkiy Street, 71, Nizhniy Novgorod 603950, Russia.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Irkut Corporation, Leningradsky Prospect 68, Moscow 125315, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Irkut Research and Production Corporation Public Joint Stock Company, 68 Leningradsky Prospect, Moscow 125315, Russia.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Joint Stock Company Scientific Research Institute of Computing Machinery, Melnichnaya Street, 31, Kirov 610025, Russia.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	JSC Central Research Institute of Machine Building (JSC TsNIIMash), Pionerskaya Street, 4, korpus 22, Moskovskaya obl., Korolov 141070, Russia.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	JSC Rocket and Space Centre—Progress, Zemetsa Street 18, Samarskaya Oblast, Samara 443009, Russia.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Kamensk-Uralsky Metallurgical Works J.S. Co., 5 Zavodskaya St., Kamensk Uralsky, 623405 Sverdlovsk region, Russia.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Kazan Helicopter Plant PJSC, Tetsevskaya St, Kazan 420085, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Komsomolsk-na-Amur Aviation Production Organization (KNAAPO), 1 Sovetskaya Street, Komsomolsk-on-Amur, Khabarovsky Krai, Russia 618018.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Korporatsiya Vsmpo Avisma OAO, Parkovaya Street 1, Verkhnaya Salda, Sverdlovsk region 624760, Russia.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Ministry of Defence RF, 19 Znamenka Str, Moscow 119160, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].

Country	Entity	Federal Register citation
	Molot Oruzhie, 612960, Kirov Oblast, Vyatskie Polyany, st. Lenin 135, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	NPO High Precision Systems JSC, Kievskaya Street 7, Moscow, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	NPO Splav JSC, 33 ul. Shcheglov Kaya Zaseka Tula, 300004 Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Oboronprom OJSC, 29/141 Vereiskaya Street, Moscow, 121357 Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	PJSC Beriev Aircraft Company, 1 Aviatorov Square, Taganrog 347923, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	PJSC Irkut Corporation, Regional Aircraft 26 Leninskaya Sloboda, Moscow 115280, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	PJSC Kazan Helicopters, Tetsevskaya Street, 14, Kazan, Tatarstan Republic 420085, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	POLYUS Research Institute of M.F. Stelmakh Joint Stock Company, Building 1, 3 Vvedenskogo Street, Moscow, 117342, Russia.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Promtech-Dubna, JSC, Programmistov st., 4, room 364, Dubna, Moscow 141983, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Public Joint Stock Company United Aircraft Corporation, Bolshaya Pionerskaya, Moscow 115054, Russia.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Radiotechnical and Information Systems (RTI) Concern, 127083, Moscow, 8 marta, 10/1 Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Rapart Services LLC, Aeroportovskaya str. 6/2, Solnechnogorskiy region, Dubrobki 141580, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Rosoboronexport OJSC (ROE), Strada Strominka 27, Moscow, 107076 Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Rostekh—Azimuth, Building 2, 5 Suite X Room 15 Floor 2, Narishkinskaya Alleya, Moscow 125167, Russia.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Rostec (Russian Technologies State Corporation), 24 Usacheva Street, Moscow, Russia 119048	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Russian Aircraft Corporation MiG, Leningradskoe highway, 6, building 1, Moscow, 125171 Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Russian Helicopters JSC, Bolshaya Pionerskaya, 1, Moscow, 123610 Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Sukhoi Aviation JSC, Polikarpov str., 23B, Moscow, 125284 Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Sukhoi Civil Aircraft, 1 Sovetskaya Street, Komsomolsk-On-Amur 681018, Russia; *and* 15 Tupoleva Street, OP JSC SCA, Zukhovskiy 140180, Russia; *and* 23b Bld 2 Polikarpova St, Moscow 125824, Russia; *and* 26, Bld. 5, Leninskaya Sloboda Street, Moscow, 115280, Russia; *and* Antonova Avenue 1, Ulianovsk 432072, Russia; *and* Leningradskaya Street 80/4A, Komsomolsk-On-Amur 681007, Russia.	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Tactical Missiles Corporation JSC, KorolevIlyicha Street, 7, 141080, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	Tupolev JSC, Academician Tupolev Embankment 17, Moscow, 105005, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	UEC-Saturn, 163 Lenin Avenue, Rybinsk 152903, Yavoslavl Region, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	United Aircraft Corporation, Bolshaya Pionerskaya str., 1, Moscow, 115054, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].

Country	Entity	**Federal Register** citation
	United Engine Corporation, 16, Budyonny Avenue, Moscow, 105118 Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
	United Instrument Manufacturing Corporation, Vereiskaya 29, str. 141, Moscow, Russia	85 FR [INSERT FR PAGE NUMBER AND 12/23/2020].
VENEZUELA	[RESERVED]	[RESERVED]

PART 756—[AMENDED]

■ 5. The authority citation for part 756 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 6. Section 756.2 is amended by revising paragraph (a)(3) to read as follows:

§ 756.2 Appeal from an administrative action.

(a) * * *

(3) A decision on a request to remove or modify an Entity List entry made pursuant to § 744.16 of the EAR, a decision on a request to remove or modify an Unverified List entry made pursuant to § 744.15 of the EAR, or a request to remove or modify a Military End User entry made pursuant to § 744.21(b) of the EAR.

* * * * *

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–28052 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 361

[Docket No. 201014–0270]

RIN 0625–AB18

Aluminum Import Monitoring and Analysis System

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the U.S. Department of Commerce (Commerce) adopts the Aluminum Import Monitoring and Analysis (AIM) system by promulgating new regulations that establish a website for the AIM system that consists of an online aluminum import license application platform and public AIM monitor; require importers, customs brokers or their agents to apply for and obtain an import license for each entry of certain aluminum products into the United States through the AIM system website; require license applicants to identify, among other requirements, the country or countries where the largest and the second largest volume of primary aluminum used in the manufacture of the imported aluminum product was smelted (subject to certain exceptions) and the country where the aluminum product was most recently cast; allow for the public release of certain import license data on an aggregate basis, as appropriate, on the public AIM monitor; and apply the license requirement to all imports of basic aluminum products. Further, Commerce is adopting the aluminum import license application form in accordance with the Paperwork Reduction Act (PRA). Lastly, Commerce is notifying parties that, after the AIM system is in place, Commerce will seek additional comment from parties on potential improvements or changes to the system in a subsequent notice.

DATES:

Effective date: January 25, 2021.

Applicability date: The AIM system website will be operational on January 4, 2021. Therefore, potential license applicants will be able to obtain their user identification numbers and apply for licenses beginning on January 4, 2021. Licenses will be required for all covered aluminum imports on or after January 25, 2021. For further information regarding a one-year delay for portions of the final rule, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The new AIM system website that will be operational on January 4, 2021 is *https://www.trade.gov/aluminum.* Through this website, potential license applicants can register for the online license application platform and apply for licenses. Additionally, the public AIM monitor is also featured on this website.

More information can be found at *https://www.trade.gov/aluminum.* Commerce is offering a virtual demonstration of the online license application platform for potential license applicants. Commerce is also offering a virtual demonstration of the public AIM monitor, which is available to the general public. Although the demonstrations will be completely virtual, Commerce will have a limited number of spots available for participation in the demonstrations, that will occur prior to the effective date of this rule. For specific dates and times of the demonstrations, and to participate in the demonstrations, please visit *https://www.trade.gov/aluminum.*

FOR FURTHER INFORMATION CONTACT: Julie Al-Saadawi at (202) 482–1930, Brandon Custard at (202) 482–1823, or Jessica Link at (202) 482–1411.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2019, the United States announced joint understandings with Canada and Mexico, respectively, concerning trade in aluminum covered by the action taken pursuant to Section 232 of the Trade Expansion Act of 1962, as amended. Among other things, the understandings call for the monitoring of aluminum trade between the United States and Canada and Mexico, respectively. Consistent with the joint understandings, and to enhance U.S. Government monitoring and analysis of aluminum products more generally, Commerce published a proposed rule on April 29, 2020 to establish the AIM system. The goal of the AIM system is to allow for the effective and timely monitoring of import surges of specific aluminum products and to aid in the prevention of transshipment of aluminum products. Over the past two decades, Commerce has operated the similar recently updated Steel Import Monitoring and Analysis (SIMA) system that allows for the effective and timely monitoring of import surges of specific steel products, and aids in the prevention of transshipment of steel products.

Modeling the AIM System on the SIMA System

To the extent practicable, the AIM System will operate in a similar manner as the SIMA system, which has been operating under its current authority

since March 11, 2005.[1] The purpose of the SIMA system is to provide steel producers, steel consumers, importers, and the general public with accurate and timely information on anticipated imports of certain steel products into the United States. Steel import licenses, issued through the online SIMA licensing system, are required by U.S. Customs and Border Protection (CBP or Customs) for filing entry summary documentation, or its electronic equivalent, for imports of certain steel mill products into the United States. Through the monitoring tool, certain import data collected from the licenses are aggregated weekly and reported on the publicly available SIMA website, *https://www.trade.gov/steel.* This tool provides valuable data regarding U.S. imports of certain steel mill imports, as early as possible, and makes such data available to the public up to eight weeks in advance of official U.S. import statistics issued by the U.S. Census Bureau (Census).

Section 232 Tariff on Imports of Aluminum Into the United States

On January 19, 2018, pursuant to section 232 of the Trade Expansion Act of 1962 (the Trade Expansion Act), as amended (19 U.S.C. 1862), the Secretary of Commerce (Secretary) transmitted to the President a report on his investigation into the effect of imports of aluminum articles on the national security of the United States.[2] The Secretary found and advised the President that aluminum articles were being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.[3] In Presidential Proclamation 9704 of March 8, 2018 (Adjusting Imports of Aluminum Into the United States) (Proclamation 9704), the President concurred with the Secretary's findings and decided to adjust the imports of aluminum articles, as defined in clause 1 of Proclamation 9704, by imposing a 10 percent ad valorem tariff on such articles imported from most countries.[4] Between March 2018 and August 2020, the President made several additional adjustments to the imports of aluminum articles.[5]

As a result, effective March 23, 2018, certain aluminum imports were subject to Section 232 tariffs, and imports from Canada and Mexico were exempted from these tariffs. With respect to Canada and Mexico, Proclamation 9704 provided that the United States would continue ongoing discussions with these countries and exempt aluminum imports from these countries from Section 232 tariffs.[6] Further, Proclamation 9704 stated that Canada and Mexico would be expected to take action to prevent transshipment of aluminum imports through these countries to the United States.[7] Subsequently, Presidential Proclamation 9758 of May 31, 2018 (Adjusting Imports of Aluminum into the United States) (Proclamation 9758) removed the exemption for aluminum imports from Canada and Mexico, and imposed Section 232 duties on aluminum imports from these countries, effective June 1, 2018.[8]

On May 17, 2019, the United States announced that discussions had yielded joint understandings with Canada and Mexico, respectively, to remove the Section 232 tariffs for aluminum imports from those countries.[9] As part of the joint understandings, the United States and Canada, and the United States and Mexico, agreed to implement effective measures to prevent the transshipment of aluminum products made outside of the United States, Canada, and Mexico, among other commitments. Additionally, the joint understandings provide that the countries will establish an agreed-upon process for monitoring aluminum trade between them. In light of the joint understandings, Presidential Proclamation 9893 of May 19, 2019 (Adjusting Imports of Aluminum into the United States) (Proclamation 9893) provided that a satisfactory alternative means had been agreed upon and, effective May 21, 2019, aluminum imports from Canada and Mexico would not be subject to Section 232 tariffs.[10]

Proposed Rule

On April 29, 2020, Commerce published a proposal for the establishment of the AIM system in 19 CFR part 361.[11] Commerce received 17 comments on the *Proposed Rule,* and we have addressed those comments below. The *Proposed Rule,* comments received, and this final rule can be accessed using the Federal eRulemaking portal at *http://www.regulations.gov/.* After analyzing and considering the comments received, we are adopting regulations to establish the AIM system.

Explanation of Regulatory Provisions and Changes From the Proposed Rule

Pursuant to its authority under the Census Act, as amended (the Census Act) (13 U.S.C. 301(a) and 302), and consistent with the joint understandings, Commerce is establishing a system of import licensing to facilitate the monitoring of imports of aluminum articles, including monitoring for import surges, known as the AIM system. Commerce has thus proposed a rule and received comments regarding the establishment of the AIM system. The AIM system will operate in a similar way as the existing SIMA system (19 CFR part 360) and will be codified under 19 CFR part 361. Also, Commerce recently incorporated minor changes into its regulations for the SIMA system.[12] The AIM system tracks the modified SIMA system as closely as possible except where necessary to address the inherent differences between steel and aluminum imports.

The responsibility for issuing these regulations is delegated to the Assistant Secretary for Enforcement and Compliance.

[1] *See Steel Import Monitoring and Analysis System,* Final Rule, 70 FR 72373 (December 5, 2005).

[2] *See The Effect of Imports of Aluminum on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, As Amended, U.S. Department of Commerce Report,* dated January 11, 2018 (*https://www.commerce.gov/files/effect-imports-aluminum-national-security-investigation-conducted-under-section-232-trade*).

[3] *Id.*

[4] *Adjusting Imports of Aluminum Into the United States, Proclamation 9704,* 83 FR 11619, 11620 (March 15, 2018) (*Presidential Proclamation 9704*).

[5] *See Adjusting Imports of Aluminum Into the United States, Proclamation 9710,* 83 FR 13355 (March 22, 2018) (*Presidential Proclamation 9710*); *Adjusting Imports of Aluminum Into the United States, Proclamation 9739,* 83 FR 20677 (April 30, 2018) (*Presidential Proclamation 9739*); *Adjusting Imports of Aluminum Into the United States, Proclamation 9758,* 83 FR 25849 (May 31, 2018) (*Presidential Proclamation 9758*); *Adjusting Imports of Aluminum Into the United States, Proclamation 9776,* 83 FR 45019 (August 28, 2018) (*Presidential Proclamation 9776*); *Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles into the United States, Proclamation 9980,* 85 FR 5281 (January 24, 2020) (*Presidential Proclamation 9980*); and *Adjusting Imports of Aluminum Articles Into United States, Proclamation 10060,* 85 FR 49921 (August 14, 2020) (*Presidential Proclamation 10060*).

[6] *See Presidential Proclamation 9704,* 83 FR at 11620.

[7] *Id.*

[8] *See Presidential Proclamation 9758,* 83 FR at 25850.

[9] *See* Joint Statement by the United States and Canada on Section 232 Duties on Steel and Aluminum, dated May 17, 2019, *available at https://ustr.gov/sites/default/files/Joint_Statement_by_the_United_States_and_Canada.pdf;* Joint Statement by the United States and Mexico on Section 232 Duties on Steel and Aluminum, dated May 17, 2019, *available at https://ustr.gov/sites/default/files/Joint_Statement_by_the_United_States_and_Mexico.pdf.*

[10] *See Adjusting Imports of Aluminum into the United States, Proclamation 9893,* 84 FR 23983 (May 19, 2019).

[11] *Aluminum Import Monitoring and Analysis System Proposed Rule,* 85 FR 23748 (April 29, 2020) (*Proposed Rule*).

[12] *See Modification of Regulations Regarding the Steel Import Monitoring and Analysis System,* 85 FR 56162 (September 11, 2020) (*SIMA Modification*).

The AIM system is based entirely on a web-based platform at *https://www.trade.gov/aluminum* and is comprised of the online registration system, automatic aluminum import license issuance system, and aluminum import monitor. As addressed in further detail below, for purposes of importing basic aluminum products,[13] any importer, importing company, customs broker or importer's agent of basic aluminum products must (1) register and obtain a username, (2) file for and obtain a unique aluminum import license (issued automatically) for each shipment, and (3) provide the license number to CBP as part of the submission of the entry summary form, Customs Form 7501, or its electronic equivalent. As discussed below, aluminum imports valued under $5,000 per shipment may obtain a multi-use low-value license. Additionally, informal entries are exempt from the licensing requirement.[14]

The public AIM monitor, described further below, will aggregate and report certain information obtained from the aluminum licenses on a monthly basis and will be refreshed each week, as appropriate. Additionally, outdated license information will be replaced, where available, with publicly available U.S. import statistics. Like the public SIMA monitor, the public AIM monitor will function as an early warning system, yielding public data up to eight weeks prior to the release of publicly available import statistics by Census.

Online Registration System and Automatic Aluminum Import License Issuance System

Similar to the SIMA system, the AIM system will include both an online registration system and an automatic aluminum import license issuance system, as provided in 19 CFR 361.101–103. Section 361.102, covering the online registration system, provides that in order to obtain an aluminum import license, any importer, importing company, customs broker or the importer's agent must first register with Commerce and obtain a username to log into the automatic aluminum import license issuance system. Although a primary username will be issued to an importing company or brokerage house, all operating units within the company (*e.g.,* individual branches, divisions or employees) may have separate usernames associated with different email addresses that will be associated with the parent company. The AIM system will be designed to allow multiple users of a single Employer Identification Number (EIN) from different locations within the company to enter information simultaneously.

There is no fee to register (*see* § 361.106), and a username will be issued immediately if all registration fields are completed. As part of the registration process, the importer, importing company, customs broker, or importer's agent will be required to provide certain general information, including the applicant company name, EIN or the CBP-issued importer number (where no EIN is available), address, phone number, and email address for both the company's headquarters and any branch offices that will be applying for aluminum licenses. This information will be used solely for the purposes of administering the aluminum import licensing and monitoring programs. The information will not be released by Commerce, except as required by U.S. law.

Section 361.103, covering the automatic issuance of import licenses, provides that aluminum import licenses will be issued to registered importers, customs brokers, or their agents through an automatic aluminum import licensing system. The separately issued username discussed above will be required to apply for the import license. There will be no fee charged to apply for the import licenses (see § 361.106). Like steel import licenses, aluminum import licenses will be issued automatically after the completion of all fields on the application form. In order to obtain the license, the applicant (also referred to as the filer) must report the information identified under § 361.103(c)(1) in the fields of the license application form. Certain fields will be generated automatically in the license form from the information in the registration system. Other information will be available from drop down lists in the application form (*e.g.,* aluminum HTS numbers, country of origin, country of smelt, port of entry) and will not have to be typed.

Much of the information requested on the license form is readily available to the importer or its broker and is similar to the information required by CBP for purposes of the entry summary. For certain fields, the information requested is not already required by CBP. Specifically, in the *Proposed Rule* Commerce proposed a field to reflect the country where the primary aluminum used in the manufacture of the imported aluminum product was smelted and poured. However, based on comments, and as discussed further below, in this final rule Commerce has altered this requirement. As stated in § 361.103(c)(1)(xiii), (xiv), and (xv), Commerce requires the applicant to provide information in three separate fields: (1) The country where the largest volume of primary aluminum used in the manufacture of the imported aluminum product was smelted (referred to as ''country of smelt for the largest volume of primary aluminum'' as shorthand), (2) the country where the second largest volume of primary aluminum used in the manufacture of the imported aluminum product was smelted (referred to as ''country of smelt for the second largest volume of primary aluminum'' as shorthand), and (3) the country where the aluminum used in the imported aluminum product was most recently cast (referred to as ''country of most recent cast'' for shorthand). These fields are further described under § 361.103(c)(3). The reference to ''pour'' and ''poured'' is removed from the final rule.

Section 361.103(c)(3)(i)(A) defines the field for the country of smelt for the largest volume of primary aluminum as the country where the largest volume of new aluminum metal is produced from alumina (or aluminum oxide) by the electrolytic Hall-Héroult process.[15] Section 361.103(c)(3)(i)(B) provides that filers may state ''not applicable'' in this field if the product contains only secondary aluminum and no primary aluminum. Secondary aluminum is defined as aluminum metal that is produced from recycled aluminum scrap through a re-melting process.[16] Additionally, recognizing that importers may have some initial difficulties in securing this information,

[13] The AIM system will cover basic aluminum products under the following HTS codes: 7601, 7604, 7605, 7606, 7607, 7608, 7609, 7616.99.51.60, and 7616.99.51.70. As discussed in 19 CFR 361.101(a)(1), a list of the products covered by the AIM system by Harmonized Tariff Schedule (HTS) codes can be obtained on the AIM system website. The HTS codes, which are maintained by the U.S. International Trade Commission (ITC), may be updated periodically to reflect revisions to the codes.

[14] *See* 19 CFR 143.21 through 143.28 for further information on informal entries.

[15] As discussed further below, this definition is directly responsive to the comments raised on the *Proposed Rule* as well as third-party sources, such as the discussion of primary aluminum production featured on the website of the Aluminum Association (available at *https://www.aluminum.org/industries/production/primary-production*). This discussion demonstrates that there is a well-understood and generally accepted description of the primary aluminum production process in the aluminum industry that allows Commerce to adopt the definitions in this final rule.

[16] As discussed further below, this definition takes into account comments on the *Proposed Rule* as well as third-party sources, such as the discussion of secondary aluminum production featured on the website of the Aluminum Association (available at *https://www.aluminum.org/industries/production/secondary-production*).

§ 361.103(c)(3)(i)(C) allows filers to state ''unknown'' for this field on the license application on a temporary basis. Specifically, ''unknown'' may be stated for a period of one year from the publication of the final rule (*i.e.,* up to December 23, 2021) to allow license applicants sufficient time to gather the requisite information. Effective December 24, 2021, filers will no longer be able to state ''unknown'' and then will be required to provide the requested information for this field.

Similar to the country of smelt for the largest volume of primary aluminum field, § 361.103(c)(3)(ii)(A) defines the field for the country of smelt for the second largest volume of primary aluminum as the country where the second largest volume of new aluminum metal is produced from alumina (or aluminum oxide) by the electrolytic Hall–Héroult process. Section 361.103(c)(3)(ii)(B) also provides that filers may state ''not applicable'' in this field if the product contains only secondary aluminum and no primary aluminum. Additionally, filers may state ''not applicable'' in this field if the product does not contain a second largest volume of primary aluminum. Further, filers will be allowed to state ''unknown'' in this field for a period of one year from the publication of the final rule (*i.e.,* up to December 23, 2021) for the reasons stated above. Effective December 24, 2021, filers will no longer be able to state ''unknown'' and then will be required to provide the requested information for this field.

Section 361.103(c)(3)(iii)(A) defines the field for the country of most recent cast as the country where the aluminum (with or without alloying elements) was last liquified by heat and cast into a solid state. The final solid state can take the form of either a semi-finished product (slab, billets or ingots) or a finished aluminum product.[17] Unlike the two fields described above, section 361.103(c)(3)(iii)(B) and (C) provide that filers will not be allowed to state ''not applicable'' or ''unknown'' for this field. As discussed further below, the country of most recent cast is information that generally is readily available to the importer or its broker and is most likely to be identified in the import documentation accompanying the entry summary to be filed with CBP (invoices, lab reports, etc.). In some instances, the country of most recent cast may be identified as the country of origin. Further, because a semi-finished or finished aluminum product could go through the casting process multiple times before importation into the United States, the field only requests the country of most recent cast.

A sample copy of the aluminum import license and the accompanying instructions will be available for viewing on Enforcement and Compliance's website (*https://www.trade.gov/aluminum/*). Upon completion of the application form, the importer, customs broker or the importer's agent will certify as to the accuracy and completeness of the information and submit the form electronically. Once the license is issued, the system will automatically issue an aluminum import license number which will appear on the application page. The applicant will also receive a confirmation email. The refreshed form containing the submitted information and the newly issued license number will appear on the screen (the ''license form''). Applicants can print the license form themselves. If needed, copies of completed license forms can be retrieved by the user or requested from Commerce during normal business hours.

Section 361.103(e) requires that users correct licenses themselves if they determine that there is an error submitted. To access a previously issued license, a user must log on with his/her username and identify the license number and the volume (quantity in kilograms) for the first product shown on the license. The information on the license should match the information presented in the entry summary data as closely as possible which includes the value and quantity of the shipment, the expected date of importation, and the customs port of entry.

Pursuant to § 361.101(b), the aluminum import license will be required for every entry of covered aluminum products (with certain exceptions for foreign trade zones and informal entries described below). As with SIMA, a single license can cover multiple products, as long as the information at the top of the form (*i.e.,* importer, exporter, manufacturer, country of origin and exportation, the expected date of export, first and second country of smelt, and expected date of import), are the same for the shipment. However, separate licenses will be required if any of the information above differs with respect to a given set of covered imported aluminum products. As a result, a single CBP entry may require more than one aluminum import license. The applicable license number(s) must cover the total quantity of the aluminum product entered and should match the information provided on the CBP entry summary. There is no requirement to present physical copies of the license forms at the time of entry summary. However, copies must be maintained in accordance with CBP's normal requirements. Licenses will be issued for single use and will be specific to an entry (as discussed above), with the exception of low-value licenses described below.

Certain information collected from the license application system that can be aggregated without revealing business proprietary information will be reported on the public AIM monitor, as described in further detail below. All other information including copies of the licenses and the names of importers, exporters, and manufacturers, will be considered business proprietary information and will not be released to the public.

Duration of the Aluminum Import License

In accordance with § 361.103(d), the aluminum import license can be applied for up to 60 days prior to the expected date of import and until the date of filing of the CBP entry summary documents, or its electronic equivalent. The aluminum import license is valid for up to 75 days. However, import licenses which are valid on the date of import but expire prior to the filing of CBP entry summary documents will be accepted. Issues related to foreign trade zones are addressed below.

License Rules for Certain Types of Entries

In accordance with § 361.101(e), aluminum import licenses are not required on temporary importation bond (TIB) entries, transportation and exportation (T&E) entries or entries into a bonded warehouse. Covered aluminum products withdrawn for consumption from a bonded warehouse will require a license at the entry summary.

Foreign Trade Zone Admissions

Pursuant to § 361.101(c), all shipments of covered aluminum products into foreign trade zone (FTZ), known as FTZ admissions, will require an aluminum import license prior to the filing of FTZ admission documents. The license number(s) must be reported on the FTZ admission documents and/or status designation (Customs Form 214) at the time of filing. There is no requirement to present physical copies of the license forms at the time of FTZ admission. However, copies must be

[17] As discussed further below, this definition takes into account comments on the *Proposed Rule* as well as third-party sources, such as the discussion of aluminum processing featured on the website of the Aluminum Association (available at *https://www.aluminum.org/industries/processing*).

maintained in accordance with Customs' normal requirements. FTZ admission documents without the required license number(s) will not be considered complete and will be subject to liquidated damages for violation of the bond condition requiring timely completion of admission. A further aluminum import license will not be required for shipments of entries for consumption from zones into the commerce of the United States. In the case of FTZ admissions, the aluminum import license can be applied for up to 60 days prior to the expected date of importation into the Zone and until the date of filing of Customs Form 214. For FTZs, the licenses do not expire and covered aluminum products do not require a new license when leaving the zone and entering for consumption.

Informal Entries and Low-Value Licenses

In accordance with § 361.101(d), no import license shall be required on informal entries of covered aluminum products, such as merchandise valued at less than $2,500 (*see* 19 CFR 143.21 through 143.28 for further information). This exemption applies to informal entries only; imports of aluminum valued at less than $2,500 that are part of a formal entry will require a license.

Pursuant to § 361.103(f), for shipments containing less than $5,000 worth of aluminum, applicants can apply for a reusable low-value license.

Public AIM Monitor

As provided in § 361.104, the public AIM monitor, featured on the AIM system website, will report certain aggregate information on imports of aluminum product categories using both publicly available import data and data obtained from the aluminum licenses. The public AIM monitor will provide information on U.S. imports of aluminum from all countries by broad product categories in both value and volume measures. Once the license collection begins, additional data will be added to the public AIM monitor. Aggregate data will be reported, as appropriate, on a monthly basis by country of origin, country where the largest volume of primary aluminum used in the manufacture of the product was smelted, country where the second largest volume of primary aluminum used in the manufacture of the product was smelted, country of most recent cast, and relevant aluminum product grouping, etc. and will include import quantity (metric tons), import Customs value (U.S. $), and average unit value ($/metric ton). The website will also contain certain aggregate data at the 6-digit Harmonized Tariff Schedule level and will also present a range of historical data for comparison purposes. Provision of aggregate data on the website may be revisited should concerns arise over the possible release of proprietary data. The public AIM monitor will be similar to SIMA's but will not incorporate preliminary Census data. Commerce believes that the early release preliminary data from Census is not critical to the early warning monitor because the aluminum import license data will be available.

With respect to the public AIM monitor, which will aggregate and report certain license data, Commerce will only release or update weekly data on the country of smelt and cast for each product group (at the 6-digit HTS level) if there are sufficient observations for the product groups. Commerce releases data on its public AIM monitor under the authority of the Census Act (13 U.S.C. 301(a) and 302) and must adhere to Census guidance for the release of data which requires the protection of proprietary data. After collecting the data on the countries of smelt and country of most recent cast, Commerce will determine whether there are sufficient data observations to report at a 6-digit product group level without disclosing proprietary data. The public AIM monitor will divide license data into various product groupings, which can be seen at *https://www.trade.gov/aluminum.* In instances where there are few (*i.e.,* less than three) observations of certain country of origin/product group combinations, Commerce will not provide this disaggregated data (*i.e.,* product group level) when adding the countries of smelt and country of cast data. Further, provision of aggregate data on the public AIM monitor may be revisited should concerns arise over the possible release of business proprietary data.

Reported monthly import data will be updated each week with new data collected from licenses issued in the prior week. The data collected may be adjusted periodically for corrected, canceled or unused aluminum import licenses, if deemed appropriate, for accurate monitoring purposes. Information provided in the public AIM monitor will mirror the information available on the public SIMA monitor.[18]

The public AIM monitor will also present a range of historical data for comparison purposes. This will include comparisons to the previous month and to the same month in the previous year; three month rolling averages along with similar comparisons to the immediately preceding period, the same period from the preceding year; and monthly import data on each aluminum product category.

At the sub-regulatory level, Commerce will consider adding additional product groups (for example, aluminum scrap) to the public AIM monitor beyond the HTS categories covered by the license requirement, which will be based on publicly available import data.[19]

Miscellaneous Provisions

Section 361.105 is reserved. Section 361.106 provides that no fees will be charged for obtaining a username, issuing an aluminum import license or accessing the public AIM monitor. Additionally, § 361.107 provides that the AIM system will generally be accessible 24 hours a day, 7 days a week but may be unavailable at times for server maintenance. If the system is unavailable for an extended period of time, parties will be able to obtain licenses from Commerce directly via email (*aluminum.license@trade.gov*) during regular business hours. Should the system be inaccessible for an extended period of time, Commerce would advise Customs to consider this as part of mitigation on any liquidated damage claims that may be issued. Lastly, § 361.108 states that Commerce may revoke a filer's electronic licensing privileges if the filer consistently files inaccurate licensing information or otherwise abuses the system. In such instances, the filer would only be able to obtain a license directly from Commerce, which may take 10 working days to process. Delays in the filing caused by the removal of a filer's electronic filing privilege will not be considered a mitigating factor by CBP.

Response to Comments Received on the Proposed Rule

Commerce received 17 comments on the proposed rule that Commerce considered in finalizing this rule. Below is a summary of the comments, grouped by issue category, followed by Commerce's response. Further, because the AIM system is being adopted for the first time in this final rule, after the AIM system is in place, Commerce will seek additional comment from parties on potential improvements or changes to the system in a subsequent notice. Parties will have the opportunity to provide further comment on any issue

[18] *See SIMA Modification.*

[19] As discussed below, after the AIM system is in place, Commerce will seek additional comment from parties on potential improvements or changes to the system in a subsequent notice, including adding aluminum scrap products to the licensing requirement.

discussed herein or any related topic at that time.

1. Country of Smelt and Pour Field

Several commenters supported the general concept of a ''smelt and pour'' requirement, while several other commenters opposed it. Most commenters recommended using the term ''smelt and cast'' instead of ''smelt and pour'' because they argued that ''pour'' was not a term used widely in the aluminum industry. These commenters recommended a wide range of alternatives.

a. Replacing ''Pour'' With ''Casting''

Several commenters recommended that Commerce collect information on the country of smelt and replace the term ''pour'' with the country of most recent cast. Another commenter recommended collecting information only on the country of most recent cast, but not the country where primary aluminum was smelted.

b. Traceability of Country of Smelt

Several commenters stated that filers would not always know where primary aluminum used in their products was originally smelted because primary aluminum is often smelted and shipped to one or more third countries where it may be re-melted, alloyed, and/or shaped before shipment to the U.S. These commenters were concerned that tracing the primary aluminum, from the original smelting, through all the stages of re-melting in different countries might not be possible. However, several other commenters asserted that it is possible to trace the country of smelt, but it might take some time to gather such information. Another commenter requested that Commerce collect information on country of origin, and opposed collecting information on smelting, pouring, or casting. This commenter stated that it would be burdensome to collect information beyond country of origin for alloys and secondary products but did not provide further details about the burden. This commenter also stated that it would be impossible to collect ''smelt and pour'' information for scrap.

One commenter asserted that aluminum semi-finished goods (profiles, castings, and rolled products) were produced using a mixture of primary aluminum, secondary (recycled) aluminum, and pre- and post-consumer aluminum scrap. The commenter stated that it was unclear how a smelt and pour field should be completed for typical aluminum products where the aluminum was smelted in various countries. This commenter recommended removing the smelt and pour field altogether, allowing an ''unknown'' option, or replacing smelt and pour with ''last melted and poured.'' Several other commenters explained that some aluminum imports contain only secondary (recycled) aluminum and, as a result, requested that importers have the option of reporting ''no primary aluminum'' in the smelt and pour (or smelt and cast) field. Another commenter also requested that the AIM system collect information on country of alloying which may be different from the country of most recent cast.

c. Requiring Further Documentation and Additional Requirements

Two commenters requested that Commerce collect documentation regarding the country of smelt and pour or the country of origin. One of these commenters requested that Commerce collect Country of Origin and Country of Analysis certificates, and another commenter requested the collection of mill test certificates for each stage of processing. Another commenter suggested that CBP examine the aluminum licenses, not just the license number, and inspect them against other import documents. Similarly, another commenter suggested that documentation proving Mexican country of origin should be required for imports from Mexico. These commenters expressed concerns that primary aluminum could be produced in countries other than Canada and Mexico, shipped to these countries as either ingots or other shapes, re-melted, and then entered duty-free if declared as Canadian or Mexican country of origin.

Response: In the *Proposed Rule,* Commerce proposed a field to reflect the country where the primary aluminum used in the manufacture of the imported aluminum product was smelted and poured. Based on comments received on the *Proposed Rule,* Commerce will make several modifications to better reflect the characteristics of the aluminum industry and provide clarity to license applicants. These modifications are described in detail above and summarized here.

Specifically, the reference to ''country of smelt'' has been further refined and the reference to ''country of pour'' is removed from the final rule. Pursuant to § 361.103(c)(1)(xiii), (xiv), and (xv), Commerce will require the license applicant to provide information in three separate fields: (1) The country where the largest volume of primary aluminum used in the manufacture of the imported aluminum product was smelted (referred to as ''country of smelt for the largest volume of primary aluminum'' as shorthand), (2) the country where the second largest volume of primary aluminum used in the manufacture of the imported aluminum product was smelted (referred to as ''country of smelt for the second largest volume of primary aluminum'' as shorthand), and (3) the country where the aluminum used in the imported aluminum product was most recently cast (referred to as ''country of most recent cast'' for shorthand). These fields are further described under § 361.103(c)(3), including definitions. These updates also are adopted in the aluminum license application form. We address individual comments below.

As discussed above, after the AIM system is in place, Commerce will seek additional comment from parties on potential improvements or changes to the system in a subsequent notice. In particular, parties may comment on the requirement to report the country of smelt for the largest and second largest volume of primary aluminum and the country of most recent cast discussed herein.

A. Replace ''Pour'' With the Term ''Most Recent Casting'' and Have Separate License Fields for ''Smelting'' and ''Most Recent Casting''

We agree with commenters that the reference to ''country of pour'' should be removed from the final rule because this term is not widely used in the aluminum industry. Additionally, based on comments, we have adopted the three fields described above. Requiring the completion of these separate fields will allow Commerce to collect data that are most relevant to the aluminum industry while minimizing the burden to applicants. Moreover, collection of this data will allow for the effective and timely monitoring of import surges of specific aluminum products and will assist in preventing the transshipment of aluminum products. Separately requiring the identification of the country of smelt for the largest and second largest volume of *primary* aluminum and the country of most recent cast better reflects data available to the industry. Furthermore, the specificity of the requested information should minimize confusion caused by the initially proposed ''smelt and pour'' field.

Commerce also agrees with certain commenters' requests that clear definitions regarding these terms should be included in the aluminum license application. Specifically, in the country of smelt for the largest volume of primary aluminum field, the license

applicant will be required to identify the country where the largest quantity of new aluminum metal is produced from alumina (or aluminum oxide) by the electrolytic Hall-Héroult process.[20] The country of smelt for the second largest volume of primary aluminum field adopts a similar definition. The establishment of these fields and the adopted definitions for these fields takes into account comments on the *Proposed Rule* as well as third-party sources, such as the discussion of primary aluminum production featured on the website of the Aluminum Association.[21] Thus, these definitions are consistent with the well-understood and generally accepted description of the primary aluminum production process in the aluminum industry. Additionally, these precise field names and definitions are further refinements of the term ''country of smelt,'' that was included the *Proposed Rule,* to provide increased clarity and consistency for all potentially regulated entities.

Moreover, by including a field for the country of smelt for the second largest volume of primary aluminum, Commerce will address concerns from foreign producers, importers, and downstream producers that primary aluminum is often melted and chemically mixed with secondary aluminum and/or primary aluminum from multiple countries. At the same time, Commerce will allow applicants to state ''not applicable'' in this field if the product does not contain a second largest volume of primary aluminum. Additionally, applicants may state ''not applicable'' in this field if the product contains only secondary aluminum and no primary aluminum. For clarity, Commerce defines secondary aluminum as aluminum metal that is produced from recycled aluminum scrap through a re-melting process.[22] Consistent with other definitions adopted in this final rule, this definition takes into account comments on the *Proposed Rule* as well as third-party sources, and reflects a well-understood and generally accepted description of the secondary aluminum production process in the aluminum industry.

Lastly, in the country of most recent cast field, the license applicant will be required to identify the country where the aluminum (with or without alloying elements) was last liquified by heat, and cast into a solid state.[23] The final solid state can take the form of either a semi-finished product (slab, billets or ingots) or a finished aluminum product.[24] This is a refinement of the term ''country of pour,'' that was also in the *Proposed Rule,* and also provides increased clarity as requested by commenters. And similar to the above definitions, this definition takes into account third-party sources and reflects a well-understood and generally accepted description of aluminum processing in the aluminum industry. In light of this, we are adopting these fields and corresponding definitions in the final rule.

B. Option To State ''Unknown'' in the Fields for the Country of Smelt for the Largest and Second Largest Volume of Primary Aluminum for a One-Year Period

As stated above, recognizing that importers may have some initial difficulty in securing the information necessary to complete the fields for the country of smelt for the largest and second largest volume of primary aluminum, Commerce will allow filers to state ''unknown'' in these fields on a temporary basis. Specifically, ''unknown'' may be stated for a period of one year from the publication of the final rule (*i.e.,* up to December 23, 2021) to enable license applicants sufficient time to gather the requisite information. Effective one year from the publication of the final rule, December 24, 2021, filers will no longer be able to state ''unknown'' and then will be required to provide the requested information for this field.

This will address concerns from commenters who do not always know the country where primary aluminum was smelted, especially when it is re-melted and alloyed with secondary aluminum. In contrast, for the modified SIMA system, Commerce determined that steel license applicants would be expected to know the country where the steel used in the manufacture of the product is melted and poured for purposes of completing this field in the license application. Specifically, Commerce determined that this information is identifiable in the mill test certification that would be readily available to the applicant, and, for this reason, declined to allow SIMA license applicants an option to state ''unknown'' in this field.[25] Given the concerns identified above (*i.e.,* that aluminum license applicants may not know the country where primary aluminum was smelted), Commerce is allowing the use of the ''unknown'' option for aluminum license applicants as described herein. Nevertheless, Commerce recognizes that allowing an ''unknown'' option presents the potential for abuse and possible loophole concerns related to circumvention/transshipment and may inhibit the accurate collection of data. Therefore, Commerce will implement the following measures.

First, Commerce will allow the use of the ''unknown'' option for *one year* after the publication of the final rule, as described above. This will place importers on notice that they need to start collecting the necessary documentation that tracks this information within their supply chains. It will also allow the AIM system to be launched expeditiously while providing importers an adjustment period to start collecting this information. By providing this adjustment period and considering the burden to importers, the AIM system would then be aligned with SIMA requirements in one year when the ''unknown'' option is removed from the form.

Second, applicants are required to certify that the information on the license application is correct to the best of the applicant's knowledge. Therefore, when importers select ''unknown'' in the license application, they are certifying that this is the best information available to them at the time of license application.

Third, Commerce will monitor use of the ''unknown'' option for abuse, in a similar manner to current monitoring of the use of low-value import licenses in the SIMA system. Commerce will identify license applicants who repeatedly report ''unknown'' in the fields for the countries where the largest and/or second largest volume(s) of primary aluminum is smelted and contact these applicants to confirm that they are providing the best available information.

Fourth, to the extent possible without revealing business proprietary information, Commerce will also report data on the volume of imports associated with licenses that use the ''unknown'' option on the public AIM monitor. This will increase transparency and allow the industry to closely monitor, including raising concerns, of potential abuse and circumvention/transshipment.

[20] *See https://www.aluminum.org/industries/production/primary-production.*

[21] *Id.*

[22] *See https://www.aluminum.org/industries/production/secondary-production.*

[23] *See http://centuryaluminum.com/plants-products/sebree/index.html,* accessed July 17, 2020 and *https://www.aluminum.org/sites/default/files/GAG_001_Terms_and_Definitions_3rd_Edition_2011_01_August_21_2011_JW.pdf,* accessed July 17, 2020.

[24] *See https://www.aluminum.org/industries/processing.*

[25] *See SIMA Modification,* 85 FR at 56166.

C. Further Documentation and Additional Requirements

Although commenters requested that Commerce collect further documentation (*i.e.,* mill test certificates, Country of Analysis/Origin certificates) and/or require CBP to examine licenses in order to prevent transshipment and circumvention/evasion, Commerce will not require such documentation or requirement at this time. These suggestions would create additional burdens and the public has not had an opportunity to comment. Moreover, it would be administratively burdensome for Commerce to examine these documents in issuing licenses through the automated license application system, and for CBP to examine such documentation upon entry of covered aluminum products. Such a requirement would necessitate further inter-agency consultation and coordination and has not been considered for purposes of this final rule.

Finally, Commerce will not collect information on the country of alloying because this would add another field to the license form and would likely provide redundant information that is already collected through the identification of country of most recent cast.

That said, as discussed above, after the AIM system is in place, Commerce will seek additional comment from parties on potential improvements or changes to the system in a subsequent notice. Parties may further comment on the issues discussed above at that time.

2. Expanding the License Requirement for Aluminum Scrap and/or Other Aluminum Products Not Included in the Proposed Rule

The *Proposed Rule* solicited comments on a licensing requirement for aluminum products subject to Section 232 tariffs, pursuant to Presidential Proclamation 9704,[26] but several commenters discussed whether the licensing requirement should be expanded to cover additional aluminum products. Specifically, several commenters requested confirmation that scrap products (not subject to Section 232 tariffs) be exempted from the *Proposed Rule's* smelt and pour requirement but did not comment on whether scrap products should be subject to the licensing requirement in the first instance. Several commenters stated that scrap should be subject to the licensing requirement, though not subject to the *Proposed Rule's* smelt and pour requirement, including one commenter that requested all of HTSUS Chapter 76 be subject to the licensing requirement. One commenter recommended allowing scrap importers to list the country where the scrap was purchased as the country of origin. Additionally, a commenter recommended expanding the licensing requirement to cover aluminum wire and cable products (HTS 7614.90.20, 7614.90.40, and 7614.90.50) because these products are now subject to Section 232 tariffs, pursuant to Presidential Proclamation 9980.[27]

Response: The AIM system will not require import licenses for aluminum scrap (HTS 7602), and certain downstream/derivative products whose inclusion is requested in comments and are now subject to Section 232 tariffs pursuant to Presidential Proclamation 9980 (*i.e.,* aluminum wire and cable products (HTS 7614.90.20, 7614.90.40, and 7614.90.50)).[28] Commerce did not request comments on including these products in the *Proposed Rule*[29] and, as a result, the public has not been afforded an opportunity to provide comments on such a change to the scope of products subject to the AIM system. However, Commerce has considered the commenters' assertion that collecting data on scrap and downstream products will assist in monitoring potential evasion/circumvention. Accordingly, as discussed above, after the AIM system is in place, Commerce will seek additional comment from parties on potential improvements or changes to the system in a subsequent notice. Parties may comment on the inclusion of these products in the AIM system's import license requirement at that time. Furthermore, as noted above, at the sub-regulatory level, Commerce will consider adding additional product groups (such as aluminum scrap) to the public AIM monitor beyond the HTS categories covered by the license requirement, which will be based only on publicly available import data.

3. Reconciling License Values Post-Entry

Several commenters stated that aluminum prices are based on a London Metal Exchange (LME) reference price that is often unavailable at time of importation, so the price of the product imported would need to be corrected (reconciled) post-entry. These commenters were concerned that importers would need to correct values for all or nearly all aluminum imports after entry, increasing the public burden on completing the license application.

Response: As per 19 CFR 361.103(e), applicants will need to correct their licenses if they determine that there was an error in their application. The information on the license should match the information presented in the Customs Form 7501 entry summary document as closely as possible; this includes the value and quantity of the shipment, the expected date of importation, and the Customs port of entry. Commerce has included instructions on the license application, specifying that importers are to provide their best estimate of the value of imports at the time of license completion. Although this estimate does not need to perfectly match the final reconciled value on CBP entry summary documents, the estimate should be reasonably accurate, based on invoices, shipping documents, or the current LME reference price for the commodity imported (at time of license completion). Further, the regulations state that licenses are to closely reflect the information contained in the entry summaries. Therefore, importers will have the ability to edit and correct the information provided on the licenses after entry and will be able to address large discrepancies in accordance with 19 CFR 361.103(e).

4. Reporting of Data in the Public AIM Monitor

There were two comments about the reporting of data in the public AIM monitor. One commenter requested that data be collected and reported at the 10-digit HTS level in order to distinguish between two types of aluminum products, can sheet end and body stock, that are the same at the 8-digit HTS level. Another commenter requested that the public AIM monitor publicly disclose specific import data (including specific importers and sources of imports), rather than aggregate import data to increase transparency.

Response: Commerce understands that it would be optimal from the data users' perspective to have the full 10-digit information collected through the licenses available to the users of the public AIM monitor. However, this may contain proprietary data, making it impossible for Commerce to provide so much detail. Commerce will release data in as much detail as possible (*i.e.,* at the most disaggregated level possible) without releasing companies' proprietary information. Like the public SIMA monitor, Commerce will release data on its public AIM monitor under the authority of the Census Act (13 U.S.C. 301(a) and 302) and must adhere

[26] *See Proposed Rule,* 85 FR at 23751.

[27] *See Presidential Proclamation 9980,* 85 FR 5281.

[28] *Id.*

[29] *See Proposed Rule.*

to Census guidance for the release of data which requires the protection of proprietary data. After collecting license data, Commerce will determine whether there are sufficient data observations (*i.e.,* more than three) to report at a 6-digit HTS level without disclosing business proprietary data. As with steel license data, the rationale for releasing only 6-digit HTS detail information is based on the notion that releasing data at the 10-digit HTS level from the license collection (updated weekly) could violate these rules and likely release identifiable proprietary information. Once Commerce begins the license collection, Commerce will re-evaluate the level of product detail it can release appropriately without disclosing proprietary information.

5. Timing of License Application/ Validity

One commenter requested allowing quarterly licenses that were only estimates of the total import volume, created up to 120 days before importation to reduce the public burden and to provide an early warning about imports farther in advance than the 60 days in the proposed rule. Another commenter requested that Commerce not require licenses too far ahead of importation date (no more than 30 days).

Response: In accordance with § 361.103(d), and as described above, Commerce will require applicants to obtain a license prior to entry, up to 60 days in advance, the same period as the existing SIMA system. Licenses will be automatic and immediate, so an importer could create a license only minutes before entry. However, applicants will be encouraged to create licenses further in advance to maximize Commerce's ability to provide the public with an early warning about import trends. Licenses cannot be based on quarterly summaries, and volumes should closely match those on all other documents required for importation because allowing vague quarterly estimates would undermine the accuracy of the system.

6. Collecting Information Related to Section 232 Tariffs

There were several comments about Section 232 tariffs and tariff exclusions. One commenter requested requiring importers to indicate whether they received an exclusion on the license and requested that the public AIM monitor present exclusion data on its website. Another commenter requested that licensing only be required for imports from countries that are not exempt from the Section 232 program.

Response: Commerce, at this time, will not require AIM license applicants to report information on Section 232 exclusions in the license application. As an initial matter, the AIM system and the Section 232 exclusion process, although both housed within Commerce, are administered separately and under separate legal authorities. Therefore, inclusion of a new field for Section 232 exclusions will require further consideration and analysis. Further, because Commerce did not request comments on including this additional field in the *Proposed Rule,* the public has not been afforded an opportunity to provide comments on what would be a significant change to the license application.

That said, Commerce has considered the commenters' assertion that collecting data on Section 232 exclusions could assist in monitoring for potential surges. Accordingly, as discussed above, after the AIM system is in place, Commerce will seek additional comment from parties on potential improvements or changes to the system in a subsequent notice, including the potential inclusion of a field for Section 232 exclusions on the AIM license application, at that time.

Additionally, Commerce is not accepting the commenter's request that licenses only be required for imports from countries that are not exempt from Section 232 tariffs. Requiring licenses for aluminum imports from all countries is consistent with the objectives of the joint understandings and the AIM system to monitor all imports of aluminum for potential surges. Indeed, a main objective of the joint understandings is to monitor potential surge patterns involving countries exempted from the Section 232 tariffs.[30]

7. Training Materials

One commenter requested additional training material on how to create licenses and reconcile import values.

Response: Commerce will create training webinars, a ''Frequently Asked Questions'' page on the AIM system website, and other materials to ensure that the public understands the licensing requirement. This does not require regulatory modifications.

8. Bonded Warehouses

One commenter requested that bonded warehouses not be exempted from licensing requirements. The commenter raised concerns that, because licenses can be obtained quickly and automatically, exempting bonded warehouses from licensing requirements creates the potential for importers to stockpile aluminum without licenses and then to later import them into the United States for consumption based on more favorable pricing conditions in the U.S. market. This commenter asserted that storing goods in bonded warehouses would also undermine the early warning provided by requiring importers to obtain licenses prior to entry of aluminum products.

Response: As provided in section 19 CFR 361.101(e) and consistent with the SIMA system, Commerce will not require users to obtain aluminum import licenses for entry into bonded warehouses. However, entries of covered aluminum products withdrawn for consumption from bonded warehouses will require a license at the entry summary. Entry into bonded warehouses does not constitute an entry for consumption as provided in § 361.101(b) and (e), and some of the aluminum could subsequently be re-exported from bonded warehouses. Additionally, Commerce also finds that including these shipments in the aluminum license data would likely overestimate monthly imports of aluminum for consumption. Furthermore, this would require users to obtain two separate licenses for importation into bonded warehouses and importation into consumption. This would increase the public burden and further reduce the accuracy of AIM licenses because the system would double-count these licenses.

9. Request for Further Consultation With Mexican Government

Several commenters requested that the United States and Mexico implement an ''agreed-upon process for monitoring aluminum trade between both countries'' as part of USMCA negotiations. One commenter sought explicit clarification regarding whether the AIM system constitutes the ''agreed-upon process for monitoring aluminum trade between countries'' in accordance with the joint understandings on aluminum.[31] In particular, this commenter requested that the U.S.

[30] *See* Joint Statement by the United States and Canada on Section 232 Duties on Steel and Aluminum, dated May 17, 2019, *available at https://ustr.gov/sites/default/files/Joint_Statement_by_the_United_States_and_Canada.pdf;* Joint Statement by the United States and Mexico on Section 232 Duties on Steel and Aluminum, dated May 17, 2019, *available at https://ustr.gov/sites/default/files/Joint_Statement_by_the_United_States_and_Mexico.pdf.*

[31] *See* Joint Statement by the United States and Mexico on Section 232 Duties on Steel and Aluminum, dated May 17, 2019, available at *https://ustr.gov/sites/default/files/Joint_Statement_by_the_United_States_and_Mexico.pdf.*

clarify the role of the AIM system with regard to the objectives of the joint understandings. This commenter also requested that Commerce clarify whether any additional measures to prevent unfair imports and transshipment are intended to complement the AIM system. This commenter further requested clarification regarding whether the AIM system could be modified in the future in the event of an ''alternative bilateral'' agreement.

Another commenter asserted that the joint understandings specify that the importing country may request consultation with the exporting country in the event of an import surge. This commenter requested that the AIM system therefore include a method for periodic consultations with the Government of Mexico.

Response: Although Commerce is cognizant of commenters' concerns regarding increased imports and transshipment, Commerce will not consult further with the Government of Mexico at this time. The Office of the U.S. Trade Representative is already actively engaged in ongoing discussions with the Mexican Government regarding import surges. Commenters should therefore direct relevant comments or questions to USTR. The Government of Mexico is aware that the AIM system has been proposed by the U.S. Government for monitoring aluminum import surges.[32] Furthermore, the AIM system is a monitoring system and not an enforcement mechanism, therefore, incorporating a consultation method into the system exceeds the authority under which the system is established and the scope of its intended activities.

Classifications

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is significant, but not economically significant, for purposes of Executive Order 12866.

Executive Order 13771

This final rule is not subject to Executive Order 13771 because it imposes *de minimis* costs.

Executive Order 13132

This final rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

[32] *See generally Proposed Rule,* 85 FR at 23748.

Paperwork Reduction Act

This rule contains a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 (PRA). Similar requirements have been approved for steel by OMB (OMB No.: 0625–0245; Expiration Date: 07/31/2023). Based on Commerce's experience with steel and sample data for aluminum entries, Commerce estimates that public reporting for the data collection of information in the aluminum import license will be less than 10.5 minutes per response, including the time for reviewing instructions, and completing and reviewing and correcting the collection of information. Commerce also estimates that the average registered applicant will complete about 173 licenses per year each and an estimated total of 278,538 regular licenses and 50 low value licenses will be issued each year.

Paperwork Reduction Act Data

OMB Number: 0625–0279.

ITA Number: ITA–4142a (regular license); ITA–4142b (low-value license).

Type of Review: Regular Submission.

Affected Public: Business or other for-profit.

Estimated Number of Registered Users: 1,750.

Estimated Time per Response: Less than 10.5 minutes.

Estimated Total Annual Burden Hours: 48,749 hours.

Estimated Total Annual Costs: $0.00.

Notwithstanding any other provision of law, no person is 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. As discussed above, after the AIM system is in place, Commerce will seek additional comment from parties on potential improvements or changes to the system in a subsequent notice. Parties may further comment on this collection of information at that time.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this rule if adopted, would not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA). The factual basis for the certification is found in the proposed rule and is repeated below. No comments were received on the certification or the economic impacts of this action. As a result, no final regulatory flexibility analysis is required and none was prepared.

This rule will not have a significant economic impact on a substantial number of small entities. This rule, if implemented, would: (1) Require importers of covered aluminum products to apply for and obtain an import license from Commerce's online license application system; (2) for purposes of obtaining the license, require import license applicants to provide information that is largely already required for purposes of importation into the customs territory of the United States pursuant to CBP requirements; (3) for information that is not already required for entry purposes, require import license applicants to specify certain information including the country where primary aluminum used in the manufacture of the imported aluminum product was smelted and where the product was most recently cast; and (4) cover the following HTS codes: 7601, 7604, 7605, 7606, 7607, 7608, 7609, 7616.99.51.60, and 7616.99.51.70, and any subsequent revisions to these HTS classifications.

The entities that would be impacted by this rule are importers and brokerage companies that import aluminum products. Based on statistics derived from current license applications for steel under the SIMA system, of the approximately 563,107 licenses (both regular and low-value licenses) issued each year, Commerce estimates that less than two percent (11,262) of steel license applications are filed by importers and brokerage companies considered to be small entities. Commerce estimates that the number of aluminum licenses issued under the AIM system will be about half of the number of steel licenses under the SIMA system, based on statistics for one month's entry information.[33] Therefore, our estimate for aluminum is that approximately 278,588 licenses (both regular and low-value licenses) will be issued each year, and of that figure, less than two percent (5,572) of the license applications will be filed by importers and brokerage companies considered to be small entities.

[33] This estimate is based on CBP data covering May 2019. Specifically, in May 2019 there were approximately 64,000 entries subject to the SIMA licensing requirement based on the covered HTS categories for SIMA. In that same month, approximately 31,000 entries entered under the covered HTS categories for AIM.

Based on the current usage of the SIMA system, Commerce does not anticipate that this rule will have a significant economic impact on a substantial number of small entities. The AIM system will mirror the SIMA system to the extent practicable. In most cases, brokerage companies will apply for the license on behalf of the aluminum importers. Many of the same brokerage firms that handle steel imports will likely handle aluminum imports, and, therefore, are familiar with the SIMA online license application system upon which the AIM system is based. Most brokerage companies that are currently involved in filing documentation for importing goods into the United States are accustomed to CBP's automated entry filing systems. Today, CBP's filings are handled electronically. Additionally, the regulated entities are already required to provide certain information required by the aluminum license application, including the name and address of the importer, type of aluminum product, and country of origin, along with additional information for purposes of filing the entry summary documentation required by CBP. For certain fields, in particular, the fields for the country where the largest and second largest volume of primary aluminum is smelted and the country where the aluminum product was most recently cast, the information requested is not already required by CBP. For the first two fields, Commerce recognizes that there may be some difficulty in reporting the requested information, and, therefore, is allowing parties to state ''unknown'' for one year from the publication of the final rule for these fields. In this one year time, Commerce anticipates that those parties will be able to obtain the requisite information. Additionally, Commerce believes that the country where the aluminum product was most recently cast is information that generally is readily available to the importer or its broker and is most likely to be identified in the import documentation accompanying the entry summary to be filed with CBP (invoices, lab reports, etc.). In some instances, the country of most recent cast may be identified as the country of origin. Therefore, the license application should not be a significant obstacle to any firm.

Further, should an importer or brokerage company need to register for an account or apply for a license non-electronically, an email/phone option is available at Commerce during regular business hours. There will be no cost to register for a company-specific aluminum license account and no cost to file for the license. Each license form is expected to take less than 10.5 minutes to complete and collects much of the same information required on the CBP entry summary documentation. The import license is the only additional U.S. entry requirement that the importers or their representatives must fulfill in order to import each covered product shipment under 19 CFR part 361.

Commerce does not charge fees for licenses. Similar to the estimates used for the steel license program, Commerce estimates that the likely aggregate license costs incurred by small entities in terms of the time to apply for licenses as a result of this rule would be less than two percent, or an estimated $19,500, of the estimated total $974,980 cost to all aluminum importers to process the on-line automatic licenses. These calculations are based on an hourly pay rate of $20.00 multiplied by the estimated 48,750 total annual burden hours. The average cost of a single license is less than $4.17 based on the estimate that one license requires less than 10.5 minutes of the filer's time.

Therefore, the Department certified that the final rule will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 19 CFR Part 361

Administrative practice and procedure, Business and industry, Imports, Reporting and recordkeeping requirements, Aluminum.

Dated: December 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

For the reasons stated in the preamble, the Department of Commerce adds 19 CFR part 361 as follows:

PART 361—ALUMINUM IMPORT MONITORING AND ANALYSIS SYSTEM

Sec.

Authority: 13 U.S.C. 301(a) and 302.

§ 361.101 Aluminum import licensing.

(a) *In general.* (1) All imports of basic aluminum products are subject to the import licensing requirements imposed by the U.S. Department of Commerce (Commerce). These products are listed on the Aluminum Import Monitoring and Analysis (AIM) system website (*https://www.trade.gov/aluminum*). Registered users will be able to obtain aluminum import licenses on the AIM system website. This website contains two sections related to import licensing—the online registration system and the automatic aluminum import license issuance system. Aluminum import licenses must be provided to U.S. Customs and Border Protection (CBP or Customs) as discussed in this section. Information gathered from these licenses will be aggregated and posted on the import monitoring section of the AIM system website.

(2) A single license may cover multiple products as long as certain information on the license (*e.g.,* importer, exporter, manufacturer and country of origin) remains the same. However, separate licenses for aluminum entered under a single entry will be required if the information differs. As a result, a single Customs entry may require more than one aluminum import license. The applicable license(s) must cover the total quantity of aluminum entered and should cover the same information provided on the Customs entry summary.

(b) *Entries for consumption.* All entries for consumption of covered aluminum products, other than the exceptions discussed in paragraphs (c) and (d) of this section, will require an import license prior to the filing of Customs entry summary documents, or its electronic equivalent. The license number(s) must be reported on the entry summary (Customs Form 7501), or its electronic equivalent, at the time of filing. There is no requirement to present physical copies of the license forms at the time of entry summary. However, copies must be maintained in accordance with Customs' normal requirements. Entry summaries submitted without the required license number(s) will be considered incomplete and will be subject to liquidated damages for violation of the bond condition requiring timely completion of entry.

(c) *Foreign Trade Zone admissions.* All shipments of covered aluminum products into a foreign trade zone (FTZ), known as FTZ admissions, will require an import license prior to the filing of FTZ admission documents, or its electronic equivalents. The license number(s) must be reported on the application for FTZ admission and/or status designation (Customs Form 214) at the time of filing. There is no

requirement to present physical copies of the license forms at the time of FTZ admission; however, copies must be maintained in accordance with Customs' normal requirements. FTZ admission documents submitted without the required license number(s) will not be considered complete and will be subject to liquidated damages for violation of the bond condition requiring timely completion of admission. The aluminum license for FTZ admission does not expire, and a further aluminum license will not be required for shipments of entries for consumption from zones into the commerce of the United States.

(d) *Informal entries.* No import license shall be required on informal entries of covered aluminum products, such as merchandise valued at less than $2,500. This exemption applies to informal entries only; imports of aluminum valued at less than $2,500 that are part of a formal entry will require a license. For additional information, refer to 19 CFR 143.21 through 143.28.

(e) *Other non-consumption entries.* Import licenses are not required on temporary importation bond (TIB) entries, transportation and exportation (T&E) entries or entries into a bonded warehouse. Covered aluminum products withdrawn for consumption from a bonded warehouse will require a license at the entry summary in accordance with paragraph (b) of this section.

§ 361.102 Online registration.

(a) *In general.* (1) Any importer, importing company, customs broker or importer's agent with a U.S. street address may register and obtain the username necessary to log on to the automatic aluminum import license issuance system. Foreign companies may obtain a username if they have a U.S. address through which they may be reached; P.O. boxes will not be accepted. A username will be issued within two business days. Companies will be able to register online through the AIM system website. However, should a company prefer to apply for a username non-electronically, a phone/email option will be available at Commerce during regular business hours.

(2) This username will be required in order to log on to the aluminum import license issuance system. A single username will be issued to an importer, customs broker or importer's agent. Operating units within the company (*e.g.,* individual branches, divisions or employees) will all use the same basic company username but can supply suffixes to identify the branches. The aluminum import license issuance system will be designed to allow multiple users of a single identification number from different locations within the company to enter information simultaneously.

(b) *Information required to obtain a username.* In order to obtain a username, the importer, importing company, customs broker or importer's agent will be required to provide general information. This information will include: The filer company name, employer identification number (EIN) or Customs ID number (the Customs-issued importer number) (where no EIN is available), U.S. street address, phone number, contact information and email address for both the company headquarters and any branch offices that will be applying for aluminum licenses. It is the responsibility of the applicant to keep the information up to date. This information will not be released by Commerce, except as required by U.S. law.

§ 361.103 Automatic issuance of import licenses.

(a) *In general.* Aluminum import licenses will be issued to registered importers, customs brokers or their agents through an automatic aluminum import licensing system. The licenses will be issued automatically after the completion of the form.

(b) *Customs entry number.* Filers are not required to report a Customs entry number to obtain an import license but are encouraged to do so if the Customs entry number is known at the time of filing for the license.

(c) *Information required to obtain an import license.* (1) The following information is required to be reported in order to obtain an import license (if using the automatic licensing system, some of this information will be provided automatically from information submitted as part of the registration process):

(i) Filer company name and address;

(ii) Filer contact name, phone number, email address;

(iii) Entry type (*i.e.,* Consumption, FTZ);

(iv) Importer name;

(v) Exporter name;

(vi) Manufacturer name (filer may state ''unknown'');

(vii) Country of origin;

(viii) Country of exportation;

(ix) Expected date of export;

(x) Expected date of import;

(xi) Expected port of entry;

(xii) Current Harmonized Tariff Schedule (HTS) number (from Chapter 76);

(xiii) Country where the largest volume of primary aluminum used in the manufacture of the product was smelted (see paragraph (c)(3)(i) of this section);

(xiv) Country where the second largest volume of primary aluminum used in the manufacture of the product was smelted (see paragraph (c)(3)(ii) of this section);

(xv) Country where the product was most recently cast (see paragraph (c)(3)(iii) of this section);

(xvi) Quantity (in kilograms); and

(xvii) Customs value (US$).

(2) Certain fields will be automatically filled out by the automatic license system based on information submitted by the filer (*e.g.,* product category, unit value). Filers should review these fields to help confirm the accuracy of the submitted data.

(3)(i) For purposes of paragraph (c)(1)(xiii) of this section:

(A) The field in the license application requiring identification of the country where the largest volume of primary aluminum used in the manufacture of the product was smelted applies to the country where the largest volume of new aluminum metal is produced from alumina (or aluminum oxide) by the electrolytic Hall–Héroult process.

(B) Filers may state ''not applicable'' for this field if the product contains only secondary aluminum and no primary aluminum. Secondary aluminum is defined as aluminum metal that is produced from recycled aluminum scrap through a re-melting process.

(C) For license applications up to December 23, 2021, filers may state ''unknown'' for this field. Effective December 24, 2021, filers may not state ''unknown'' for this field.

(ii) For purposes of paragraph (c)(1)(xiv) of this section:

(A) The field in the license application requiring identification of the country where the second largest volume of primary aluminum used in the manufacture of the product was smelted applies to the country where the second largest volume of new aluminum metal is produced from alumina (or aluminum oxide) by the electrolytic Hall–Héroult process.

(B) Filers may state ''not applicable'' for this field if the product does not contain a second largest volume of primary aluminum or if the product contains only secondary aluminum and no primary aluminum. Secondary aluminum is defined as aluminum metal that is produced from recycled aluminum scrap through a re-melting process.

(C) For license applications up to December 23, 2021, filers may state

''unknown'' for this field. Effective December 24, 2021, filers may not state ''unknown'' for this field.

(iii) For purposes of paragraph (c)(1)(xv) of this section:

(A) The field in the license application requiring identification of the country where the product was most recently cast applies to the country where the aluminum (with or without alloying elements) was last liquified by heat and cast into a solid state. The final solid state can take the form of either a semi-finished product (slab, billets or ingots) or a finished aluminum product.

(B) Filers may not state ''not applicable'' for this field.

(C) Filers may not state ''unknown'' for this field.

(4) Upon completion of the form, the importer, customs broker or the importer's agent will certify as to the accuracy and completeness of the information and submit the form electronically. After refreshing the page, the system will automatically issue an aluminum import license number. The refreshed form containing the submitted information and the newly issued license number will appear on the screen (the ''license form''). Filers can print the license form themselves only at that time. For security purposes, users will not be able to retrieve licenses themselves from the license system at a later date for reprinting. If needed, copies of completed license forms can be requested from Commerce during normal business hours.

(d) *Duration of the aluminum import license.* The aluminum import license can be applied for up to 60 days prior to the expected date of importation and until the date of filing of the entry summary documents, or in the case of FTZ admissions, the filing of Customs Form 214, or their electronic equivalents. With the exception of the licenses for FTZ admission (*see* § 361.101(c)), the aluminum import license is valid for 75 days; however, import licenses that were valid on the date of importation but expired prior to the filing of entry summary data will be accepted.

(e) *Correcting submitted license information.* Users will need to correct licenses themselves if they determine that there was an error submitted. To access a previously issued license, a user must log on with his username and identify the license number and the volume (quantity in kilograms) for the first product shown on the license. The information on the license should match the information presented in the entry summary data as closely as possible. This includes the value and quantity of the shipment, the expected date of importation, and the Customs port of entry.

(f) *Low-value licenses.* There is one exception to the requirement for obtaining a unique license for each Customs entry. If the total value of the covered aluminum portion of an entry is less than $5,000, applicants may apply to Commerce for a low-value license that can be used in lieu of a single-entry license for low-value entries.

§ 361.104 Aluminum import monitoring.

(a) Commerce will maintain an import monitoring system on the public AIM system website that will report certain aggregate information on imports of aluminum products obtained from the aluminum licenses and, where available, from publicly available U.S. import statistics. Aggregate data will be reported, as appropriate, on a monthly basis by country of origin, country of smelt, country of last cast, relevant aluminum product grouping, etc., and will include import quantity (metric tons), import Customs value (U.S. $), and average unit value ($/metric ton). The website will also contain certain aggregate data at the 6-digit Harmonized Tariff Schedule level and will also present a range of historical data for comparison purposes. Provision of aggregate data on the website may be revisited should concerns arise over the possible release of proprietary data.

(b) Reported monthly import data will be refreshed each week, as appropriate, with new data on licenses issued during the previous week. This data will also be adjusted periodically for cancelled or unused aluminum import licenses, as appropriate. Additionally, outdated license data will be replaced, where available, with publicly available U.S. import statistics.

§ 361.105 [Reserved]

§ 361.106 Fees.

No fees will be charged for obtaining a username, issuing an aluminum import license or accessing the aluminum import monitoring system.

§ 361.107 Hours of operation.

The automatic licensing system will generally be accessible 24 hours a day, 7 days a week but may be unavailable at selected times for server maintenance. If the system is unavailable for an extended period of time, parties will be able to obtain licenses from Commerce directly via email (*aluminum.license@trade.gov*) during regular business hours. Should the system be inaccessible for an extended period of time, Commerce would advise CBP to consider this as part of mitigation on any liquidated damage claims that may be issued.

§ 361.108 Loss of electronic licensing privileges.

Should Commerce determine that a filer consistently files inaccurate licensing information or otherwise abuses the licensing system, Commerce may revoke its electronic licensing privileges without prior notice. The filer will then only be able to obtain a license directly from Commerce. Because of the additional time needed to review such forms, Commerce may require up to 10 working days to process such forms. Delays in filing caused by the removal of a filer's electronic filing privilege will not be considered a mitigating factor by CBP.

[FR Doc. 2020–28166 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 20

RIN 1290–AA44

Second and Subsequent Notifications

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: This final rule makes two changes. First, the final rule more clearly permits Department of Labor agency heads (or designees) to send second and subsequent demand letters at intervals of time separated by less than thirty days. Second, the final rule encourages debt collection efforts to proceed promptly so that, if needed, uncollected debt may be referred to the Department of Justice in a timely manner.

DATES: This final rule is effective on December 23, 2020.

FOR FURTHER INFORMATION CONTACT: Erin FitzGerald, Senior Policy Advisor, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–5076 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Overview of Amendments

Agencies within the Department of Labor (Department) often must collect debt owed them, including debt relating to legal violations such as citation penalties. To collect such debt, agencies sometimes must send multiple demand letters. Prior to this final rule, 29 CFR 20.55(a) provided that ''second and subsequent demands shall generally be

made at 30 day intervals from the first.'' The Department's Office of the Chief Financial Officer (OCFO) has indicated that agencies may have an increased likelihood of securing debt payments if second and subsequent demands are sent at intervals of time separated by less than thirty days. In particular, in reviewing enforcement agency debt collection practices, OCFO has noted that agencies that send out demand letters more quickly and at shorter intervals have higher collection rates than agencies that do not. Although agency heads (or designees) could send second and subsequent demand letters at intervals of time separated by less than thirty days pursuant to 29 CFR 20.55(a) as it existed before this final rule, this final rule amends 29 CFR 20.55(a) to provide clearer notice to the public that agency heads (or designees) can send demand letters in their sole discretion more often than every thirty days.

This final rule also amends 29 CFR 20.55(a) to better describe current Department practice. Prior to this final rule, 29 CFR 20.55(a) stated that ''agencies should give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the final determination of the fact and the amount of the debt.'' It has been revised to state that ''agencies should give due regard to the need to act promptly so that, if necessary, the debt may be referred in a timely manner to the Department of Justice for litigation.'' This change better reflects current practice, pursuant to which the Department of Treasury typically seeks to collect federal debt for up to two years.[1] After two years, the Department of Treasury refers uncollected debt back to the relevant agency, including agencies within the Department of Labor. Because debt is not typically referred back to agencies until the debt is at least two years old, referral to the Department of Justice will generally not be made until the debt is at least two years old.

II. Administrative Procedure Act

Pursuant to 5 U.S.C. 553, this rule is being published as a final rule to have immediate effect upon publication in the **Federal Register**. This final rule deals only with internal operating procedures regarding the Department's debt-collection practices. This final rule thus qualifies as a rule ''of agency organization, procedure, or practice'' or a ''general statement of policy'' under 5 U.S.C. 553(b)(A), so it is exempt from the notice-and-comment requirements of the Administrative Procedure Act.

This rule is not a ''major rule'' under 5 U.S.C. 801(a)(3) nor a ''substantive rule'' under 5 U.S.C. 553(d) and may also qualify as a ''statement[ ] of policy'' under 5 U.S.C. 553(d)(2). Thus it can be effective immediately. The Department is making it effective immediately because of its strong interest in promptly collecting debt, especially debt derived from legal violations. The prompt collection of such debt provides the regulated public a stronger incentive to follow the law by showing that duly levied citations and other penalties must in fact be paid. Collecting debts also strengthens the Department's fisc, which assists with budgeting and offsets funds that might otherwise be requested from Congress and, ultimately, the nation's taxpayers. Delaying the effective date of this rule would unnecessarily hinder the Department's law-enforcement mission.

III. Executive Orders 12866, 13563; Small Business Regulatory Enforcement Fairness Act; Regulatory Flexibility; Paperwork Reduction Act; Unfunded Mandates Reform Act

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a ''significant regulatory action'' is one meeting any of a number of specified conditions, including the following: Having an annual effect on the economy of $100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients; or raising novel legal or policy issues.

The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866 and waived review. This final rule deals only with internal operating procedures regarding the Department's debt collection practices. Because no notice of proposed rulemaking is required for this rule under section 553(b) of the APA, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility do not apply to this rule. See 5 U.S.C. 601(2). Accordingly, the Department is not required to either certify that the final rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis. Because, as noted above, no notice of proposed rulemaking is required for this rule, no requirements of the Unfunded Mandates Reform Act of 1995 are triggered. In addition, the amended regulation contain no additional information-collection or record-keeping requirements under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and the implementing regulations at 5 CFR part 1320.

List of Subjects in 29 CFR Part 20

Claims, Income taxes, Reporting and recordkeeping requirements, Wages.

For the reasons discussed in the preamble, the Department of Labor amends 29 CFR part 20 as follows:

PART 20—FEDERAL CLAIMS COLLECTION

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 31 U.S.C. 3711 *et seq.;* Subpart D is also issued under 5 U.S.C. 5514; Subpart E is also issued under 31 U.S.C. 3720A; Subpart F is also issued under 31 U.S.C. 3720D.

■ 2. Amend § 20.55 by revising paragraph (a) to read as follows:

§ 20.55 Second and subsequent notifications

(a) In accordance with guidelines established by the Chief Financial Officer, the responsible agency head (or designee) shall send progressively stronger second and subsequent demands for payment, if payment or other appropriate response is not received within the time specified by the initial demand. Unless a response to the first or second demand indicates that a further demand would be futile or the debtor's response does not require rebuttal, the second and subsequent demands shall generally be made at 30-day intervals from the first, and shall state that a 6 percent per annum penalty will be assessed after the debt has been delinquent 90 days, accruing from the date it became delinquent. An agency head (or designee), however, in his or her sole discretion can send second and subsequent demands at shorter intervals. The second and subsequent demands shall identify the amount of interest then accrued on the debt, as well as administrative costs thus far assessed. In determining the timing of the demand letters, agencies should give due regard to the need to act promptly so that, if necessary, the debt may be referred in a timely manner to the Department of Justice for litigation.

[1] *See* OMB Circular No. A–129, Policies for Federal Credit Programs and Non-Tax Receivables. Section V.E.1. January 2013.

When the agency head (or designee) deems it appropriate to protect the government's interests (for example, to prevent the statute of limitations 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

* * * * *

Signed on the 18th day of December, 2020, in Washington, DC.

Eugene Scalia,

Secretary, Department of Labor.

[FR Doc. 2020–28469 Filed 12–22–20; 8:45 am]

BILLING CODE 4510–FN–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 19

[FRL–10018–13–OECA]

Civil Monetary Penalty Inflation Adjustment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating this final rule to adjust the level of the maximum (and minimum) statutory civil monetary penalty amounts under the statutes the EPA administers. This action is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (''the 2015 Act''). The 2015 Act prescribes a formula for annually adjusting the statutory maximum (and minimum) amount of civil monetary penalties to reflect inflation, maintain the deterrent effect of statutory civil monetary penalties, and promote compliance with the law. The rule does not establish specific civil monetary penalty amounts the EPA may seek in particular cases, as appropriate given the facts of particular cases and applicable agency penalty policies. The EPA's civil penalty policies, which guide enforcement personnel on how to exercise the EPA's discretion within statutory penalty authorities, take into account a number of fact-specific considerations, *e.g.,* the seriousness of the violation, the violator's good faith efforts to comply, any economic benefit gained by the violator as a result of its noncompliance, and a violator's ability to pay.

DATES: This final rule is effective December 23, 2020.

FOR FURTHER INFORMATION CONTACT: David Smith-Watts, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, Mail Code 2241A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, telephone number: (202) 564–4083; *smith-watts.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Since 1996, Federal agencies have been required to issue regulations adjusting for inflation the statutory civil monetary penalties [1] that can be imposed under the laws administered by that agency. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (DCIA), required agencies to review their statutory civil monetary penalties every four years, and to adjust the statutory civil monetary penalty amounts for inflation if the increase met the DCIA's adjustment methodology. In accordance with the DCIA, the EPA reviewed and, as appropriate, adjusted the civil monetary penalty levels under each of the statutes the agency implements in 1996 (61 FR 69360), 2004 (69 FR 7121), 2008 (73 FR 75340), and 2013 (78 FR 66643).

The 2015 Act [2] required each Federal agency to adjust the level of statutory civil monetary penalties under the laws implemented by that agency with an initial ''catch-up'' adjustment through an interim final rulemaking. The 2015 Act also required Federal agencies, beginning on January 15, 2017, to make subsequent annual adjustments for inflation. Section 4 of the 2015 Act requires each Federal agency to publish these adjustments by January 15 of each year. The purpose of the 2015 Act is to maintain the deterrent effect of civil monetary penalties by translating originally enacted statutory civil penalty amounts to today's dollars and rounding statutory civil penalties to the nearest dollar.

As required by the 2015 Act, the EPA issued a catch-up rule on July 1, 2016, which was effective August 1, 2016 (81 FR 43091). The EPA has made four annual adjustments since then: On January 12, 2017, effective on January 15, 2017 (82 FR 3633); on January 10, 2018, effective on January 15, 2018 (83 FR 1190); on February 6, 2019, effective February 6, 2019 (84 FR 2056), and issued a subsequent correction on February 25, 2019 (84 FR 5955); and on January 13, 2020, effective the same day (85 FR 1751). This rule implements the fifth annual adjustment mandated by the 2015 Act.

The 2015 Act provides a formula for calculating the adjustments. Each statutory maximum and minimum [3] civil monetary penalty as currently adjusted is multiplied by the cost-of-living adjustment multiplier, which is the percentage by which the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October 2020 exceeds the CPI–U for the month of October 2019.[4]

With this rule, the new statutory maximum and minimum penalty levels listed in the third column of Table 1 of 40 CFR 19.4 will apply to all civil monetary penalties assessed on or after December 23, 2020, for violations that occurred after November 2, 2015, the date the 2015 Act was enacted. The former maximum and minimum statutory civil monetary penalty levels, which are in the fourth column of Table 1 to 40 CFR 19.4, will now apply only to violations that occurred after November 2, 2015, where the penalties were assessed on or after January 13, 2020, but before December 23, 2020. The statutory civil monetary penalty levels that apply to violations that occurred on or before November 2, 2015, are codified at Table 2 to 40 CFR 19.4. The fifth column of Table 1 and the seventh column of Table 2 display the statutory civil monetary penalty levels as originally enacted.

The formula for determining the cost-of-living or inflation adjustment to

[1] The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 28 U.S.C. 2461 note, defines ''civil monetary penalty'' as any penalty, fine, or other sanction that—(1)(i) is for a specific monetary amount as provided by Federal law; or (ii) has a maximum amount provided for by Federal law; and (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

[2] The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74) was signed into law on November 2, 2015, and further amended the Federal Civil Penalties Inflation Adjustment Act of 1990.

[3] Under Section 3(2)(A) of the 2015 Act, ''civil monetary penalty'' means ''a specific monetary amount as provided by Federal law''; or ''has a maximum amount provided for by Federal law.'' EPA-administered statutes generally refer to statutory maximum penalties, with the following exceptions: Section 311(b)(7)(D) of the Clean Water Act, 33 U.S.C. 1321(b)(7)(D), refers to a minimum penalty of ''not less than $100,000 . . .''; Section 104B(d)(1) of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1414b(d)(1), refers to an exact penalty of $600 ''[f]or each dry ton (or equivalent) of sewage sludge or industrial waste dumped or transported by the person in violation of this subsection in calendar year 1992. . .''; and Section 325(d)(1) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11045(d)(1), refers to an exact civil penalty of $25,000 for each frivolous trade secret claim.

[4] Current and historical CPI–U's can be found on the Bureau of Labor Statistics' website here: *https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202010.pdf.*

statutory civil monetary penalties consists of the following steps:

Step 1: The cost-of-living adjustment multiplier for 2021 is the percentage by which the CPI–U of October 2020 (260.388) exceeds the CPI–U for the month of October 2019 (257.346), which is 1.01182.[5] Multiply 1.01182 by the current penalty amount. This is the raw adjusted penalty value.

Step 2: Round the raw adjusted penalty value. Section 5 of the 2015 Act states that any adjustment shall be rounded to the nearest multiple of $1. The result is the final penalty value for the year.

II. The 2015 Act Requires Federal Agencies To Publish Annual Penalty Inflation Adjustments Notwithstanding Section 553 of the Administrative Procedure Act

Pursuant to section 4 of the 2015 Act, each Federal agency is required to publish adjustments no later than January 15 each year. In accordance with section 553 of the Administrative Procedure Act (APA), most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. However, section 4(b)(2) of the 2015 Act provides that each agency shall make the annual inflation adjustments ''notwithstanding section 553'' of the APA. Consistent with the language of the 2015 Act, this rule is not subject to notice and an opportunity for public comment and will be effective on December 23, 2020.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to OMB for review.

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

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

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule merely increases the level of statutory civil monetary penalties that can be imposed in the context of a Federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations.

D. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. Because the 2015 Act directs Federal agencies to publish this rule notwithstanding section 553 of the APA, this rule is not subject to notice and comment requirements or the RFA.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action is required by the 2015 Act, without the exercise of any policy discretion by the EPA. This action also imposes no enforceable duty on any state, local or tribal governments or the private sector. Because the calculation of any increase is formula-driven pursuant to the 2015 Act, the EPA has no policy discretion to vary the amount of the adjustment.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It 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.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175.

This rule merely reconciles the real value of current statutory civil monetary penalty levels to reflect and keep pace with the levels originally set by Congress when the statutes were enacted or amended. The calculation of the increases is formula-driven and prescribed by statute, and the EPA has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, this rule will not have a substantial direct effect on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

The rulemaking does not involve technical standards.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. Rather, this action is mandated by the 2015 Act, which prescribes a formula for adjusting statutory civil penalties on an annual basis to reflect inflation.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding

[5] Section 5(b) of the 2015 Act provides that the term ''cost-of-living adjustment'' means the percentage (if any) for each civil monetary penalty by which—

(1) the Consumer Price Index for the month of October preceding the date of the adjustment, exceeds

(2) the Consumer Price Index for the month of October 1 year before the month of October referred to in paragraph (2).

Because the CPI–U for October 2020 is 260.388 and the CPI–U for October 2019 is 257.346, the cost-of-living multiplier is 1.01182 (260.388 divided by 257.346).

that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA finds that the APA's notice and comment rulemaking procedures are unnecessary because the 2015 Act directs Federal agencies to publish their annual penalty inflation adjustments ''notwithstanding section 553 [of the APA].''

List of Subjects in 40 CFR Part 19

Environmental protection, Administrative practice and procedure, Penalties.

Andrew Wheeler,

Administrator.

For the reasons set out in the preamble, the EPA amends title 40, chapter I, part 19 of the Code of Federal Regulations as follows:

PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 19 continues to read as follows:

Authority: Public Law 101–410, Oct. 5, 1990, 104 Stat. 890, as amended by Public Law 104–134, title III, sec. 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321–373; Public Law 105–362, title XIII, sec. 1301(a), Nov. 10, 1998, 112 Stat. 3293; Public Law 114–74, title VII, sec. 701(b), Nov. 2, 2015, 129 Stat. 599.

■ 2. Revise § 19.2 to read as follows:

§ 19.2 Effective date.

(a) The statutory civil monetary penalty levels set forth in the third column of Table 1 of § 19.4 apply to all violations which occur or occurred after November 2, 2015, where the penalties are assessed on or after December 23, 2020. The statutory civil monetary penalty levels set forth in the fourth column of Table 1 of § 19.4 apply to all violations which occurred after November 2, 2015, where the penalties were assessed on or after January 13, 2020, but before December 23, 2020.

(b) The statutory monetary penalty levels in the third column of Table 2 to § 19.4 apply to all violations which occurred after December 6, 2013 through November 2, 2015, and to violations occurring after November 2, 2015, where penalties were assessed before August 1, 2016. The statutory civil monetary penalty levels set forth in the fourth column of Table 2 of § 19.4 apply to all violations which occurred after January 12, 2009 through December 6, 2013. The statutory civil monetary penalty levels set forth in the fifth column of Table 2 of § 19.4 apply to all violations which occurred after March 15, 2004 through January 12, 2009. The statutory civil monetary penalty levels set forth in the sixth column of Table 2 of § 19.4 apply to all violations which occurred after January 30, 1997 through March 15, 2004.

3. Revise the section heading, introductory text, and Table 1 of § 19.4 to read as follows:

§ 19.4 Statutory civil monetary penalties, as adjusted for inflation, and tables.

Table 1 of this section sets out the statutory civil monetary penalty provisions of statutes administered by the EPA, with the third column setting out the latest operative statutory civil monetary penalty levels for violations that occur or occurred after November 2, 2015, where penalties are assessed on or after December 23, 2020. The fourth column displays the operative statutory civil monetary penalty levels where penalties were assessed on or after January 13, 2020, but before December 23, 2020. Table 2 of this section sets out the statutory civil monetary penalty provision of statutes administered by the EPA, with the operative statutory civil monetary penalty levels, as adjusted for inflation, for violations that occurred on or before November 2, 2015, and for violations that occurred after November 2, 2015, where penalties were assessed before August 1, 2016.

TABLE 1 OF § 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Environmental statute	Statutory civil monetary penalties for violations that occur or occurred after November 2, 2015, where penalties are assessed on or after December 23, 2020	Statutory civil monetary penalties for violations that occurred after November 2, 2015, where penalties were assessed on or after January 13, 2020, but before December 23, 2020	Statutory civil monetary penalties, as enacted
7 U.S.C. 136*l*(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA).	$20,528	$20,288	$5,000
7 U.S.C. 136*l*(a)(2) [1]	FIFRA	3,011/1,940/3,011	2,976/1,917/2,976	1,000/500/1,000
15 U.S.C. 2615(a)(1)	TOXIC SUBSTANCES CONTROL ACT (TSCA).	41,056	40,576	25,000
15 U.S.C. 2647(a)	TSCA	11,803	11,665	5,000
15 U.S.C. 2647(g)	TSCA	9,753	9,639	5,000
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA).	11,803	11,665	5,000
31 U.S.C. 3802(a)(2)	PFCRA	11,803	11,665	5,000
33 U.S.C. 1319(d)	CLEAN WATER ACT (CWA)	56,460	55,800	25,000
33 U.S.C. 1319(g)(2)(A)	CWA	22,584/56,460	22,320/55,800	10,000/25,000
33 U.S.C. 1319(g)(2)(B)	CWA	22,584/282,293	22,320/278,995	10,000/125,000
33 U.S.C. 1321(b)(6)(B)(i)	CWA	19,505/48,762	19,277/48,192	10,000/25,000
33 U.S.C. 1321(b)(6)(B)(ii)	CWA	19,505/243,808	19,277/240,960	10,000/125,000
33 U.S.C. 1321(b)(7)(A)	CWA	48,762/1,951	48,192/1,928	25,000/1,000
33 U.S.C. 1321(b)(7)(B)	CWA	48,762	48,192	25,000
33 U.S.C. 1321(b)(7)(C)	CWA	48,762	48,192	25,000
33 U.S.C. 1321(b)(7)(D)	CWA	195,047/5,851	192,768/5,783	100,000/3,000
33 U.S.C. 1414b(d)(1)	MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA).	1,299	1,284	600
33 U.S.C. 1415(a)	MPRSA	205,276/270,784	202,878/267,621	50,000/125,000
33 U.S.C. 1901 note (*see* 1409(a)(2)(A))	CERTAIN ALASKAN CRUISE SHIP OPERATIONS (CACSO).	14,966/37,412	14,791/36,975	10,000/25,000
33 U.S.C. 1901 note (*see* 1409(a)(2)(B))	CACSO	14,966/187,059	14,791/184,874	10,000/125,000
33 U.S.C. 1901 note (*see* 1409(b)(1))	CACSO	37,412	36,975	25,000
33 U.S.C. 1908(b)(1)	ACT TO PREVENT POLLUTION FROM SHIPS (APPS).	76,764	75,867	25,000

TABLE 1 OF § 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Environmental statute	Statutory civil monetary penalties for violations that occur or occurred after November 2, 2015, where penalties are assessed on or after December 23, 2020	Statutory civil monetary penalties for violations that occurred after November 2, 2015, where penalties were assessed on or after January 13, 2020, but before December 23, 2020	Statutory civil monetary penalties, as enacted
33 U.S.C. 1908(b)(2)	APPS	15,352	15,173	5,000
42 U.S.C. 300g–3(b)	SAFE DRINKING WATER ACT (SDWA)	59,017	58,328	25,000
42 U.S.C. 300g–3(g)(3)(A)	SDWA	59,017	58,328	25,000
42 U.S.C. 300g–3(g)(3)(B)	SDWA	11,803/41,120	11,665/40,640	5,000/25,000
42 U.S.C. 300g–3(g)(3)(C)	SDWA	41,120	40,640	25,000
42 U.S.C. 300h–2(b)(1)	SDWA	59,017	58,328	25,000
42 U.S.C. 300h–2(c)(1)	SDWA	23,607/295,088	23,331/291,641	10,000/125,000
42 U.S.C. 300h–2(c)(2)	SDWA	11,803/295,088	11,665/291,641	5,000/125,000
42 U.S.C. 300h–3(c)	SDWA	20,528/43,792	20,288/43,280	5,000/10,000
42 U.S.C. 300i(b)	SDWA	24,674	24,386	15,000
42 U.S.C. 300i–1(c)	SDWA	143,621/1,436,220	141,943/1,419,442	100,000/1,000,000
42 U.S.C. 300j(e)(2)	SDWA	10,263	10,143	2,500
42 U.S.C. 300j–4(c)	SDWA	59,017	58,328	25,000
42 U.S.C. 300j–6(b)(2)	SDWA	41,120	40,640	25,000
42 U.S.C. 300j–23(d)	SDWA	10,832/108,315	10,705/107,050	5,000/50,000
42 U.S.C. 4852d(b)(5)	RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992.	18,364	18,149	10,000
42 U.S.C. 4910(a)(2)	NOISE CONTROL ACT OF 1972	38,805	38,352	10,000
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION AND RECOVERY ACT (RCRA).	102,638	101,439	25,000
42 U.S.C. 6928(c)	RCRA	61,820	61,098	25,000
42 U.S.C. 6928(g)	RCRA	76,764	75,867	25,000
42 U.S.C. 6928(h)(2)	RCRA	61,820	61,098	25,000
42 U.S.C. 6934(e)	RCRA	15,352	15,173	5,000
42 U.S.C. 6973(b)	RCRA	15,352	15,173	5,000
42 U.S.C. 6991e(a)(3)	RCRA	61,820	61,098	25,000
42 U.S.C. 6991e(d)(1)	RCRA	24,730	24,441	10,000
42 U.S.C. 6991e(d)(2)	RCRA	24,730	24,441	10,000
42 U.S.C. 7413(b)	CLEAN AIR ACT (CAA)	102,638	101,439	25,000
42 U.S.C. 7413(d)(1)	CAA	48,762/390,092	48,192/385,535	25,000/200,000
42 U.S.C. 7413(d)(3)	CAA	9,753	9,639	5,000
42 U.S.C. 7524(a)	CAA	48,762/4,876	48,192/4,819	25,000/2,500
42 U.S.C. 7524(c)(1)	CAA	390,092	385,535	200,000
42 U.S.C. 7545(d)(1)	CAA	48,762	48,192	25,000
42 U.S.C. 9604(e)(5)(B)	COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA).	59,017	58,328	25,000
42 U.S.C. 9606(b)(1)	CERCLA	59,017	58,328	25,000
42 U.S.C. 9609(a)(1)	CERCLA	59,017	58,328	25,000
42 U.S.C. 9609(b)	CERCLA	59,017/177,053	58,328/174,985	25,000/75,000
42 U.S.C. 9609(c)	CERCLA	59,017/177,053	58,328/174,985	25,000/75,000
42 U.S.C. 11045(a)	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA).	59,017	58,328	25,000
42 U.S.C. 11045(b)(1)(A)	EPCRA	59,017	58,328	25,000
42 U.S.C. 11045(b)(2)	EPCRA	59,017/177,053	58,328/174,985	25,000/75,000
42 U.S.C. 11045(b)(3)	EPCRA	59,017/177,053	58,328/174,985	25,000/75,000
42 U.S.C. 11045(c)(1)	EPCRA	59,017	58,328	25,000
42 U.S.C. 11045(c)(2)	EPCRA	23,607	23,331	10,000
42 U.S.C. 11045(d)(1)	EPCRA	59,017	58,328	25,000
42 U.S.C. 14304(a)(1)	MERCURY-CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT (BATTERY ACT).	16,450	16,258	10,000
42 U.S.C. 14304(g)	BATTERY ACT	16,450	16,258	10,000

[1] Note that 7 U.S.C. 136*l*(a)(2) contains three separate statutory maximum civil penalty provisions. The first mention of $1,000 and the $500 statutory maximum civil penalty amount were originally enacted in 1978 (Pub. L. 95–396), and the second mention of $1,000 was enacted in 1972 (Pub. L. 92–516).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 51c

RIN 0906–AB25

Implementation of Executive Order on Access to Affordable Life-Saving Medications

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule implements an Executive Order requiring entities funded under section 330(e) of the Public Health Service Act (PHS Act or the Act), whether by receiving a federal award or a subaward, and that also participate in the 340B Drug Pricing Program (340B Program) must establish practices to provide access to insulin and injectable epinephrine to low-income health center patients at the price the health center purchased these two drugs through the 340B Program. The Executive Order supports the improved access to these life-saving medications by low-income individuals who do not have access to affordable insulin and injectable epinephrine due to either lack of insurance or high cost sharing requirements.

DATES: This final rule is effective on January 22, 2021.

FOR FURTHER INFORMATION CONTACT: Jennifer Joseph, Director, Office of Policy and Program Development, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857; email: *jjoseph@hrsa.gov*; telephone: 301–594–4300; fax: 301–594–4997.

SUPPLEMENTARY INFORMATION:

I. Public Participation

On September 28, 2020, HHS published a notice of proposed rulemaking (NPRM) in the **Federal Register** (85 FR 60748) to implement Executive Order 13937 (Executive Order) of July 24, 2020, by amending the regulations implementing Section 330 of the Public Health Service Act (PHS Act or the Act), to require entities funded under Section 330(e) of the Act to establish practices to provide insulin and injectable epinephrine to low-income patients at the price the health center purchased these two drugs through the 340B Program. The NPRM provided for a 30-day comment period, and HHS received 226 comments. HHS carefully considered all comments in developing this rule, as outlined in Section V below, and presents a summary of all significant comments and HHS responses.

II. Background

As discussed in the NPRM, on March 13, 2020, President Trump declared the COVID–19 pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, territories, and the District of Columbia. With the COVID–19 emergency, many low-income individuals are experiencing significant economic hardship. These low-income individuals who are dependent upon the life-saving medications of insulin and/or injectable epinephrine are now less able to access these drugs at an affordable price. On July 24, 2020, President Trump issued Executive Order 13937 to direct health centers that receive grants under section 330(e) of the PHS Act to support the improved access to certain life-saving medications by low-income individuals. As provided in the Executive Order, it is the policy of the United States to enable Americans without access to affordable insulin and injectable epinephrine through commercial insurance or federal programs, such as Medicare and Medicaid, to purchase these pharmaceuticals from a health center at the same price at which the health center acquired the medication through the 340B Program. This final rule aligns with the goals of the President's mandate.

Through the Executive Order, the President directed the Secretary of Health and Human Services (the Secretary) to take action, to the extent permitted by law, to ensure all future grants available under section 330(e) of the PHS Act, as amended, 42 U.S.C. 254b(e), are conditioned upon health centers having established practices to make insulin and injectable epinephrine available at the discounted price paid by the health center grantee or subgrantee under the 340B Program (plus a minimal administration fee) to individuals with low incomes, as determined by the Secretary, who:

(a) Have a high cost sharing requirement for either insulin or injectable epinephrine;

(b) Have a high unmet deductible; or

(c) Have no health care insurance.

Under section 330(k)(3) of the Act, the Secretary may not approve an application for a grant under subparagraph (A) or (B) of subsection (e)(1) unless the Secretary determines that the entity for which the application is submitted meets the requirements enumerated in section 330(k)(3)(A)–(N). Section 330(k)(3)(N) requires that ''the center has written policies and procedures in place to ensure the appropriate use of Federal funds in compliance with applicable Federal statutes, regulations, and the terms and conditions of the Federal award.'' Through this final rule, and consistent with the Act, HRSA will include in the Terms section of applicable Notices of Award (NOAs) issued under section 330(e) grant awards, the requirement that health center awardees comply with the discounted price provisions described herein.

This regulation applies to new grants and new project periods for service area, new access point, supplemental, and expanded services awards issued under section 330(e) of the PHS Act.

III. Statutory Authority

The statement of authority for 42 CFR part 51c continues to read section 330 of the PHS Act (42 U.S.C. 254b) and section 215 of the PHS Act (42 U.S.C. 216).

IV. Summary of This Rule

Overview

This rule codifies the proposed requirement described in the September 2020 NPRM implementing the Executive Order issued to support the improved access to certain life-saving medications for low-income individuals. This rule establishes a requirement for awarding new grants under section 330(e) of the PHS Act (42 U.S.C. 254b) that the awardee have established written practices to make insulin and injectable epinephrine available at or below the discounted price paid by the health center grantee or subgrantee under the 340B Program (plus a minimal administration fee) to health center patients with low incomes who: (a) Have a high cost sharing requirement for either insulin or injectable epinephrine, (b) have a high unmet deductible, or (c) have no health insurance. This final rule also provides definitions relevant to this requirement.

Through this final rule, the requirement for all grant awards under section 330(e) of the PHS Act is as follows:

Under Executive Order 13937, issued July 24, 2020, if your health center or a subrecipient receives section 330(e) funding, is enrolled in the 340B Program and purchases, is reimbursed, or provides reimbursement to other entities for insulin and injectable epinephrine, whether obtained using federal or non-federal funds, your health center must have established practices to make insulin and injectable epinephrine available to low-income health center patients (defined herein as

those individuals or families with annual incomes at or below 350 percent of the Federal Poverty Guidelines (FPG))—who either have insurance with a high cost sharing requirement for either insulin or injectable epinephrine, as applicable, a high unmet deductible, or who have no health insurance—at or below the price the health center paid through the 340B Program, plus a minimal administration fee. You are not required to charge third-party payors this discounted price.

Consistent with the Executive Order, this Term only applies to health centers receiving section 330(e) grant funds that participate in the 340B Program (42 U.S.C. 254b and 256b). This requirement is limited to increasing affordable access to insulin and injectable epinephrine. The requirement to make insulin and injectable epinephrine available at or below the same price paid through the 340B Program does not apply to other 340B drugs. Health centers subject to this requirement are expected to provide drugs in these two categories at or below the price paid through the 340B Program to health center patients only, and only to those health center patients identified as low-income, as described below. An individual will not be considered a ''patient'' of the health center for this purpose if the only health care service received by the individual from the health center is the dispensing of a drug or drugs for subsequent self-administration or administration in the home setting. See Notice Regarding Section 602 of the Veterans Health Care Act of 1992 Patient and Entity Eligibility, 61 FR 55,156 (Oct. 24, 1996). Nothing in this Program Term or the actions described in this final rule prohibits or otherwise restricts a health center from setting the price for insulin or injectable epinephrine lower than the price the health center paid through the 340B Program.

This Program Term will be included on all Notices of Award issued to health centers receiving grant funds under section 330(e) of the Act.

The Executive Order states that future grants under section 330(e) should be conditioned upon health centers or subrecipients participating in the 340B Program, including through contract pharmacy arrangements, having established practices to make insulin and injectable epinephrine accessible at an affordable price to low-income patients. To implement this requirement, all future awards made available under section 330(e) will include the requirement that health centers participating in the 340B Program comply with the regulation as described in the Program Term in order to receive a grant award. Specifically, these funding opportunities will require health centers that participate in the 340B Program to have established practices that implement the Executive Order by offering insulin and injectable epinephrine to low-income health center patients at no more than the price the health center paid through the 340B Program plus a minimal administration fee. In particular, these practices will provide information to health center patients in an easily understandable format regarding their administration fees, and the low-income, high cost sharing, and high unmet deductibles standard as described in this regulation. Health centers that have one or more subgrantees that participate in the 340B Program must demonstrate such subgrantees have established practices to offer health center patients these 340B discounted drugs as described in this final rule.

Through this final rule, HRSA defines the following terms to assist health centers in complying with and implementing the Executive Order.

1. ''*Established practices*'': The health center demonstrates through its written policies, procedures, and/or other relevant documents that it has established practices to offer insulin and injectable epinephrine at no more than the discounted price paid by the health center under the 340B Program plus a minimal administration fee.

2. ''*Health center grantee or subgrantee*'': The Executive Order cites section 1905(l)(2)(B)(i) and (ii) of the Social Security Act, as amended (42 U.S.C. 1396d(l)(2)(B)(i) and (ii)). These two subparagraphs refer to organizations receiving an award under section 330 of the PHS Act (health centers) directly or as a subrecipient of grant funding. For purposes of this final rule, this definition of health center grantee or subgrantee is defined as organizations receiving funding under section 330(e) of the PHS Act.

3. ''*Minimal administration fee*'': This final rule establishes that health centers receiving funding under section 330(e) of the PHS Act are expected to offer insulin and injectable epinephrine at or below the price the health center paid through the 340B Program, plus a minimal administration fee. As the Executive Order does not allow any other charge for these two categories of drugs, the minimal administration fee is expected to include any dispensing fee, counseling costs, and any other charges associated with the patient receiving the medication. As the fee must be ''minimal,'' consistent with the stated policy of the Executive Order, the administration fee should not create a barrier to low-income health center patients accessing these drugs, and health centers should make every reasonable effort to keep the fee as low as possible. Health centers may consider referring to the Medicaid dispensing fee in their state [1] as a comparison for what may be considered a minimal administration fee. Please note that when there is a separate fee associated with provision of the pharmaceutical service, such as a dispensing fee, health centers must apply a sliding fee discount to that fee. The Health Center Program Compliance Manual's Sliding Fee Discount Program Chapter specifies the requirements of a health center's sliding fee discount program for in-scope services including pharmaceutical services.[2]

4. ''*Individuals with low incomes*'': This final rule defines individuals with low incomes as individuals and families with annual incomes of no greater than 350 percent of the Federal Poverty Guidelines.

5. ''*High cost sharing requirement*'': For purposes of this final rule, cost sharing refers to a patient's out-of-pocket costs, including, but not limited to, deductibles, coinsurance, and copayments, or similar charges. More specifically, a cost sharing requirement that exceeds twenty percent of the amount the health center is charging its patients for the drug would be considered a high cost sharing requirement.

6. ''*High deductible*'': High deductible refers to a deductible amount that is not less than the amount required for a high deductible health plan as defined in section 223(c)(2)(A) of the Internal Revenue Code, which, for 2020, is any plan with a deductible of at least $1,400 for an individual or $2,800 for a family, with out-of-pocket costs not to exceed $6,900 for an individual and $13,800 for a family for in-network services. For 2021, the deductible limits would remain the same, while the limits for out-of-pocket costs would increase to $7,000 for self-only coverage and $14,000 for family coverage. When the Internal Revenue Service (IRS) updates these figures, HRSA will post the updated high deductible amounts on the Health Center Program website.

7. ''*High unmet deductible*'': High unmet deductible refers to the amount

[1] Please see *https://www.medicaid.gov/medicaid/prescription-drugs/state-prescription-drug-resources/medicaid-covered-outpatient-prescription-drug-reimbursement-information-state/index.html* for further information.

[2] Please see *https://bphc.hrsa.gov/programrequirements/compliancemanual/chapter-9.html#titletop* for further information.

a patient owes toward their high deductible at any time during a plan year in which the portion of the patient's high deductible for the plan year that has not yet been met exceeds 20 percent of the deductible.

8. ''*Health insurance*'': Health insurance refers to private insurance, State and exchange plans, employer-funded plans, and coverage under titles XVIII, XIX, and XXI of the Social Security Act.

V. Public Comments and Responses

HRSA received a total of 226 comments from the public, including individuals requiring insulin or injectable epinephrine and their family members, associations and organizations representing health centers and other stakeholders, health center staff and clinical professionals, health insurance issuers, and pharmaceutical manufacturers. The vast majority of commenters identifying themselves as individuals or the family members of those who rely on insulin or injectable epinephrine (22) were in favor of the proposed rule, although several suggested the proposed rule did not go far enough in reducing prices of these two medications. Many commenters (175), including many health centers, strongly urged that the proposed rule either not be finalized or be delayed in implementation, although most of these comments shared in the Administration's goal of ensuring access to these two life-saving medications. Most of the comments opposing implementation of the rule or suggesting delaying implementation also recommended changes to the language of the NPRM if it were to be implemented.

All comments were considered in developing this final rule. This section presents a summary of all major issues raised by commenters, grouped by subject, as well as responses to the comments. Commenters used the terms ''Federally Qualified Health Centers (FQHCs)'' and ''health centers'' interchangeably. For consistency, and as this rule applies to health centers funded under Section 330(e) of the PHS Act, and not to other FQHCs, this final rule uses ''health center'' throughout.

1. Support for the Proposed Rule

Approximately 23 commenters expressed support for the proposed rule. Commenters cited a number of reasons for their support, including the high cost of insulin and injectable epinephrine and concern over increasing costs of medications. Commenters also stated that lower cost medications lead to higher medication patient adherence and, as such, lower the costs to the overall health system. One commenter noted that the proposed rule would mostly benefit those between 200 percent and 350 percent of the FPG.[3] Many of these commenters felt the proposed rule should be expanded to include more medications and patients beyond those served by health centers.

Additionally, one commenter requested that HRSA include the proposed rule's requirements in all grants establishing 340B eligibility, and that the proposed rule's requirements should also apply to health centers' contract pharmacy arrangements.

Response: HRSA appreciates the commenters' support for the rule. Consistent with the direction provided to HHS in the Executive Order, HRSA is not expanding this final rule beyond health centers receiving grants under Section 330(e) of the PHS Act, to drugs beyond insulin and injectable epinephrine, or otherwise beyond the parameters identified in the proposed rule. As a clarification, health centers utilizing contract pharmacy arrangements must also adhere to this final rule.

2. Concerns Regarding the Proposed Rule's Enforceability

Two commenters expressed concerns with the proposed rule's enforceability. Commenters suggested that a rule implementing the Executive Order could be easily circumvented and could be challenging to enforce. More specifically, commenters stated that without explicit codes for documenting which health centers participate in the 340B Program, it would be difficult to monitor and enforce compliance. Another commenter suggested HRSA clearly identify which health centers are participating in the 340B Program to help private sector partners support the implementation of the proposed rule. In addition, the commenter stated that HRSA should specify methods that would be used to verify income and insurance status in order to successfully operate the program.

One commenter also included suggestions for ensuring compliance and eliminating loopholes, including: (1) Providing receipt information for the monetary exchange between patients and providers, (2) comparing the manufacturer's drug price against the price charged to patients, and (3) using incentives to ensure compliance beyond the loss of section 330(e) funding awards (*e.g.,* loss of medical license for non-compliance).

Response: HRSA appreciates these comments. HRSA provides oversight of all covered entities in the 340B Program, including health centers, and HRSA declines to add these suggested compliance requirements. In particular, the suggestion that non-compliance should result in the loss of a medical license is outside of HRSA's purview.

With regard to the other suggestions for monitoring compliance with the final rule, HRSA will monitor the ongoing implementation of this final rule and will make changes as appropriate to ensure its effective implementation.

3. Final Rule Is Not Needed as the 340B Program Is Operating as Intended

Approximately 52 commenters stated that the 340B Program is operating as intended when originally created and changes are not needed. Many of these commenters stated that health centers already provide discounted drugs to patients, regardless of their ability to pay. Commenters also noted that health centers are required by law to use 340B savings to expand access to health care for the underserved, and these savings are crucial to enabling health centers to offer other services to their patients in addition to providing discounts for drugs.

One commenter called on HRSA to take a more holistic approach to realign the 340B Program with its original intent and scope and support health centers' access to the 340 Program.

Response: HRSA acknowledges that health centers use 340B Program savings to benefit their patient population, as required by the Health Center Program, and many health centers provide discounted medications to their patients. Consistent with the Executive Order, this final rule applies only to insulin and injectable epinephrine and does not address other drugs health centers purchase through the 340B Program.

4. The Executive Order Reflects a Misunderstanding of Health Centers' Mission and Operations

Approximately 175 commenters suggested that the Executive Order, on which the NPRM is based, reflects fundamental misunderstandings about health centers' mission and operations, and does not recognize the essential role that health centers play in ensuring access to affordable pharmaceuticals for medically vulnerable populations. The commenters expressed concern with the

[3] The FPG are a federal poverty measure issued each year in the **Federal Register** by HHS. The guidelines are used for administrative purposes, such as for determining financial eligibility for certain federal programs. They are available at *https://aspe.hhs.gov/poverty-guidelines.*

Executive Order provision that suggested that health centers are benefiting inappropriately from the 340B Program at the expense of their vulnerable patients. The commenters argued that health centers do much more than pass on the 340B discount to their low-income patients, and often discount drug prices below the 340B price to ensure they are affordable. Additionally, commenters stated that all health centers are required to invest all 340B savings into activities that expand access to care for low-income populations, and that health centers are already part of the solution to unaffordable drug prices, and not part of the problem. Commenters also stated that health centers are widely praised for their strong track record of compliance with both the letter and the spirit of the 340B statute.

Response: The final rule implements the goals and intent of the Executive Order to make insulin and injectable epinephrine more affordable. HRSA acknowledges that health centers play a crucial role in providing access to comprehensive, high quality primary health care to all patients regardless of ability to pay. Further, HRSA is cognizant of health centers' compliance with the 340B statute and strong track record of using the savings generated to benefit patients. HRSA values its partnerships with all health centers and commends their efforts to ensure access to affordable drugs for all of their patients.

5. The Executive Order Reflects a Misunderstanding of the 340B Program

Approximately 161 commenters suggested that the Executive Order on which the NPRM is based reflects a fundamental misunderstanding of the 340B Program, and if implemented as written would decrease some patients' access to affordable drugs. The commenters argued that this misunderstanding of 340B pricing would result in some patients paying more for insulin, dramatic fluctuations in insulin costs from one quarter to another and requiring quarterly changes to a patient's prescription to keep them on the most affordable insulin brand available.

The commenters also disagreed with the Executive Order's statement that health centers pay only one penny for a month's supply of insulin or injectable epinephrine. The commenters suggested that this statement was not universally true given drug pricing fluctuations, with prices for drugs often varying from one penny in one quarter to over $100 in another quarter. These commenters stated that health centers cannot guarantee that the price of the insulin or injectable epinephrine that a patient will pay on a certain day is the exact 340B price. This 340B price fluctuation from quarter to quarter can create an undue administrative compliance burden on health center staff.

One commenter suggested that the drug price charged to the health center patient should be the average 340B drug price to account for the quarterly variations in pricing.

Response: The rule implements the goals and intent of the Executive Order to make insulin and injectable epinephrine more affordable. HRSA recognizes that health centers have a strong history of compliance with the 340B statute and that many already significantly discount drugs for their patients, either through in-house pharmacies or via 340B contract pharmacies.

Drug prices are set quarterly based on prices manufacturers submit to the Centers for Medicare & Medicaid Services. Although insulin and injectable epinephrine prices may vary from quarter to quarter, the final rule allows health centers to offer these drugs at lower than the 340B price despite these fluctuations. Given this flexibility, and consistent with the intent of the Executive Order, HRSA will not change the final rule to allow for the averaging of 340B prices.

6. Differences Between the Executive Order and NPRM

Approximately 143 commenters noted that the language in the proposed rule departs from language in the Executive Order. Specifically, the proposed rule would allow health centers to make insulin and injectable epinephrine available ''at *or below*'' the price the health center paid through the 340B Program, whereas the Executive Order requires that health centers make such medications available ''at the discounted price.'' Commenters suggested that the Executive Order prohibits health centers from providing these drugs at prices below the 340B Ceiling Price. The commenters agreed with the need to allow flexibility in providing further discounts to patients but expressed concern that the discrepancy in language between the Executive Order and proposed rule demonstrates the inappropriateness of both.

Response: HRSA intends to proceed with language in the proposed rule requiring health centers to make insulin and injectable epinephrine available ''at *or below*'' the price paid by the health center through the 340B Program. This final rule will allow a health center to provide either of these two medications to patients at a price below the 340B Price. The language in this rule is consistent with the intent of the Executive Order.

7. Change Proposed Definition of ''*Low-Income*''

Approximately 164 commenters requested that HRSA change its proposed definition of ''low-income'' from 350 percent of the FPG to 200 percent of the FPG to better align with definitions used by other federal programs and private entities. Commenters noted that income assessments are not typically conducted by clinical staff, and those who conduct the assessments do not and should not have access to the personal health information that would be required for them to conduct a separate income analysis for patients who require insulin or injectable epinephrine. Additionally, commenters stated that such staff may not be competent to determine which patients may need such drugs now or in the future. Commenters specifically argued that using a low-income definition different from the 200 percent of the FPG required by the Health Center Program would create significant burden on health center staff to determine eligibility for health center discounts differently from eligibility for the pricing created by the proposed rule. This discrepancy would also create potential burden when using a contract pharmacy, where staff may be unfamiliar with evaluating patient income and may be unwilling to do so. Commenters further noted HHS, the United States Census Bureau, and private groups use 200 percent of the FPG to define low-income for research purposes. Commenters stated that for every federal program with income eligibility thresholds, low-income is defined as 250 percent of the FPG or less. While the Patient Protection and Affordable Care Act uses a ceiling above 350 percent to identify those eligible for premium tax credits on the Exchanges, this is not a definition of low income, as premium tax credits are designed for both lower and middle class individuals. Finally, commenters argued that a 350 percent FPG threshold could eliminate health centers' ability to retain 340B savings from privately insured patients due to health insurance issuers frequently requiring health centers to bill no more than their usual and customary (U&C) rate. While health centers have been successful resisting issuers' attempts to define U&C rates as discounted rates provided to patients at or below 200 percent FPG, the commenters expressed concern that

defining low-income as 350 percent FPG will cover most health center patients, making it very difficult to argue that the 340B price for insulin and injectable epinephrine is not the health center's U&C rate. This change would effectively transfer the 340B benefit from health centers to private health insurance issuers.

Response: HRSA intends to proceed with the language in the proposed rule requiring health centers to make insulin and injectable epinephrine available at or below the price paid by the health center through the 340B Program to health center patients that have incomes at or below 350 percent FPG and that otherwise meet the criteria described in this rule. While HRSA appreciates the feedback on the definition of ''low income'', we do not agree that it is too burdensome to implement as written. The language in this rule is consistent with the intent of the Executive Order.

8. Clarify Eligible Patients Under the Rule

Approximately 162 commenters requested clarification of the regulatory language that only those patients who meet the 340B patient definition are eligible for the 340B (or lower) price. Commenters argued that the regulatory language must clearly state that the health center is required to charge the 340B price (or less) only to those low-income individuals who meet the definition of ''FQHC patient'' under the 340B Program. Without such language, health centers could be forced to provide 340B pricing (or less) to individuals who are not eligible to receive 340B-priced drugs from the health center. Commenters used the example that low-income individuals could demand the health center provide them with discounted insulin, without permitting the health center to assume responsibility for their care (a necessary step for 340B eligibility). In such situations, 340B compliance would require the health center to purchase the insulin at the regular price, while this regulation would require that the individual be charged the 340B price or lower—an outcome that would be both expensive and administratively burdensome for the health center. Commenters recommended an addition to the regulatory text to clarify that only eligible health center patients should be able to access these drugs at the 340B price.

Response: The intent of the rule is to provide insulin and injectable epinephrine at no more than the 340B price to health center patients and not to individuals who are not health center patients. HRSA understands commenters' concerns, and the language in 42 CFR 51c.303(w)(1) has been revised to clarify that the final rule applies only to ''health center patients.'' HRSA also notes that the NPRM states that a ''patient'' for purposes of this subsection means only health center patients who receive in-scope health center services beyond dispensing of drugs that are self-administered or administered at home. This definition is also being finalized in this rule.

9. Address Potential Conflict With Third-Party Payor Contract Terms

Approximately 161 commenters requested that HRSA add regulatory language ensuring that health centers are not forced to provide discounts to underinsured patients if doing so would violate the terms of their insurance contracts. These commenters noted that many health insurance issuers prohibit providers from charging patients less for a service or supply than the amount due under their deductible or cost sharing requirements.

Response: HRSA acknowledges that health centers need to comply with the terms of their contracts with third-party payors. HRSA clarifies in the final rule that provision of insulin and injectable epinephrine at or below the 340B discounted price is subject to potential restrictions in contracts with third-party payors. The language of the final rule reflects this clarification.

10. Change Definitions of ''High Cost Sharing Requirement,'' ''High Deductible'' and ''High Unmet Deductible''

Approximately 161 commenters requested HRSA clarify its definitions of ''high cost sharing requirement.'' Commenters specifically noted confusion surrounding the definition of ''high cost sharing requirement'' and asked whether it means that a low-income patient should be charged the lesser of their cost sharing amount, or the amount they would be charged under the proposed rule if they were uninsured. In addition, two commenters argued that health centers already provide their patients with medications at significant discounts and are thus concerned about defining ''high cost sharing requirement'' as 20 percent of an already discounted price. The two commenters noted that it is unlikely that a private health insurance issuer would define a charge that is 20 percent of an already discounted price as a ''high cost sharing requirement.'' Commenters requested the definition be rewritten to reflect that 20 percent of an already discounted price is not a high cost sharing requirement. One commenter requested clarification as to how ''high cost sharing'' would be calculated for a patient with an insurance plan that ties the patient's cost sharing to a deductible or co-insurance that may change over the course of a plan year and suggested that this kind of fluctuation in cost sharing would require communication with payors and should be worked out before a final rule is promulgated.

Two commenters requested that ''high deductible'' and ''high unmet deductible'' be changed to a specifically defined amount so that health center and contract pharmacy staff could determine eligibility from a patient's insurance card. They specifically noted the proposed definition of ''high deductible'' points to a section in the Internal Revenue Code and that it would be burdensome for intake staff to determine if a patient has a ''high deductible'' or a ''high unmet deductible'' using this definition. One commenter requested further clarification of ''high unmet deductible,'' asking if once a patient meets 80 percent of their deductible they are no longer eligible for the proposed rules' pricing. The commenter noted that, if so, the patient's deductible payments would need to be tracked throughout the plan year and made available at the point of sale through the claims adjudication process. Additionally, medical claims may need to be factored into the unmet deductible amount, which could be challenging due to the delays in processing medical claims for patients with a dual pharmacy/medical deductible.

Response: HRSA appreciates the feedback surrounding the definition of ''high cost sharing requirement.'' The rule does not state that a low-income patient should be charged the lesser of their cost sharing amount or the amount they would be charged under the proposed rule if they were uninsured. Rather, the rule states that such patients should be provided access to insulin and injectable epinephrine at no more than the price at which the health center purchased the drug through the 340B program. While HRSA appreciates the feedback on the definition of ''high cost sharing requirement,'' we do not agree that it is too burdensome to implement as written. HRSA also notes that health centers may choose to charge their patients less than the discounted price at which the health center purchased the drug through the 340B Program, regardless of the patient's insurance out-of-pocket costs or insurance status.

HRSA appreciates the feedback that the proposed rule may be difficult to implement for patients whose cost

sharing changes throughout the plan year. HRSA will monitor implementation of the final rule and will modify it if we determine that a modification is warranted.

HRSA appreciates the feedback that it will be difficult for health center intake staff to determine eligibility for the final rule's pricing on insulin and injectable epinephrine because the rule's definition of ''high deductible'' references the Internal Revenue Code definition. As reflected in the preamble of the NPRM, HRSA will publish the Internal Revenue Code definition of high deductible on the Health Center Program website. Such eligibility determinations may be integrated into existing processes utilized by health centers. Furthermore, it is HRSA's understanding that many insurance cards do print the deductible on their cards, and we agree that the ability to evaluate whether a plan has a ''high deductible'' based on such information may make evaluation less burdensome on health center staff. However, HRSA does not have the authority to require health insurance issuers to place deductible amounts on the proof of insurance cards they provide to patients.

HRSA appreciates the feedback on the definition of ''high unmet deductible'' and the potential difficulty with implementing this provision of the rule. To clarify, HRSA does intend that once a patient meets 80 percent of a high unmet deductible, the health center would no longer be required to provide that patient with insulin or injectable epinephrine at the 340B price as described by this rule, unless such patient separately meets the definition of either having a ''high cost sharing requirement'' or having no insurance. We realize this may have the potential to create additional burden on health centers and their contract pharmacies to ascertain a patient's eligibility for pricing under this rule. HRSA will monitor implementation of this final rule and will modify it if it is deemed that a modification is warranted.

11. Clarify Definition of ''Minimal Administration Fee''

Approximately 161 commenters requested clarification that, as a result of this rule, the ''minimal administration fee'' for insulin and injectable epinephrine will differ from the fees (if any) associated with dispensing other pharmaceuticals. Commenters noted that this rule will create significant additional administrative burdens for health centers, beyond the costs regularly associated with dispensing, counseling, and 340B compliance. One commenter requested that if the eligibility threshold under this rule is not aligned with the 200 percent of the FPG established for discounts to health center services under the Health Center Program, that HRSA define ''minimal administration fee'' to include costs associated with dispensing, 340B compliance, and the additional administrative work required to identify patients. Furthermore, they requested that HRSA clarify that this fee is unique to the dispensing of insulin and injectable epinephrine.

One commenter requested clarification that administration fees may include limited per prescription fees associated with operationalizing an overall 340B Program or contract pharmacy network. Because health centers often have arrangements with third-party vendors and/or contract pharmacies that include a per prescription fee, and such fees are often minimal, changes to how these fees are calculated and administered could cause patients to lose access to some pharmacies.

Response: The final rule defines ''minimal administration fee'' as a fee that may not create a barrier to low-income patients' access to insulin and injectable epinephrine. It would be inconsistent with the intent of the Executive Order and the rule to define ''minimal administration fee'' in a way that could create a barrier to accessing these drugs. A definition that included potential costs related to compliance could be seen as accepting that health centers will charge patients a higher fee to purchase insulin and injectable epinephrine than for other pharmaceuticals.

As all health centers are required to collect information regarding patient income, HRSA does not anticipate the need for a separate eligibility review. Entities participating in the 340B Program already manage different prices for 340B drugs on a quarterly basis. This final rule has clarified that only health center patients are eligible for insulin and injectable epinephrine at the prices set under this rule, and HRSA does not anticipate health centers incurring additional costs related to non-health center patients receiving these drugs. Monitoring and reporting compliance with this rule is not anticipated to be significant.

HRSA recognizes that the minimal administration fee described in the rule does not occur with other pharmaceuticals, including other 340B drugs, where multiple fees are listed separately. The rule defines the term, and states that health centers may, but are not required to, charge such a minimal administration fee for insulin and injectable epinephrine. HRSA acknowledges that this minimal administration fee is unique to this rule and insulin and injectable epinephrine as covered here, and that this rule does not create a new term that applies to the 340B Program beyond this rule. As noted in the rule, all definitions are provided ''for purposes of this paragraph exclusively.'' Therefore, HRSA declines to make revisions to this section.

12. Clarify ''Established Practices''

One commenter requested that HRSA clarify and provide additional guidance on the proposed rule's requirement for ''established practices.'' Because not all covered entities have mechanisms in place to adjudicate 340B claims for uninsured or underinsured patients, the commenter noted that many will have to take affirmative steps to develop systems and processes to support the provisions of the proposed rule, which have cost and time implications. These additional administrative costs could lead to reduced patient access to health center services or discounted drugs.

The commenter requested HRSA clarify that to the extent that 340B covered entities have existing contracts with third-party administrators or vendors regarding established practices, deference be given to the practices in those existing contracts. However, for those covered entities that do not have established practices in place, the commenter requested that HRSA provide clear guidance on how covered entities should notify contract pharmacies so that they are aware which patients are eligible for the discounted prices.

Response: HRSA proposed a definition of ''established practices'' in the NPRM and finalizes that definition in this rule. We understand that some health centers will have to establish new practices to ensure compliance with the requirements of this rule; however, HRSA does not anticipate that the administrative costs of establishing such practices will be substantial.

13. Suggested Technical Edits to (w)(1)

One commenter suggested several edits to the NPRM language proposed at 42 CFR 51c.303(w)(1). Specifically, they suggested that the regulatory language in subsection 51c.303(w)(1), as proposed in the NPRM, be edited to replace ''through a written agreement'' with ''indirectly.'' They argued that some 340B covered entities either do not have written agreements with contract pharmacies, or do not abide by such agreements. They further suggested

that ''discounted price paid by the health center'' be replaced with ''340B Ceiling Price,'' arguing that ''ceiling price'' be more clearly defined. They also suggested several typographical edits.

Response: As the commenter noted, health centers should have written agreements with contract pharmacies used for dispensing 340B drugs. HRSA believes that the use of ''written agreements'' as proposed in the NPRM will provide greater clarity for health centers in complying with this rule. It is HRSA's intent that a health center choosing to participate in the 340B Program must provide the two life-saving medications identified in this rule either directly or through a written agreement. Other forms of ''indirect'' distribution of the drug would not be compliant with the rule. HRSA will monitor implementation of this final rule and will modify it if it is deemed that a modification is warranted.

HRSA will not at this time use ''340B Ceiling Price'' as suggested by the commenter. The Executive Order intended for low-income patients to access insulin and injectable epinephrine at no more than the price paid by the health center through the 340B Program. As it is possible that the health center may have paid less than the 340B Ceiling Price, the language proposed in the NPRM is finalized in this rule.

HRSA appreciates the commenter's identification of several typographical edits and accepts those suggestions, which are reflected in the final rule.

14. Concern Regarding Market Distortions

Two commenters expressed concern regarding market distortions. One commenter argued that the proposed rule could exacerbate market distortions, as well as create new ones. Another commenter noted that applying this policy to the insured could deflect costs from insurance plans to patients and that the policy could perpetuate a situation whereby patients with insurance may be unable to utilize the benefit in a meaningful way. The commenter argued that allowing patients with insurance to access 340B Program pricing creates a perverse incentive for insurance plans to continue shifting out-of-pocket costs for 340B drugs to patients. They argued that this undermines the purpose of insurance, and that to the extent more patients remain in the deductible phase of the benefit for all if not most of the year, the health insurance issuer does not provide any coverage for the patient's prescription.

Response: HRSA appreciates the concern expressed in these comments. However, the purpose of the Executive Order and the rule is to reduce the cost of insulin and injectable epinephrine to patients. Therefore, HRSA will finalize the rule as described.

15. Concern Regarding Additional Burden on Contract Pharmacies

One commenter noted the NPRM expressly states there will be no additional paperwork or reporting burden for health centers associated with implementation. The commenter was concerned that implementation of the proposed rule could lead to additional paperwork, reporting, and regulatory burdens for independent pharmacies operating as contract pharmacies for health centers. The commenter requested clarification in the final rule that no additional burdens will be placed on contract pharmacies.

Response: Health centers and contract pharmacies operate as private entities and make independent decisions as to their contracting arrangements. HRSA will continue to monitor the impact of this final rule on health centers and their contract pharmacy arrangements and will modify it if it is determined that a modification is warranted.

16. Rule Is Economically Significant

One commenter disagreed with the proposed rule and believed it was economically significant and that it would have an impact on small entities. The commenter requested that HRSA be required to further evaluate the costs and benefits of finalizing the proposed rule and to look at alternatives to implementing the rule.

Response: This comment is addressed in the Regulatory Impact Analysis section of this final rule.

17. Legal Sufficiency of the NPRM

One commenter argued that the NPRM does not provide legal justification and is therefore arbitrary and capricious and contrary to the Administrative Procedure Act. The commenter requested that HRSA withdraw the NPRM.

Response: HRSA has indicated the statutory authority for the NPRM and final rule as Section 330 of the PHS Act (42 U.S.C. 254b) and Section 215 of the PHS Act (42 U.S.C. 216), and is issuing the final rule pursuant to Executive Order 13937. HRSA disagrees with the commenter that the rule is arbitrary and capricious. HRSA stated in the NPRM that the ongoing Coronavirus Disease COVID–19 pandemic has caused significant hardship among many low-income individuals and, because of this and consistent with the Executive Order, HRSA is attempting to ensure two life-saving medications, insulin and injectable epinephrine, are available at affordable rates. HRSA disagrees that the NPRM and final rule are inconsistent with the Administrative Procedure Act.

18. Miscellaneous

Other commenters raised a variety of issues that do not pertain directly to the implementation of Executive Order 13937 requiring entities funded under Section 330(e) of the PHS Act to establish practices to provide access to insulin and injectable epinephrine to low-income health center patients at the price the health center purchased these two drugs through the 340B Program, which was the focus of the proposed rule. This final rule does not address those issues as they are outside the scope of the proposed rule.

VI. Regulatory Impact Analysis

HHS has examined the effects of this 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 8, 2011), the Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 on Federalism (August 4, 1999). HHS has also considered Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), and received public comments describing new administrative costs for health centers. As a result, OMB has determined this rule is regulatory for purposes of Executive Order 13771.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the

economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year), and a ''significant'' regulatory action is subject to review by the Office of Management and Budget (OMB).

HHS does not believe that this rule will have an economic impact of $100 million or more in any 1 year, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. Because this rule is limited in scope to two classes of drugs that are of particular need and it aligns with the mission for health centers to provide access to care for vulnerable individuals and families, HHS believes it will have minimal economic impact. The economic impact is also expected to be minimal given the rule is limited to only two drug categories which are available under the 340B Program at significantly reduced prices. Indeed, approximately 91 percent of patients at affected health centers have incomes at or below 200 percent of FPG, and thus receive discounts on health services. (In addition, health centers are required to reinvest any income from the 340B Program into patient services.) Many commenters noted that health centers already provide medications at reduced prices to their patients. For example, some health centers reported charging $7 for a 1-month supply of insulin for individuals below 200 percent of poverty. As discussed earlier, in the summary of public comments, the final rule leads to new administrative costs for health centers in association with new processes and procedures. There are approximately 1,385 health center awardees that could experience these new costs.[4] HRSA estimates that, on average, each health center would need one additional full-time equivalent (FTE) eligibility assistance worker at approximately $50,000 to support necessary additional administrative processes, totaling approximately roughly $68,750,000. Therefore, OMB has not designated this rule as ''economically significant'' under section 3(f)(1) of the Executive Order 12866. HHS welcomed but received no public comments that demonstrated this rule will have an economic impact exceeding the threshold set by E.O. 12866.

The Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require HHS to analyze options for regulatory relief of small businesses. If a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of the rule on small entities and analyze regulatory options that could lessen the impact of the rule. HHS will use an RFA threshold of at least a 3 percent impact on at least 5 percent of small entities.

For purposes of the RFA, HHS considers all health care providers to be small entities either by meeting the Small Business Administration (SBA) size standard for a small business, or for being a nonprofit organization that is not dominant in its market. The current SBA size standard for health care providers ranges from annual receipts of $8 million to $41.5 million. As of August 8, 2020, the Health Center Program provides grant funding under section 330(e) of the PHS Act to 1,310 organizations to provide health care to medically underserved communities. HHS has determined, and the Secretary certifies, that this rule will not have a significant impact on the operations of a substantial number of small health centers; therefore, we are not preparing an analysis of impact for the RFA.

HHS welcomed comments concerning the impact of this proposed rule on health centers and received one comment on this topic. The commenter argued that the rule will have a significant economic impact on a substantial number of small entities. The commenter argued that the stress this rule will cause to health centers may result in reductions in services, employment, and access to life-saving treatment. Specifically, the commenter stated that the rule will have the impact of (1) dramatically reducing 340B savings for health centers, (2) likely increasing the cost of life-saving medications nationwide, and (3) creating enormous administrative burdens for health centers, specifically because the NPRM proposed defining ''low-income'' as at or below 350 percent of the FPG, a different income threshold than the 200 percent used by the Health Center Program.

HHS acknowledges the commenter's concerns. However, HHS has not changed its determination that the RFA does not apply to this rule. The comment did not demonstrate that a reduction in 340B savings would meet the threshold of a 3 percent impact on 5 percent of small entities. A reduction in 340B savings is limited to those related to these two medication categories, and only when provided to low-income patients that are uninsured, or who have a high cost sharing requirement or high unmet deductible. The comment did not demonstrate or explain how this rule will increase the cost of medications nationwide. To the contrary, the rule will increase the access of certain low-income patients to affordable insulin and injectable epinephrine.

Unfunded Mandates Reform Act

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.'' In 2019, that threshold level was approximately $164 million. HHS does not expect this rule to exceed the threshold.

Executive Order 13132—Federalism

HHS has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' This rule 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.'' This rule would not adversely affect the following family elements: Family safety, family stability, marital commitment; parental rights in the education, nurture, and supervision

[4] See *https://data.hrsa.gov/tools/data-reporting/program-data/national.*

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.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that OMB approve all collections of information by a federal agency from the public before they can be implemented. This rule is projected to have no impact on current reporting and recordkeeping burden for health centers. This rule would result in no new reporting burdens. HHS welcomed but did not receive comments that this rule would result in new reporting burdens for health centers.

List of Subjects in 42 CFR Part 51c

Grant programs—Health, Health care, Health facilities, Reporting and recordkeeping requirements.

Dated: December 16, 2020.

Thomas J. Engels,

Administrator, Health Resources and Services Administration.

Dated: December 17, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

Accordingly, by the authority vested in me as the Secretary of Health and Human Services, and for the reasons set forth in the preamble, 42 Code of Federal Regulations Part 51c is amended as follows:

PART 51c—GRANTS FOR COMMUNITY HEALTH CENTERS

■ 1. The authority statement for part 51c is revised to read as follows:

Authority: 42 U.S.C. 254b (Sec. 330, Public Health Service Act); 42 U.S.C. 216 (Sec. 215, Public Health Service Act,).

■ 2. Section 51c.303 is amended by adding paragraph (w) to read as follows:

§ 51c.303 Project elements.

* * * * *

(w)(1) *Provision.* To the extent that an applicant for funding under Section 330(e) of the Public Health Service Act (42 U.S.C. 254b(e)) has indicated that it plans to distribute, either directly, or through a written agreement, drugs purchased through the 340B Drug Pricing Program (42 U.S.C. 256b), and to the extent that such applicant plans to make insulin and/or injectable epinephrine available to its patients, the applicant shall provide an assurance that it has established practices to provide insulin and injectable epinephrine at or below the discounted price paid by the health center grantee or subgrantee under the 340B Drug Pricing Program (plus a minimal administration fee) to health center patients with low incomes, as determined by the Secretary, who have a high cost sharing requirement for either insulin or injectable epinephrine; have a high unmet deductible; or have no health insurance.

(2) *Definitions.* For purposes of this paragraph (w) exclusively:

(i) *Established practices.* The health center has written policies, procedures, and/or other relevant documents that it has established practices to offer insulin and injectable epinephrine at no more than the discounted price paid by the health center under the 340B Drug Pricing Program plus a minimal administration fee. Such established practices may reflect that provision of insulin and injectable epinephrine at or below the 340B discounted price is subject to potential restrictions through contracts with third-party payors.

(ii) *Health center grantee or subgrantee.* Organizations receiving an award under section 330(e) of the PHS Act (*i.e.,* health centers) directly or as subgrantees of section 330(e) grant funding.

(iii) *Minimal administration fee.* The minimal administration fee includes any dispensing fee, counseling costs, and any other charges associated with the patient receiving the medication. The administration fee may not create a barrier to low-income health center patients accessing these drugs, and health centers should make every reasonable effort to keep the fee as low as possible. Health centers may refer to the Medicaid dispensing fee in their state as a reference for minimal administration fees. When there is a separate fee associated with provision of the pharmaceutical service, such as a dispensing fee, health centers must apply a sliding fee discount to that fee.

(iv) *Individuals with low incomes.* Individuals and families with annual incomes no greater than 350 percent of the Federal Poverty Guidelines.

(v) *High cost sharing requirement.* A cost sharing requirement that exceeds twenty percent of the amount the health center charges its patients for the drug is a high cost sharing requirement. Cost sharing refers to a patient's out-of-pocket costs, including, but not limited to, deductibles, coinsurance, and copayments, or similar charges.

(vi) *High deductible.* High deductible refers to a deductible amount that is not less than the amount required for a high deductible health plan as defined in section 223(c)(2)(A) of the Internal Revenue Code, as implemented by the Internal Revenue Service.

(vii) *High unmet deductible.* High unmet deductible refers to the amount a patient owes toward their high deductible at any time during a plan year in which the outstanding deductible portion exceeds 20 percent of the total deductible for the plan year.

(viii) *Health insurance.* Health insurance refers to private insurance, State and exchange plans, employer-funded plans, and coverage under titles XVIII, XIX, and XXI of the Social Security Act.

(ix) ''*Patient.*'' an individual is not be considered a ''patient'' of the health center if the only health care service received by the individual from the health center is the dispensing of a drug or drugs for subsequent self-administration or administration in the home setting.

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SURFACE TRANSPORTATION BOARD

49 CFR Part 1002

[Docket No. EP 758]

Filing Fee Waiver Requests

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board or STB) clarifies and updates its rules regarding requests to waive or reduce certain filing fees.

DATES: This rule is effective on January 22, 2021.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet at (202) 245–0368. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Independent Offices Appropriations Act (IOAA), codified at 31 U.S.C. 9701, provides that each service of value provided by an agency to a person (except those on official business of the U.S. Government) shall be self-sustaining to the extent possible and, accordingly, permits agencies to establish fees for services provided by the agency. The Office of Management and Budget (OMB) subsequently established a policy of full cost recovery for government services under which agencies must assess and collect user fees. OMB Circular A–25, User Charges (July 8, 1993). Under these authorities, the Board's predecessor—the Interstate Commerce Commission (ICC)—adopted

the fee structure at 49 CFR 1002.2 to ''cover all the [agency's] expenses, including administrative expenses.'' *See Crystal City R.R.—Aban. Exemption—in LaSalle, Zavala, & Dimmit Cntys., Tex.,* AB 427X et al., slip op. at 2 (ICC served Aug. 22, 1995).

The Board's regulations also provide for waiver or reduction of filing fees in certain limited circumstances. Under 49 CFR 1002.2(e)(1), the Board's filing fees generally are waived for filings made by a federal government agency or a state or local government entity.[1] Additionally, in ''extraordinary situations,'' a filing fee may be waived or reduced if the applicant shows that the waiver or reduction is in the best interest of the public or that payment of the fee would impose an undue hardship on the requestor. 49 CFR 1002.2(e)(2)(ii).

In 2000, the Board issued a policy statement that clarified its anticipated approach to fee waivers in several respects. *Reguls. Governing Fees for Serv.* 5 S.T.B. 352 (2000). As relevant here, the Board clarified that for state and local government entities, fees would be assessed pursuant to section 1002.2 ''to *any entity* (a state or local governmental entity, a quasi-governmental entity, or a government-subsidized transportation company) that owns or proposes to own a carrier, or that is a shipper, and comes before the Board in that capacity. . . . The fee waiver will be available to a state or local government entity that is not acting in the capacity of a carrier or shipper.'' 5 S.T.B. at 355. The Board also stated that ''[f]ees will also be assessed to quasi-governmental corporations or government-subsidized transportation companies for *any filing* submitted for which there is a fee.'' *Id.*

The Board has determined that it is appropriate to clarify its regulations and codify certain existing policies and practices to promote transparency and assist stakeholders who are considering requesting a waiver or reduction of filing fees. The Board will amend 49 CFR 1002.2(e)(1) to provide, consistent with *Regulations Governing Fees for Services,* that the fee waiver for government entities is not available to (1) quasi-governmental entities or government-subsidized transportation companies, or (2) any state and local government entity that is acting in the capacity of a carrier or shipper, or any such entity that owns or proposes to own a carrier and is before the agency in its proprietary role. As explained in *Regulations Governing Fees for Services,* when government entities are acting in a commercial capacity, they should be treated the same as any other entity that acts in a commercial capacity for purposes of fee waivers. 5 S.T.B. at 354–55.[2] This approach balances Congress' policy that agencies provide services in a manner that is ''self-sustaining to the extent possible'' through collection of fees, 31 U.S.C. 9701(a), with the agency's longstanding view that government entities should not generally be charged fees when the benefits of their actions flow to the general public. *See* 5 S.T.B. at 354–55.

The Board will also clarify in section 1002.2(e)(1) and (e)(2) how applicants for fee waivers or reductions will be notified of decisions on their requests, consistent with the Board's existing practices. In certain circumstances when a fee waiver request is granted under section 1002.2(e)(1) during the processing of the filing, the filing will be stamped ''Filing Fee Waived'' and posted in the public docket, and the Board need not provide any further notice to the applicant that the fee waiver request was granted.[3] In all other circumstances, if a request for a fee waiver or reduction is granted or denied under either section 1002.2(e)(1) or (e)(2), the Board, through the Chief of the Section of Administration in the Office of Proceedings, will notify the applicant by letter.[4]

Additionally, the Board has held that third parties lack any legal interest in, and therefore cannot challenge or appeal, the grant or denial of a fee waiver or reduction request. *Hartwell First United Methodist Church—Adverse Aban. & Discontinuance—Great Walton R.R.,* AB 1242 (STB served June 2, 2017). The Board will codify that principle by amending 49 CFR 1002.2(e) to provide that third-party appeals of fee waiver or reduction decisions are not permitted.

Finally, the Board will amend the language in 49 CFR 1002.2(e) to consistently refer to the entity seeking a fee waiver or reduction as the ''fee waiver applicant.''

Administrative Procedure Act

Under the Administrative Procedure Act (APA), the public generally may participate in the promulgation of rules through a notice and comment period. 5 U.S.C. 553(b) & (c). However, an agency may publish ''rules of agency organization, procedure, or practice'' in final form without notice and comment. *See* 5 U.S.C. 553(b)(3)(A). Because the Board has determined that these updates to its regulations relate to agency organization, practice, and procedure, the Board finds that notice and public comment on these changes is unnecessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612, generally requires an agency to prepare a regulatory flexibility analysis of any rules subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the Board has determined that notice and comment are not required under the APA for these rulemakings, the requirements of the RFA do not apply.

Paperwork Reduction Act

These final rules do not require a new or amended information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

Congressional Review Act

The Board has determined that this action is not a rule as defined by the Congressional Review Act, 5 U.S.C. 804(3).

List of Subjects in 49 CFR Part 1002

Administrative Practice and procedure, Common carriers, Freedom of information.

It is ordered:

1. The Board adopts the final rules as set forth in this decision. Notice of the adopted rules will be published in the **Federal Register**.

2. This decision is effective on January 22, 2021.

Decided: December 17, 2020.

[1] For purposes of section 1002.2(e)(1), the phrases ''federal government agency'' or ''government entity'' do not include a quasi-governmental entity or government-subsidized transportation company. The Board has indicated that a quasi-governmental entity can include a public service corporation. *See Reguls. Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—Pol'y Statement,* 5 S.T.B. 352, 354–55 (2000).

[2] The fee waiver for federal government agencies, which is based on the IOAA's waiver for persons on official business of the United States Government, will continue to apply. *Reguls. Governing Fees for Serv.,* 5 S.T.B. at 353.

[3] This process is only used in limited circumstances where it is clear that the government-entity applicant qualifies for a waiver of the fee (*e.g.,* when a government entity requests to extend a negotiating period under a notice of interim trail use or abandonment).

[4] Pursuant to 49 CFR 1104.12(d), service of decisions and other Board issuances as appropriate will be made by electronic means except in the case of paper filers that have not consented to e-service, in which case service upon that recipient will be made by mail.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board amends part 1002 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1002—FEES

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), (a)(6)(B), and 553; 31 U.S.C. 9701; and 49 U.S.C. 1321.

■ 2. Amend § 1002.2 by revising paragraphs (e)(1), (e)(2)(i), (ii), and (iii) and adding paragraph (e)(3) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(e) * * *

(1) Except as noted in this paragraph (e)(1), filing fees are waived for an application, petition, notice, tariff, contract summary, or other document that is filed by a federal government agency or a state or local government entity. A fee waiver is not available under this paragraph for a quasi-governmental entity or government-subsidized transportation company. A fee waiver is also not available to any state or local government entity that is acting in the capacity of a carrier or shipper or that owns or proposes to own a carrier and is before the agency in its proprietary role.

(i) *When to request.* At the time that a filing is submitted to the Board, the fee waiver applicant may request a waiver of the fee prescribed in this part. Such request should be addressed to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board.

(ii) *Board action.* The Board will either stamp the relevant filing with the notation ''Filing Fee Waived,'' or the fee waiver applicant will be notified of the decision to grant or deny the request for waiver by the Chief, Section of Administration, Office of Proceedings.

(2) * * *

(i) *When to request.* At the time that a filing is submitted to the Board, the fee waiver applicant may request a waiver or reduction of the fee prescribed in this part. Such request should be addressed to the Chief, Section of Administration, Office of Proceedings.

(ii) *Basis.* The fee waiver applicant must show the waiver or reduction of the fee is in the best interest of the public, or that payment of the fee would impose an undue hardship on the fee waiver applicant.

(iii) *Board action.* The Chief, Section of Administration, Office of Proceedings will notify the fee waiver applicant of the decision to grant or deny the request for waiver or reduction.

(3) *Review.* No third-party appeals of fee waiver or reduction decisions are permitted.

* * * * *

[FR Doc. 2020–28408 Filed 12–22–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02; RTID 0648–XA699]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 19.5 metric tons (mt) of Atlantic bluefin tuna (BFT) from the 28.9-mt General category December 2021 subquota to the January through March 2021 subquota period. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Atlantic Highly Migratory Species (HMS) Charter/Headboat category vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective January 1, 2021, through March 31, 2021.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, *sarah.mclaughlin@noaa.gov,* 978–281–9260, Nicholas Velseboer, *nicholas.velseboer@noaa.gov,* or Larry Redd, *larry.redd@noaa.gov,* 301–427–8503.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The current baseline General and Reserve category quotas are 555.7 mt and 29.5 mt, respectively. See § 635.27(a). Each of the General category time periods (January through March, June through August, September, October through November, and December) is allocated a ''subquota'' or portion of the annual General category quota. The baseline subquotas for each time period are as follows: 29.5 mt for January through March; 277.9 mt for June through August; 147.3 mt for September; 72.2 mt for October through November; and 28.9 mt for December. Any unused General category quota rolls forward from one time period to the next and is available for use in subsequent time periods.

Transfer of 19.5 mt From the December 2021 Subquota to the January Through March 2021 Subquota

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers provide valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT, and potentially over a greater portion of the January through March time period, would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including in December 2020 and during the winter fishery in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii)

and (ix)). Without a quota transfer from December 2021, the quota available for the January through March period would be 29.5 mt (5.3 percent of the General category quota), and participants would have to stop BFT fishing activities once that amount is met, while commercial-sized BFT may remain available in the areas where General category permitted vessels operate. Transferring 19.5 mt of the 28.9-mt quota available for December 2021 (with 28.9 mt representing 5.2 percent of the General category quota) would result in 49 mt (8.8 percent of the General category quota) being available for the January through March 2021 subquota period. This quota transfer would provide additional opportunities to harvest the U.S. BFT quota without exceeding it, while preserving the opportunity for General category fishermen to participate in the winter BFT fishery at both the beginning and end of the calendar year.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. Any unused General category quota from the January through March subperiod that remains as of March 31 will roll forward to the next subperiod within the calendar year (*i.e.,* the June through August time period). In early 2020, NMFS transferred 19.5 mt of quota from the December 2020 subquota to the January through March 2020 subquota period, resulting in a subquota of 49 mt for the January through March 2020 period and a subquota of 9.4 mt for the December 2020 period (85 FR 17, January 2, 2020). NMFS also made a transfer of 51 mt from the Reserve to the General category effective February 5, 2020, resulting in an adjusted subquota of 100 mt for the January through March 2020 period (85 FR 6828, February 6, 2020), and closed the General category fishery for the January through March subquota period effective February 24 (85 FR 10993, February 26, 2020). Under a one-fish General category daily retention limit (*i.e.,* of large medium or giant BFT, measuring 73 inches (185 cm) curved fork length or greater) effective January 1 through February 24, a total of 124.1 mt were landed.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2021 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2021 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds to the extent consistent with the available amount of transferrable quota and other management objectives, while avoiding quota exceedance.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the 2006 Consolidated HMS FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with the current quotas, which were established and analyzed in the 2018 BFT quota final rule (83 FR 51391, October 11, 2018), and with objectives of the 2006 Consolidated HMS FMP and amendments and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents. Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunity equitably across all time periods.

NMFS also anticipates that some underharvest of the 2020 adjusted U.S. BFT quota will be carried forward to 2021 and placed in the Reserve category, in accordance with the regulations. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year, as well as NMFS' plan to actively manage the subquotas to avoid any exceedances, makes it likely that General category quota will remain available through the end of 2021 for December fishery participants, even with the quota transfer. NMFS also may choose to transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as NMFS did for late 2020. NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2021, through active inseason management actions such as retention limit adjustments and/or the timing of quota transfers, as practicable.

Based on the considerations above, NMFS is transferring 19.5 mt of the 28.9-mt General category quota allocated for the December 2021 period to the January through March 2021 period, resulting in a subquota of 49 mt for the January through March 2021 period and a subquota of 9.4 mt for the December 2021 period.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landings reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8). However, at this time, NMFS is maintaining the default daily retention limit of one large medium or giant BFT per vessel per day/trip (§ 635.23(a)(2)) for the January through March 2021 General category fishery. Regardless of the duration of a fishing trip, no more than a single day's retention limit may be possessed, retained, or landed. For example (and specific to the limit that will apply beginning January 1, 2021), whether a vessel fishing under the General category limit takes a 2-day trip or makes two trips in 1 day, the daily limit of one fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels with a commercial sale

endorsement when fishing commercially for BFT.

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (*e.g.,* quota adjustment, daily retention limit adjustment, or closure) is necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. As needed, NMFS will close the General category fishery when the adjusted January through March period subquota has been reached. Even if the adjusted subquota is not reached, the General category fishery will close automatically on March 31, 2021, and will remain closed until it reopens on June 1, 2021. Fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is consistent with regulations at 50 CFR part 635, which were issued pursuant to section 304(c) of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act, and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason quota transfers to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer for the January through March 2021 subquota period is impracticable and contrary to the public interest as NMFS could not have proposed this action earlier, as it needed to consider and respond to updated landings data, including the recently available December 2020 data, in deciding to transfer a portion of the December 2021 subquota to the January through March 2021 subquota. If NMFS was to offer a public comment period now, after having appropriately considered that data, it could preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria, and/or could result in selection of a retention limit inappropriately high for the amount of quota available for the period. This action does not raise conservation and management concerns. Transferring quota within the General category does not affect the overall U.S. BFT quota, and available data shows the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 17, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–28215 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[[Docket No. 200221–0062]

RTID 0648–XA725

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2021 Gulf of Alaska Pollock and Pacific Cod Total Allowable Catch Amounts

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2021 total allowable catch (TAC) amounts for the Gulf of Alaska (GOA) pollock and Pacific cod fishery. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the GOA pollock and Pacific cod TACs are the appropriate amount based on the best available scientific information for pollock and Pacific cod in the GOA. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective 0001 hours, Alaska local time (A.l.t.), January 1, 2021, until the effective date of the final 2021 and 2022 harvest specifications for GOA groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 7, 2021.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2019–0102 by any of the following methods:

- *Federal e-Rulemaking Portal:* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0102,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record, and NMFS will post the comments for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final 2020 and 2021 harvest specifications for groundfish in the GOA (85 FR 13802, March 10, 2020 and revision to implement Amendment 109, 85 FR 74266, November 20, 2020) set the 2021 pollock TAC at 119,239 metric tons (mt) in the GOA. In December 2020, the Council recommended a 2021 pollock TAC of 113,227 mt for the GOA, which is less than the 119,239 mt established by the final 2020 and 2021 harvest specifications for groundfish in

the GOA. The Council's recommended 2021 TAC, and the area and seasonal apportionments, is based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2020.

The final 2020 and 2021 harvest specifications for groundfish in the GOA (85 FR 13802, March 10, 2020 and revision to implement Amendment 109, 85 FR 74266, November 20, 2020) set the 2021 Pacific cod TAC at 6,431 mt in the GOA. In December 2020, the Council recommended a 2021 Pacific cod TAC of 17,321 mt for the GOA, which is more than the 6,431 mt established by the final 2020 and 2021 harvest specifications for groundfish in the GOA. The Council's recommended 2021 TAC, and the area and seasonal apportionments, is based on the SAFE, dated November 2020.

Steller sea lions occur in the same location as the pollock and Pacific cod fisheries and are listed as endangered under the Endangered Species Act. Pollock and Pacific cod are principal prey species for Steller sea lions in the GOA. The seasonal apportionment of pollock and Pacific cod harvests are necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(5)(iv) specify how the pollock TAC will be apportioned and the regulations at § 679.20(a)(6)(ii) and (a)(12)(i) specify how the Pacific cod TAC will be apportioned.

In accordance with § 679.25(a)(1)(iii), (a)(2)(i)(B), and (a)(2)(iv) the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the best available scientific information for this fishery, the current GOA pollock and Pacific cod TACs are incorrectly specified. Consequently, pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2021 GOA pollock TAC to 113,227 mt and the 2021 Pacific cod TAC to 17,321 mt. Therefore, Tables 4 and 6 of the final 2020 and 2021 harvest specifications for groundfish in the GOA (85 FR 13802, March 10, 2020 and revision to implement Amendment 109, 85 FR 74266, November 20, 2020) are revised consistent with this adjustment.

NMFS published a final rule to implement Amendment 109 to the FMP (85 FR 38093, June 25, 2020). That rule revised the pollock seasons in the GOA, along with Pacific cod seasonal allocations, for the Central and Western Regulatory Areas of the GOA. Amendment 109 modified the existing annual pollock TAC allocation to two equal seasonal allocations (50 percent of TAC), rather than four equal seasonal allocations (25 percent of TAC). The pollock A and B seasons were combined into a January 20 through May 31 A season, and the pollock C and D seasons were combined into a September 1 through November 1 B season. Additionally, Amendment 109 revised the Pacific cod TAC seasonal allocations to the trawl catcher vessel sector by increasing the A season allocation and decreasing the B season allocation. The revisions implemented by Amendment 109, which are effective January 1, 2021, are incorporated into this inseason adjustment.

Pursuant to § 679.20(a)(5)(iv), Table 4 of the final 2020 and 2021 harvest specifications for groundfish in the GOA (85 FR 13802, March 10, 2020 and revision to implement Amendment 109, 85 FR 74266, November 20, 2020) is revised for the 2021 TACs of pollock in the Central and Western Regulatory Area of the GOA.

TABLE 4—FINAL 2021 DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA; AREA APPORTIONMENTS; [1] AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton and percentages are rounded to the nearest 0.01]

Season [2]	Shumigan (area 610)	Chirikof (area 620)	Kodiak (area 630)	Total [3]
A (January 20–May 31)	799	41,737	6,297	48,833
B (September 1–November 1)	17,677	13,133	18,023	48,833
Annual Total	18,477	54,870	24,320	97,667

[1] Area apportionments and seasonal allowances may not total precisely due to rounding.

[2] As established by § 679.23(d)(2)(i) through (ii), the A and B season allowances are available from January 20 through May 31 and September 1 through November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

[3] The West Yakutat and Southeast Outside District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Pursuant to § 679.20(a)(6)(ii) and (a)(12)(i), Table 6 of the final 2020 and 2021 harvest specifications for groundfish in the GOA (85 FR 13802, March 10, 2020 and revision to implement Amendment 109, 85 FR 74266, November 20, 2020) is revised for the 2021 TACs of Pacific cod in the GOA.

TABLE 6—FINAL 2021 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH (TAC) AMOUNTS IN THE GOA; ALLOCATIONS IN THE WESTERN GOA AND CENTRAL GOA SECTORS, AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA					
Jig (3.5% of TAC)	196	N/A	117	N/A	78
Hook-and-line CV	76	0.70	38	0.70	38

TABLE 6—FINAL 2021 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH (TAC) AMOUNTS IN THE GOA; ALLOCATIONS IN THE WESTERN GOA AND CENTRAL GOA SECTORS, AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS—Continued

[Values are rounded to the nearest metric ton]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Hook-and-line CP	1,068	10.90	588	8.90	480
Trawl CV	2,071	31.54	1,701	10.70	370
Trawl CP	129	0.90	49	1.50	81
All Pot CV and Pot CP	2,050	19.80	1,068	18.20	982
Total	5,590	63.84	3,561	36.16	2,029
Central GOA					
Jig (1.0% of TAC)	102	N/A	61	N/A	41
Hook-and-line <50 CV	1,481	9.32	945	5.29	536
Hook-and-line ≥50 CV	680	5.61	569	1.10	111
Hook-and-line CP	518	4.11	416	1.00	101
Trawl CV [1]	4,216	21.14	2,565	20.45	1,652
Trawl CP	426	2.00	203	2.19	223
All Pot CV and Pot CP	2,819	17.83	1,808	9.97	1,011
Total	10,242	64.16	6,567	35.84	3,675
Eastern GOA	.....	Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
	1,489	.....	1,340	.....	149

[1] Trawl catcher vessels participating in Rockfish Program cooperatives receive 3.81 percent, or 390 mt, of the annual Central GOA TAC (see Table 28c to 50 CFR part 679), which is deducted from the Trawl CV B season allowance (see Table 12. Final 2021 Apportionments of Rockfish Secondary Species in the Central GOA and Table 28c to 50 CFR part 679).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocation for pollock and Pacific cod based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 16, 2020.

Without this inseason adjustment, NMFS could not allow the fishery for pollock, Atka mackerel, and Pacific cod in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 7, 2021.

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

Dated: December 17, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–28261 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 247
Wednesday, December 23, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AH29

Secondary Market Program—Proposed Regulatory Changes

AGENCY: U.S. Small Business Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is considering a change in the structure of its secondary market 7(a) loan pool security to better align the collateral and cash flows to support the long-term viability of the SBA secondary market 7(a) loan pooling program. Specifically, SBA seeks public comment on the alignment of cash flows between the collateral (the guaranteed portion of 7(a) loans) and the pool security (Pool Certificate), the timely payment of scheduled interest and actual principal, and the publication of additional loan-level disclosure. The Agency is also seeking public comment on registering such securities in book-entry form.

DATES: Comments must be received on or before February 22, 2021.

ADDRESSES: You may submit comments, identified by RIN 3245–AH29, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Peter Meyers, Office of Capital Access, U.S. Small Business Administration, 409 Third Street SW, 8th Floor, Washington, DC 20416.

All comments will be posted on *https://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *https://www.regulations.gov,* you must submit such information either by mail to Peter Meyers, Office of Capital Access, U.S. Small Business Administration, 409 Third Street SW, 8th Floor, Washington, DC 20416, or by email to *Peter.Meyers@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Peter Meyers, Office of Capital Access, U.S. Small Business Administration, 409 Third Street SW, 8th Floor, Washington, DC 20416; (202) 527–1253 or *Peter.Meyers@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secondary Markets Improvement Act of 1984 (Pub. L. 98–352) authorized SBA to establish a secondary market to facilitate the pooling of the guaranteed portion of 7(a) loans (underlying loans) into securities (referred to as Pool Certificates). The SBA secondary market allows SBA Lenders to expand their commitment to small businesses by establishing a process for the sale and pooling of SBA-guaranteed 7(a) loans into securities, which enables SBA Lenders to leverage their capital and make more 7(a) loans. SBA Lenders may sell SBA-guaranteed 7(a) loans to SBA-approved Pool Assemblers, who aggregate loans into SBA pools (the underlying loans represent the collateral for the pool). SBA then issues Pool Certificates representing ownership of all or a fractional undivided interest in a part of those pools. SBA's guarantee on Pool Certificates is backed by the full faith and credit of the United States.

Currently, investors receive a timely payment guarantee of principal and interest on Pool Certificates. However, certain structural limitations of the current pool security prevent the instrument from performing like a pure pass-through security. For example, mismatches in cashflows between the underlying loan collateral and the pool security may result in the accumulation of amortization excess in SBA's Master Reserve Fund (''MRF''). Historically, the program costs associated with amortization excess (and the additional coupon interest paid while the amortization excess remains in the MRF) has been absorbed by SBA.

Other U.S. government-backed securities issued by government-sponsored enterprises pass through all prepayments to the security holder, which keeps the cash flow from the underlying loan collateral aligned with the cash flow paid on the related securities. Government-sponsored enterprises also disclose a significant amount of loan-level information which provides investors with a better understanding of underlying loan collateral performance and may enhance more accurate security pricing.

II. Current SBA Secondary Market 7(a) Loan Pool Security

SBA's current secondary market 7(a) loan pool security provides for the timely payment of principal and interest each month. Full prepayments from the underlying loans are passed through to the Pool Certificate holders. Partial prepayments greater than 20% of the outstanding principal balance of the loan at the time of prepayment are also passed through to the Pool Certificate holders. However, partial prepayments that are 20% or less than the outstanding principal balance of the loan at the time of prepayment are held in the MRF for future distribution. While this current structure may protect the Pool Certificate holder from some prepayment risk, it can create imbalances between the underlying loans in the pool and the balance outstanding on the related Pool Certificates. SBA is seeking to eliminate this imbalance through the creation of a new SBA secondary market 7(a) loan pool security that better aligns payments in with payments out. SBA anticipates that the proposed solution will reduce the risk assumed by SBA for administering the 7(a) loan pooling program.

SBA believes that offering a 7(a) loan pool security that is more similar to those of other government-backed enterprises will provide more consistent long-term stability for pool security payments, which will attract more institutional investors. SBA also believes that these changes will promote a continued source of liquidity for SBA Lenders that make 7(a) loans to small businesses.

III. Proposed New SBA Secondary Market 7(a) Loan Pool Security

A. Alignment of Cash Flows

SBA is considering the issuance of a new modified pass-through pool security that would better align the actual monthly cash flows of the

underlying loans with the pool security. The underlying loans are structured as simple interest term loans that are amortized over their respective loan maturities. The allocation of principal and interest on any given installment payment is dependent on when the payment is received relative to when it is due. Accrued interest is paid up to the date of receipt of payment, with all remaining amounts applied to principal. When the underlying loans are paid as agreed according to their loan terms, the scheduled principal received from borrowers aligns with their respective loan amortization schedules. However, when borrower payments are late or missed, the payment of all accrued interest must be satisfied first before any remaining amount is applied to the principal outstanding. This can result in reduced loan principal paid by the borrower and, in some instances, no payment of principal at all. SBA does not require SBA Lenders, as loan servicers, to advance principal payments to make up for these differences. Under this current structure, the risk to SBA of supporting a scheduled principal payment to Pool Certificate holders is not sustainable over the long-term.

The current SBA secondary market 7(a) loan pool security is further complicated by underlying loan prepayments. Scheduled pool principal is paid to Pool Certificate holders based on the outstanding pool principal balance and the remaining months to maturity of the pool. This can create a difference between the remaining pool principal balance outstanding and the principal balance outstanding on the underlying loans. Full prepayments (which include voluntary prepayments by borrowers and involuntary prepayments resulting from SBA's payment on its guarantee on defaulted 7(a) loans) require a reconciliation of the allocated principal paid to the pool compared with the actual loan principal received from the underlying loans. This reconciliation may result in a reduced amount of prepayment principal paid to Pool Certificate holders because portions of prepayment principal may be needed to cover a shortfall of principal collected on a specific loan. Conversely, this reconciliation may result in an additional amount of prepayment principal paid to Pool Certificate holders due to actual loan principal previously collected on a specific loan but not yet distributed.

B. Timely Payment of Scheduled Interest and Actual Principal

As a solution to the misalignment of cash flows noted above, SBA is proposing to restructure its 7(a) loan pool security to provide for the timely payment of *scheduled* interest and *actual* principal received. SBA believes that this form of a modified pass-through security would remove differences arising from scheduled principal paid and actual principal received and eliminate the reconciliation and adjustment exercise occurring on all principal prepayments. Scheduled interest will be calculated using a 30/360 accrual method (*i.e.,* interest will be calculated on the basis of a 360-day year consisting of twelve 30-day months). It is a much simpler form of security and allows investors to monitor pool prepayment speeds based on the actual prepayment activity of the underlying loans. SBA believes that this will provide greater transparency to market participants.

This structural change in the pool security will bring SBA Pool Certificates more in line with other U.S. government-backed securities and may be more marketable to potential investors. SBA believes that passing all prepayments through to the Pool Certificate holder will promote greater predictability of monthly cash flows. This will keep the underlying loan balances in sync with the related Pool Certificate balances and will no longer require the MRF to retain amortization excess or make advances of pool principal.

Implementing a more standardized set of pool characteristics, such as requiring the same underlying loan payment due date and requiring ACH debits on underlying loan payments will also simplify the pooling process and create a more viable program for the long-term.

C. Loan-Level Disclosure

In addition to the new features described above, SBA is considering a robust set of loan-level disclosures to accompany the launch of a new pass-through security. This data will provide investors with greater insight on the underlying loans and may help inform more accurate pricing decisions. A new disclosure portal could be launched to provide historical and current loan-level data as well as customizable reports.

D. Book Entry Registration

To further align a new pool security with other U.S. government-backed securities, SBA is proposing a book-entry form of registration. This electronic record of ownership will allow the pool security to be traded or transferred with greater ease than a physical certificate.

IV. Request for Comment

SBA requests comments from the public on the questions listed below. The list of questions is meant to assist in the formulation of public comments and is not intended to restrict the issues that may be addressed. Responders are invited to comment on any or all portions of this ANPRM.

A. Questions About the Alignment of Cash Flows

1. What are the advantages or disadvantages to SBA revising the current method of administering loan prepayments and other unscheduled principal payments?

2. Are there benefits of knowing that a pool's underlying loan collateral balance will be in sync with that pool's outstanding security balance?

3. What impact would this proposed new security have on the SBA secondary market 7(a) loan pooling program?

4. What effect would the alignment of cash flows have on the pricing of a security?

B. Questions About the Timely Payment of Scheduled Interest and Actual Principal

1. What payment features are most important when considering a new pool security? Are there certain payment features of the current Pool Certificate that SBA should consider changing?

2. What effect would the timely payment of scheduled interest and actual principal have on the pricing of a pool security?

C. Questions About Loan-Level Disclosures

1. Will providing loan level disclosures make the proposed pool security more attractive to a larger market?

2. Which loan-level attributes could SBA provide that would be the most beneficial?

3. What types of disclosures or reports would be preferable with a new pool security?

4. What is the preferred method of receiving loan-level data and security-level data? Would using a disclosure portal to generate reports and download data files be a helpful resource?

5. What features of a customer-facing disclosure tool might increase participation in the SBA secondary market 7(a) loan pooling program?

6. What effect would the publication of robust loan-level disclosures have on

the pricing of the proposed pool security?

D. Questions About Book-Entry Registration

1. Currently, Pool Certificates are registered in physical certificate form. Would there be a benefit to the new pool security being registered in book-entry form? If so, what would those benefits be?
2. What additional process or technology changes would be needed to support a book-entry security?
3. What effect would book-entry registration have on the pricing of the proposed pool security?

E. New SBA Secondary Market 7(a) Loan Pool Security General Comments

SBA is seeking comments and recommendations on changes to the current pool security for the 7(a) loan program to better align underlying loan collateral and pool cash flows and to sustain the long-term viability of the 7(a) loan pooling program. SBA also requests comments on the proposed cash flow alignment, the timely payment of scheduled interest and actual principal, loan-level disclosures, and book-entry registration.

We value your comments and ask that you provide a rationale for any suggested changes or recommendations.

Jovita Carranza,

Administrator.

[FR Doc. 2020–28195 Filed 12–22–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–1191 Airspace Docket No. 20–AGL–41]

RIN 2120–AA66

Proposed Revocation of VOR Federal Airway V–242 Due to the Planned Decommissioning of the Atikokan, Ontario, Canada, Nondirectional Radio Beacon (NDB) Navigation Aid

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove VHF Omnidirectional Range (VOR) Federal airway V–242 in the northcentral United States to reflect changes being made by NAV CANADA in Canadian airspace. The airway removal is necessary due to the planned decommissioning of the Atikokan, Ontario (ON), Canada, NDB navigation aid (NAVAID), which provides navigation guidance for V–242. The Atikokan NDB is being decommissioned as part of NAV CANADA's NAVAID Modernization Program.

DATES: Comments must be received on or before February 8, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–1191 Airspace Docket No. 20–AGL–41 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2020–1191 Airspace Docket No. 20–AGL–41) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–1191 Airspace Docket No. 20–AGL–41.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during

normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

NAV CANADA, which operates Canada's civil air navigation service, is continuing to implement various changes to Canada's instrument flight rules (IFR) navigation infrastructure as part of their NAVAID Modernization Program to enhance the efficiency of operations by taking advantage of performance based navigation and modern avionic capabilities. The changes being implemented by NAV CANADA occasionally affect parts of U.S. VOR Federal airways that extend across the U.S./Canada border into Canadian airspace. As a result, the removal of V–242 would mirror changes that are planned to be made by NAV CANADA on the Canadian side of the border.

NAV CANADA is planning the decommissioning of the Atikokan, ON, Canada, NDB as part of their NAVAID Modernization Program. With the planned decommissioning of the Atikokan NDB, the ground-based NAVAID coverage in the area is insufficient to enable the continuity of V–242. As a result, V–242 would no longer be supportable and would be removed in its entirety.

To overcome the loss of the airway, instrument flight rules (IFR) traffic could use adjacent ATS routes, including VOR Federal airways V–133, V–300, and V–367, or request air traffic control (ATC) radar vectors to fly through or circumnavigate the affected area. The International Falls, MN, VHF Omni-directional Range/Distance Measuring Equipment (VOR/DME) NAVAID, which is currently the first airway point on V–242, will also remain in service and continue providing positive course guidance and distance measuring service to aircraft within 40 nautical miles of the NAVAID. Additionally, IFR pilots equipped with RNAV PBN capabilities would also be able to navigate point to point using the existing fixes that will remain in place to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the airways through the affected area could also take advantage of the adjacent VOR Federal airways or ATC services listed previously.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to remove VOR Federal airway V–242. The planned decommissioning of the Atikokan, ON, Canada, NDB has made this action necessary. The proposed change is outlined below.

V–242: V–242 currently extends between the International Falls, MN, VOR/DME and the Atikokan, ON, Canada, NDB, excluding that airspace within Canada. The FAA proposes to remove the airway in its entirety.

VOR Federal airways are published in paragraph 6010(a) 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 ATS route listed in this document would be subsequently published in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–242 [Removed]

* * * * *

Issued in Washington, DC, on December 16, 2020.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–28164 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Parts 1010, 1020, and 1022

RIN 1506–AB47

Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is issuing this notice of proposed rulemaking to seek public comments on a proposal to require banks and money service businesses (''MSBs'') to submit reports, keep records, and verify the identity of customers in relation to transactions involving convertible virtual currency

(''CVC'') or digital assets with legal tender status (''legal tender digital assets'' or ''LTDA'') held in unhosted wallets (as defined below), or held in wallets hosted in a jurisdiction identified by FinCEN. FinCEN is proposing to adopt these requirements pursuant to the Bank Secrecy Act (''BSA''). To effectuate certain of these proposed requirements, FinCEN proposes to prescribe by regulation that CVC and LTDA are ''monetary instruments'' for purposes of the BSA. However, FinCEN is not proposing to modify the regulatory definition of ''monetary instruments'' or otherwise alter existing BSA regulatory requirements applicable to ''monetary instruments'' in FinCEN's regulations, including the existing currency transaction reporting (''CTR'') requirement and the existing transportation of currency or monetary instruments reporting requirement.

DATES: Written comments on this proposed rule may be submitted on or before January 4, 2021.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2020–0020 and the specific RIN number 1506–AB47 the comment applies to.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2020–0020 and the specific RIN number.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Through this proposed rule, FinCEN is seeking to address the illicit finance threat created by one segment of the CVC market and the anticipated growth in LTDAs based on similar technological principles. FinCEN proposes to address this threat by establishing a new reporting requirement with respect to certain transactions in CVC or LTDA, that is similar to the existing currency transaction reporting requirement, and by establishing a new recordkeeping requirement for certain CVC/LTDA transactions, that is similar to the recordkeeping and travel rule regulations pertaining to funds transfers and transmittals of funds.

FinCEN is providing a 15-day period for public comments with respect to this proposed rule. FinCEN has determined that such a comment period is appropriate for several reasons.[1]

First, FinCEN assesses that there are significant national security imperatives that necessitate an efficient process for proposal and implementation of this rule. As explained further below, U.S. authorities have found that malign actors are increasingly using CVC to facilitate international terrorist financing, weapons proliferation, sanctions evasion, and transnational money laundering, as well as to buy and sell controlled substances, stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms, and toxic chemicals.[2] In addition, ransomware attacks and associated demands for payment, which are almost exclusively denominated in CVC, are increasing in severity,[3] and the G7 has specifically noted concern regarding ransomware attacks ''in light of malicious actors targeting critical sectors amid the COVID–19 pandemic.'' [4]

Second, the new requirements FinCEN is proposing to adopt represent a targeted expansion of BSA reporting and recordkeeping obligations, and FinCEN has engaged with the cryptocurrency industry on multiple occasions on the AML risks presented in the cryptocurrency space and carefully considered information and feedback received from industry participants. These engagements have included a FinCEN Exchange event in May 2019, visits to cryptocurrency businesses in California in February 2020, an industry roundtable with the Secretary of the Treasury in March 2020, and a FinCEN Exchange event on cryptocurrency and ransomware in November 2020. FinCEN also has received outreach on unhosted wallets in response to anticipated FinCEN regulatory action, including letters from CoinCenter, the Blockchain Association, *Blockchain.com*, Global Digital Asset & Cryptocurrency Association, Circle, and the Association for Digital Asset Markets.

Third, although FinCEN is publishing this proposal in the Federal Record and invites public comment, FinCEN has noted that notice-and-comment rulemaking requirements are inapplicable because this proposal involves a foreign affairs function of the

[1] Although the formal comment period concludes 15 days after filing at the **Federal Register**, FinCEN will endeavor to consider any material comments received after the deadline as well.

[2] *See, e.g., United States.* v. *Cazes,* No. 1:17CR–00144, Indictment ¶ 2 (E.D. Ca. filed June 1, 2017) (alleging that ''AlphaBay [was] a dark-web marketplace designed to enable users to buy and sell illegal goods, including controlled substances, stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms, and toxic chemicals . . . AlphaBay required its users to transact in digital currencies, including Bitcoin, Monero, and Ethereum.''); Dep't of the Treasury Press Release—Remarks of Sigal Mandelker, Under Secretary for Terrorism and Financial Intelligence (May 13, 2019), *https://home.treasury.gov/news/press-releases/sm687;* Press Release, Dep't of Justice, ''Two Chinese Nationals Charged with Laundering Over $100 Million in Cryptocurrency from Exchange Hack'' at pp. 1 (Mar. 2, 2020) (''North Korea continues to attack the growing worldwide ecosystem of virtual currency as a means to bypass the sanctions imposed on it by the United States and the United Nations Security Council.''), *https://www.justice.gov/opa/pr/two-chinese-nationals-charged-laundering-over-100-million-cryptocurrency-exchange-hack.* For vulnerabilities of digital assets to securities fraud, see SEC—Investor Alert: Ponzi Schemes Using Virtual Currencies, SEC Pub. No. 153 (7/13), *https://www.sec.gov/investor/alerts/ia_virtualcurrencies.pdf* (accessed June 23, 2020); CFTC—Investor Alert: Watch Out for Fraudulent Digital Asset and ''Crypto'' Trading websites, *https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/watch_out_for_digital_fraud.html* (accessed Aug. 28, 2020); U.S. Dep't of Justice, ''Report of the Attorney General's Cyber-Digital Task Force, Cryptocurrency: An Enforcement Framework,'' (Oct. 8, 2020), *https://www.justice.gov/ag/page/file/1326061/download.*

[3] In 2019, ransomware demands reached $25 billion globally, and FinCEN observed an increase in the average amount involved in ransomware incidents of $280,000 from 2018 to 2019. *See* Emsisoft, ''Report: The Cost of Ransomware in 2020. A Country-by-Country Analysis'' (Feb. 2020), *https://blog.emsisoft.com/en/35583/report-the-cost-of-ransomware-in-2020-a-country-by-country-analysis/* (accessed Dec. 1, 2020); FinCEN Advisory, FIN–2020–A006, ''Advisory on Ransomware and the Use of the Financial System to Facilitate Ransom Payments'' (Oct. 2020), *https://www.fincen.gov/sites/default/files/advisory/2020-10-01/Advisory%20Ransomware%20FINAL%20508.pdf. See also* G7 Finance Ministers and Central Bank Governors' Statement on Digital Payments, Ransomware Annex to G7 Statement (Oct. 13, 2020) (''[Ransomware] [a]ttacks have intensified in the last two years[.]''), *https://home.treasury.gov/system/files/136/G7-Ransomware-Annex-10132020_Final.pdf.*

[4] G7 Finance Ministers and Central Bank Governors' Statement on Digital Payments (Oct. 13, 2020), *https://home.treasury.gov/news/press-releases/sm1152.* In ransomware attacks, victims are often compelled to obtain and send CVC to an account or address designated by the perpetrator of the attack. This activity can occur through regulated financial institutions. For example, across 2017 and 2018, FinCEN observed at least seventeen separate transactions over $10,000 conducted between U.S. financial institutions and unhosted wallets affiliated with the Lazarus Group, a malign actor engaged in efforts to steal and extort CVC as a means of generating and laundering large amounts of revenue for the North Korean regime. Generally, FinCEN has observed that, following initial receipt of the funds, the perpetrator may then engage in multiple transactions between unhosted wallets before exchanging the CVC for fiat currency. *See also* Joe Tidy, ''How hackers extorted $1.14m from University of California, San Francisco,'' (June 29, 2020), *https://www.bbc.com/news/technology-53214783* (detailing ransomware attack against COVID–19 researchers); Dep't of the Treasury Press Release—Remarks of Sigal Mandelker, Under Secretary for Terrorism and Financial Intelligence (May 13, 2019), *https://home.treasury.gov/news/press-releases/sm687.*

United States and because ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [5] The proposal seeks to establish appropriate controls to protect United States national security from a variety of threats from foreign nations and foreign actors, including state-sponsored ransomware and cybersecurity attacks, sanctions evasion, and financing of global terrorism, among others. Furthermore, undue delay in the implementation of the proposed rule would encourage movement of unreported or unrecorded assets implicated in illicit finance from hosted wallets at financial institutions to unhosted or otherwise covered wallets, such as by moving CVC to exchanges that do not comply with AML/CFT requirements.

This section provides an overview of the relevant technology and the requirements of the proposed rule.

A. Technology Overview

CVC is a medium of exchange, such as a cryptocurrency, that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status.[6] Blockchain-based types of CVC (*e.g.,* Bitcoin) are peer-to-peer systems that allow any two parties to transfer value directly with each other without the need for a centralized intermediary (*e.g.,* a bank or MSB). As a technical matter, blockchain-based CVC generally consist of computers operating the network software (nodes) that enable, validate, and store transaction records on a distributed digital ledger (a blockchain). To transfer an asset on a blockchain, a person enters an alphanumeric code known only to the transferor (a private key) into a cryptographic hash function enabled by the network software, which allows the transferor to request that the network software validate a new entry on the ledger showing that control of an asset has been assigned to the recipient.[7] Once the network software has validated this transfer, the ledger is altered and the recipient may transfer the asset to another recipient using their own private key.[8] Ledger entries are cryptographically secured, and accounts are identified on a blockchain by alphanumeric ''public keys''—not by the owner's name.

Some persons use the services of a financial institution to acquire or transact in CVC. For example, certain financial institutions provide custody services for their customers' CVC in so-called ''hosted wallets.'' In such arrangements, a financial institution may execute transactions on a blockchain on behalf of a customer using a private key controlled by the financial institution. Other persons do not use the services of a financial institution, in which case they use the private key controlling the CVC to transact directly on a blockchain. Such persons may store the private key in a software program or written record, often referred to as an ''unhosted wallet.'' Importantly, as described below, financial institutions are subject to certain BSA regulatory obligations when providing CVC-related services, including services involving hosted wallets.[9] A person conducting a transaction through an unhosted wallet to purchase goods or services on their own behalf is not a money transmitter.[10]

Blockchain-based CVC networks present opportunities as well as risks. The G7 Finance Ministers and Central Bank Governors recently noted that ''[t]he widespread adoption of digital payments [such as CVC] has the potential to address frictions in existing payment systems by improving access to financial services, reducing inefficiencies, and lowering costs.'' [11] At the same time, however, CVCs are used in illicit financial activity that presents substantial national security concerns. Depending on the features of the particular CVC and its network, a CVC's global reach can enable the rapid transfer of significant value with only anonymized or pseudonymized information about the transaction recorded, making it easier for malign actors to engage in illicit financial activity without detection or traceability.[12] Specifically, illicit finance risks involving CVC are enhanced by the capacity of users to engage with the CVC through unhosted wallets or wallets hosted by a foreign financial institution not subject to effective anti-money laundering regulation (an ''otherwise covered wallet''). In such cases, there may be gaps in the recordkeeping and reporting regime with respect to financial transactions, which malign actors may seek to exploit.

Determining the true amount of illicit activity that is conducted in cryptocurrency is challenging. One industry estimate is that approximately 1% of overall market transaction volume, or $10 billion, in CVC activity conducted globally in 2019 was illicit.[13] This figure, however, may underestimate such illicit activity. Despite significant underreporting due to compliance challenges in parts of the CVC sector, in 2019, FinCEN received approximately $119 billion in suspicious activity reporting associated with CVC activity taking place wholly or in substantial part in the United States.[14] By industry measures, this would equate to approximately 11.9% of total CVC market activity being relevant to a possible violation of law or regulation.[15] U.S. authorities have found that malign actors have used CVC to facilitate international terrorist financing, weapons proliferation, sanctions evasion, and transnational money laundering, as well as to buy and sell controlled substances, stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms, and toxic chemicals.[16] In

[5] 5 U.S.C. 533.

[6] CVC is therefore a type of ''value that substitutes for currency.'' *See* 31 CFR 1010.100(ff)(5)(i)(A). This definition is consistent with the recent joint notice of proposed rulemaking issued by FinCEN and the Board of Governors of the Federal Reserve in relation to the collection, recordkeeping, and transmission requirements applicable to funds transfers and transmittals of funds. *See* ''Threshold for the Requirement To Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds That Begin or End Outside the United States, and Clarification of the Requirement To Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets With Legal Tender Status,'' 85 FR 68005, 68011 (Oct. 27, 2020) (''Funds Transfer/Travel Rule NPRM'').

[7] *See* Satoshi Nakamoto, ''Bitcoin: A Peer-to-Peer Electronic Cash System'' (2008), *https://bitcoin.org/bitcoin.pdf;* Chamber of Digital Commerce, ''Legislator's Toolkit for Blockchain Technology'' (Dec. 2018), *https://digitalchamber.s3.amazonaws.com/State-Working-Group-Toolkit_Final_12.4.1.pdf.*

[8] *Id.*

[9] Financial institutions that use unhosted wallets but that still conduct money transmission activities on behalf of third parties, such as peer-to-peer exchangers, are money transmitters. FinCEN Guidance—Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies at pp. 14–15 (May 9, 2019) (''FinCEN 2019 CVC Guidance'').

[10] *Id.* at 16.

[11] G7 Finance Ministers and Central Bank Governors' Statement on Digital Payments (Oct. 13, 2020).

[12] U.S. Dep't of Justice, ''Report of the Attorney General's Cyber-Digital Task Force, Cryptocurrency: An Enforcement Framework,'' (Oct. 8, 2020), *https://www.justice.gov/ag/page/file/1326061/download.*

[13] *See* Chainalysis, ''2020 Crypto Crime Report,'' (Jan. 2020), *https://go.chainalysis.com/2020-Crypto-Crime-Report.html.*

[14] A significant majority of this $119 billion related to suspicious activity that took place before 2019 based on subsequent lookbacks. FinCEN anticipates that in the future it will receive additional suspicious activity reporting for activity that took place in 2019 but that has not yet been recognized as suspicious.

[15] FinCEN emphasizes that suspicious activity is not a clear indication of a crime but is activity that is potentially illicit. *See* 31 CFR 1020.320, 1022.320 (laying out the standards for suspicious activity).

[16] *See, e.g., United States.* v. *Cazes,* No. 1:17CR–00144, Indictment ¶ 2 (E.D. Ca. filed June 1, 2017) (alleging that ''AlphaBay [was] a dark-web marketplace designed to enable users to buy and

addition, ransomware attacks and associated demands for payment, which are almost exclusively denominated in CVC, have increased in severity,[17] and the G7 has specifically noted concern regarding ransomware attacks ''in light of malicious actors targeting critical sectors amid the COVID–19 pandemic.'' [18]

Some types of CVC pose particularly severe illicit finance challenges. Anonymity-enhanced cryptocurrency (''AEC'') protocols have the effect of limiting the ability of investigators or other parties to follow transaction flows on their distributed public ledgers, unlike other types of CVC that allow a bank or MSB to identify the full transaction history of the CVC or LTDA value involved in the transaction (*i.e.* the entire transaction history of the value from the transaction block it was mined). Though relatively small in comparison to more established CVC networks, AECs have a well-documented connection to illicit activity. For example, AECs were used to launder Bitcoins paid to the wallet used in the Wannacry ransomware attack. AECs are accepted on various darknet marketplaces and the largest cryptocurrency mining malware networks continue to mine Monero, a type of AEC. Other innovations in distributed ledger technology designed to address transaction scalability, such as so-called Layer 2 solutions, together with AEC protocols represent an overall trend towards less transparency. These technology features are readily transferable to existing systems through protocol upgrades or system forks, *i.e.* the development of a new blockchain from an existing blockchain.[19]

B. Rule Overview

This proposed rule would adopt recordkeeping, verification, and reporting requirements for certain deposits, withdrawals, exchanges, or other payments or transfers of CVC or LTDA by, through, or to a bank or MSB [20] that involve an unhosted or otherwise covered wallet. FinCEN is proposing to define otherwise covered wallets as those wallets that are held at a financial institution that is not subject to the BSA and is located in a foreign jurisdiction identified by FinCEN on a List of Foreign Jurisdictions Subject to 31 CFR 1010.316 Reporting and 31 CFR 1010.410(g) Recordkeeping (the ''Foreign Jurisdictions List''). Initially, FinCEN is proposing that the Foreign Jurisdictions List be comprised of jurisdictions designated by FinCEN as jurisdictions of primary money laundering concern (*i.e.* Burma, Iran, and North Korea).

First, this proposed rule would require banks and MSBs to file a report with FinCEN containing certain information related to a customer's CVC or LTDA transaction and counterparty (including name and physical address), and to verify the identity of their customer, if a counterparty to the transaction is using an unhosted or otherwise covered wallet and the transaction is greater than $10,000 (or the transaction is one of multiple CVC transactions involving such counterparty wallets and the customer flowing through the bank or MSB within a 24-hour period that aggregate to value in or value out of greater than $10,000). Second, this proposed rule would require banks and MSBs to keep records of a customer's CVC or LTDA transaction and counterparty, including verifying the identity of their customer, if a counterparty is using an unhosted or otherwise covered wallet and the transaction is greater than $3,000.

II. Background

A. Risks of Unhosted and Otherwise Covered Wallets Versus Hosted Wallets

CVC wallets are interfaces for storing and transferring CVC.[21] There are two wallet types: ''hosted wallets'' and ''unhosted wallets.'' The ability to transact in CVC using unhosted or otherwise covered wallets, and the possibility that there will be a similar ability to transact in LTDA using unhosted or otherwise wallets, increases risks related to AML and combatting the financing of terrorism (''CFT'').

Hosted wallets are provided by account-based money transmitters that receive, store, and transmit CVC on behalf of their accountholders. Such entities generally interact with their customers through websites or mobile applications. In this business model, the money transmitter (*i.e.*, the hosted wallet provider) is the host, the account is the wallet, and the accountholder is the wallet owner. Banks can also be

sell illegal goods, including controlled substances, stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms, and toxic chemicals . . . AlphaBay required its users to transact in digital currencies, including Bitcoin, Monero, and Ethereum.''); Dep't of the Treasury Press Release—Remarks of Sigal Mandelker, Under Secretary for Terrorism and Financial Intelligence (May 13, 2019), *https://home.treasury.gov/news/press-releases/sm687;* Press Release, Dep't of Justice, ''Two Chinese Nationals Charged with Laundering Over $100 Million in Cryptocurrency from Exchange Hack'' at pp. 1 (Mar. 2, 2020) (''North Korea continues to attack the growing worldwide ecosystem of virtual currency as a means to bypass the sanctions imposed on it by the United States and the United Nations Security Council.''), *https://www.justice.gov/opa/pr/two-chinese-nationals-charged-laundering-over-100-million-cryptocurrency-exchange-hack.* For vulnerabilities of digital assets to securities fraud, see SEC—Investor Alert: Ponzi Schemes Using Virtual Currencies, SEC Pub. No. 153 (7/13), *https://www.sec.gov/investor/alerts/ia_virtualcurrencies.pdf* (accessed June 23, 2020); CFTC—Investor Alert: Watch Out for Fraudulent Digital Asset and ''Crypto'' Trading websites, *https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/watch_out_for_digital_fraud.html* (accessed Aug. 28, 2020).

[17] In 2019, ransomware demands reached $25 billion globally, and FinCEN observed an increase in the average amount involved in ransomware incidents of $280,000 from 2018 to 2019. *See* Emsisoft, ''Report: The Cost of Ransomware in 2020. A Country-by-Country Analysis'' (Feb. 2020), *https://blog.emsisoft.com/en/35583/report-the-cost-of-ransomware-in-2020-a-country-by-country-analysis/* (accessed Dec. 1, 2020); FinCEN Advisory, FIN–2020–A006, ''Advisory on Ransomware and the Use of the Financial System to Facilitate Ransom Payments'' (Oct. 2020), *https://www.fincen.gov/sites/default/files/advisory/2020-10-01/Advisory%20Ransomware%20FINAL%20508.pdf. See also* G7 Finance Ministers and Central Bank Governors' Statement on Digital Payments, Ransomware Annex to G7 Statement (Oct. 13, 2020) (''[Ransomware] [a]ttacks have intensified in the last two years[.]''), *https://home.treasury.gov/system/files/136/G7-Ransomware-Annex-10132020_Final.pdf.*

[18] G7 Finance Ministers and Central Bank Governors' Statement on Digital Payments (Oct. 13, 2020), *https://home.treasury.gov/news/press-releases/sm1152.* In ransomware attacks, victims are often compelled to obtain and send CVC to an account or address designated by the perpetrator of the attack. This activity can occur through regulated financial institutions. For example, across 2017 and 2018, FinCEN observed at least seventeen separate transactions over $10,000 conducted between U.S. financial institutions and unhosted wallets affiliated with the Lazarus Group, a malign actor engaged in efforts to steal and extort CVC as a means of generating and laundering large amounts of revenue for the North Korean regime. Generally, FinCEN has observed that, following initial receipt of the funds, the perpetrator may then engage in multiple transactions between unhosted wallets before exchanging the CVC for fiat currency. *See also* Joe Tidy, ''How hackers extorted $1.14m from University of California, San Francisco,'' (June 29, 2020), *https://www.bbc.com/news/technology-53214783* (detailing ransomware attack against COVID–19 researchers); Dep't of the Treasury Press Release—Remarks of Sigal Mandelker, Under Secretary for Terrorism and Financial Intelligence (May 13, 2019), *https://home.treasury.gov/news/press-releases/sm687.;*

[19] *Cf.* Financial Action Task Force, ''12-Month Review of the Revised FATF Standards on Virtual Assets and Virtual Asset Service Providers'' (June 2020) (''The ML/TF [Money Laundering/Terror Finance] risks of virtual assets are more difficult to address and mitigate once the products are launched. Their cross-border nature can present difficulties for enforcement if AML/CFT is not considered from the start. Hence, it is very important for jurisdictions to analyse and address risk in a forward-looking manner and ensure that they have all the necessary tools and authorities in place before they are needed.''), *http://www.fatf-gafi.org/media/fatf/documents/recommendations/12-Month-Review-Revised-FATF-Standards-Virtual-Assets-VASPS.pdf.*

[20] FinCEN requests comment on whether to expand the requirements of the proposed rule to other types of financial institutions, such as broker-dealers.

[21] FinCEN 2019 CVC Guidance at pp. 15–16.

hosted wallet providers.[22] Money transmitters doing business in whole or substantial part in the United States, as well as banks within the United States, that are hosted wallet providers are subject to the BSA and must comply with AML/CFT program requirements, including by conducting customer due diligence with respect to accountholders and reporting suspicious activity.

By contrast, the term unhosted wallet describes when a financial institution is not required to conduct transactions from the wallet (for example, when an owner has the private key controlling the cryptocurrency wallet and uses it to execute transactions involving the wallet on the owner's own behalf). Users of unhosted wallets interact with a virtual currency system directly and have independent control over the transmission of the value. When such a person conducts a transaction to purchase goods or services on the person's own behalf, they are not a money transmitter and are not subject to BSA requirements applicable to financial institutions.[23] Additionally, because such transactions do not necessarily involve a regulated financial intermediary on at least one side of the transaction, they may never be scrutinized pursuant to any AML/CFT program.

The Treasury Department has previously noted that ''[a]nonymity in transactions and funds transfers is the main risk that facilitates money laundering.'' [24] The Financial Action Task Force (''FATF'') [25] has similarly observed that the extent to which anonymous peer-to-peer permit transactions via unhosted wallets, without involvement of a virtual asset service provider or a financial institution, is a key potential AML/CFT risk in some CVC systems.[26] FATF members have specifically observed that unregulated peer-to-peer transactions ''could present a leak in tracing illicit flows of virtual assets,'' particularly if one or more blockchain-based CVC networks were to reach global scale.[27] Importantly, as explained below, while data contained on some blockchains are open to public inspection and can be used by authorities to attempt to trace illicit activity, FinCEN believes that this data does not sufficiently mitigate the risks of unhosted and otherwise covered wallets.[28]

[22] Since the FinCEN 2019 CVC Guidance, certain BSA-regulated banks have obtained authorization to custody CVC through hosted wallets. For example, on July 22, 2020, the Office of the Comptroller of the Currency (''OCC'') concluded that a national bank or federal savings association may provide cryptocurrency custody services on behalf of customers (the ''OCC Custody Guidance''). Office of the Comptroller of the Currency, Interpretive Letter #1170 at pp. 1, 9 (July 22, 2020), *https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1170.pdf.* The OCC Custody Guidance notes that demand for cryptocurrency custody services has grown for several reasons, including that (i) access to cryptocurrency value is lost when an owner loses its cryptographic private key; (ii) banks may offer more secure storage than other existing options; and (iii) some investors may wish to manage cryptocurrency on behalf of customers and use national banks as custodians for the managed assets. *Id.* at pp. 4–5. The OCC Custody Guidance notes that as part of the custody services they provide, national banks and federal savings associations may include services such as facilitating the customer's cryptocurrency and fiat currency exchange transactions, transaction settlement, trade execution, recording keeping, valuation, tax services, reporting, or other appropriate services. *Id.* at pp. 8 n.39, 9. Similarly, some state-chartered banks are also authorized to custody CVC in hosted wallets. For example, in 2019 Wyoming created a new class of financial institutions, Special Purpose Depository Institutions, or SPDIs. *See* H.B. 74, 65th Wyo. Leg., 1st Sess. (as amended) (2019). The SPDI bank charter permits an SPDI to engage in a range of services, including custodial services and trade execution related to digital assets.

[23] FinCEN 2019 CVC Guidance at pp. 16.

[24] Dep't of the Treasury, National Money Laundering Risk Assessment at pp. 4 (2018), *https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf.*

[25] The FATF is an international, inter-governmental task force whose purpose is the development and promotion of international standards and the effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, the financing of proliferation, and other related threats to the integrity of the international financial system.

[26] FATF Report to the G20 Finance Ministers and Central Bank Governors on So-Called Stablecoins at pp. 15 (June 2020), *https://www.fatf-gafi.org/media/fatf/documents/recommendations/Virtual-Assets-FATF-Report-G20-So-Called-Stablecoins.pdf.*

[27] 12-Month Review of the Revised FATF Standards on Virtual Assets and Virtual Asset Service Providers at pp. 15 (June 2020), *https://www.fatf-gafi.org/media/fatf/documents/recommendations/12-Month-Review-Revised-FATF-Standards-Virtual-Assets-VASPS.pdf.* The FATF has also encouraged government authorities to address potential risks posed by disintermediated (*i.e.,* peer-to-peer) transactions in a proactive manner, as they deem appropriate. *Id.* at pp. 7. The FATF noted that jurisdictions have a range of national-level tools to mitigate, to some extent, the risks posed by anonymous peer-to-peer transactions if national authorities consider the ML/TF risk to be unacceptably high. This includes banning or denying licensing of platforms if they allow unhosted wallet transfers, introducing transactional or volume limits on peer-to-peer transactions, or mandating that transactions occur with the use of a VASP or financial institutions. *Id.* at pp. 15.

[28] The risk profile of wallets hosted by foreign financial institutions located in certain jurisdictions that do not have an effective AML regime resembles the risk profile of unhosted wallets. The reason transactions involving hosted wallets present lower illicit finance risk in jurisdictions with an effective AML regime is because of the role that intermediaries in such jurisdictions play in preventing money laundering by applying a variety of controls, such as due diligence, transaction monitoring, and suspicious activity reporting. Financial institutions subject to effective regulation are also obligated to cooperate with lawful investigations. In jurisdictions in which financial institutions are allowed to turn a blind eye to, or even purposefully facilitate, money laundering, there is no basis to conclude that intermediation reduces illicit finance risk. The reporting, recordkeeping, and verification requirements of this proposed rule would apply to transactions with wallets hosted in jurisdictions listed on the Foreign Jurisdictions List.

B. Limitations of Current Tools To Mitigate the AML/CFT Risks of CVC

In certain circumstances, investigators may be able to analyze blockchain data to identify illicit activity.[29] While such analytic techniques can be used to combat illicit finance, they are not a panacea. Blockchain analysis can be rendered less effective by a number of factors, including the scale of a blockchain network, the extent of peer-to-peer activity (*i.e.,* transactions between unhosted wallets), the use of anonymizing technologies to obscure transaction information, and a lack of information concerning the identity of transferors and recipients in particular transactions. Additionally, several types of AEC (*e.g.,* Monero, Zcash, Dash, Komodo, and Beam) are increasing in popularity and employ various technologies that inhibit investigators' ability both to identify transaction activity using blockchain data and to attribute this activity to illicit activity conducted by natural persons.[30]

Regulations under the BSA already require filing CTRs for transactions involving or aggregating to more than $10,000 in currency or monetary instruments as defined in 31 CFR 1010.100(dd). Such CTRs provide valuable information that helps investigators identify bulk cash smuggling, structuring, and other large-scale money laundering efforts, among other activity, even when the customer is not complicit in the overall money laundering scheme.[31] This proposed rule would similarly provide greater insight into transacting parties with a nexus to one or more potentially illicit transactions:

- First, the proposed rule would require that banks and MSBs identify and verify hosted wallet customers who engage in transactions with unhosted or otherwise covered wallet counterparties when those customers conduct transactions above the equivalent of $3,000 in CVC or LTDA with an unhosted or otherwise covered wallet

[29] D.Y. Huang et al., ''Tracking Ransomware End-to-end,'' 2018 IEEE Symposium on Security and Privacy (SP), San Francisco, CA, 2018, pp. 618–631, doi: 10.1109/SP.2018.00047.

[30] *See* ''What is Monero (XMR)?'' *https://web.getmonero.org/get-started/what-is-monero/* (accessed Dec. 1, 2020).

[31] Other types of reports required under the BSA, including suspicious activity reports, are also critical to law enforcement. The reporting requirements of this proposed rule are a virtual currency analogue to the CTR reporting requirement.

counterparty (with reporting required for transactions over $10,000), and that banks and MSBs collect certain information (*i.e.* name and physical address) concerning the customer's counterparties.[32]

- Second, the proposed rule would cause banks and MSBs to generate reports containing the transaction hash and identity of persons holding wallets engaging with unhosted or otherwise covered wallets engaging in transactions across multiple financial institutions.
- Third, the proposed rule would create a new prohibition on structuring—*i.e.,* engaging in transactions in a manner to avoid reporting requirement—applicable to virtual currency transactions. Structuring is a method used by some malign actors to avoid detection by law enforcement of their illicit activities.

In this notice, FinCEN is seeking comment on the potential effects of this proposed rule on activity through financial intermediaries that are subject to the BSA or to AML/CFT regulations in a foreign jurisdiction.

C. Legal Framework

1. The Bank Secrecy Act

The Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (''USA PATRIOT Act'') (Pub. L. 107–56) and other legislation, is the legislative framework commonly referred to as the BSA. The Secretary of the Treasury (''Secretary'') has delegated to the Director of FinCEN (''Director'') the authority to implement, administer, and enforce compliance with the BSA and associated regulations.[33]

Pursuant to this authority, FinCEN may require financial institutions to keep records and file reports that the Director determines have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in intelligence or counterintelligence matters to protect against international terrorism.[34] Regulations implementing Title II of the BSA appear at 31 CFR chapter X.[35]

Specifically, under 12 U.S.C. 1829b(b)(1), where the Secretary determines that the maintenance of appropriate types of records and other evidence by insured depository institutions has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, the Secretary has the authority to prescribe regulations to carry out the purposes of this section. Similarly, under 12 U.S.C. 1953, the Secretary is authorized to promulgate recordkeeping requirements for uninsured banks and uninsured financial institutions, to include MSBs.

Under 31 U.S.C. 5313, the Secretary is authorized to require financial institutions to report currency transactions, or transactions involving other monetary instruments as the Secretary prescribes. These reports may be required on transactions in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation. Reports must be filed at the time and in the way the Secretary prescribes. The BSA defines the term ''monetary instruments'' to include, among other things, ''United States coins and currency . . . [and] as the Secretary may prescribe by regulation, coins and currency of a foreign country, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and similar material. . . .'' [36] The term ''monetary instruments'' is also defined for the purposes of FinCEN's regulations in 31 CFR chapter X at 31 CFR 1010.100(dd).[37]

Under 31 U.S.C. 5318(a)(2), the general powers of the Secretary pursuant to the BSA include the ability to require a class of domestic financial institutions to ''maintain appropriate procedures to ensure compliance with [subchapter 53 of title 31 of the U.S. Code] and regulations prescribed under [such] subchapter or to guard against money laundering.'' [38]

2. Implementation of the BSA With Respect to Persons Dealing in CVC

Under FinCEN's regulations found at 31 CFR chapter X, banks and MSBs are subject to a number of requirements under the BSA, including requirements to maintain an AML/CFT program and to report suspicious activity to FinCEN.[39] Specifically, banks and MSBs are required to have an AML/CFT program that includes, at a minimum, (1) internal controls to assure ongoing compliance; (2) independent testing for compliance to be conducted by internal personnel or by an outside party; (3) designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and (4) training and education for appropriate personnel.[40] Banks are also required to maintain appropriate risk-based procedures for conducting customer due diligence and a customer identification program (''CIP'') as part of their AML/CFT program.[41] The BSA and its implementing regulations also require banks and MSBs to file CTRs and suspicious activity reports (''SARs''). Financial institutions are required to file SARs to report any transaction that the financial institution ''knows, suspects, or has reason to suspect'' is suspicious, if the transaction is conducted or attempted by, at, or through the institution, and the transaction involves or aggregates to at least $5,000 in funds or other assets in the case of banks, and at least $2,000 in funds or other assets in the case of MSBs.[42]

Many of the BSA requirements that apply to banks and MSBs are applicable to their transactions in CVC or LTDA.[43] For instance, financial institutions are required to address the risks of such transactions as part of their AML/CFT programs, file CTRs where appropriate (such as where a person uses a reportable amount of currency to purchase CVC or LTDA), and report suspicious activity related to such transactions to FinCEN.

[32] FinCEN recognizes that persons engaged in illicit finance will likely attempt to use falsified credentials and other types of schemes to evade the requirement to report their true identities. However, banks and MSBs develop solutions to try to ferret out such abuse, not only for AML purposes but also to avoid being defrauded by illicit actors themselves. Furthermore, such efforts can generate valuable leads through suspicious activity reports.

[33] Treasury Order 180–01 (Jan. 14, 2020).

[34] 31 U.S.C. 5311.

[35] Treasury Order 180–01 (Jan. 14, 2020).

[36] 31 U.S.C. 5312(a)(3).

[37] This proposed rule would not modify the regulatory definition of ''monetary instruments'' at 31 CFR 1010.100(dd), although it would prescribe that CVC and LTDA are ''monetary instruments'' pursuant to 31 U.S.C. 5313 for the purposes of the issuance of the proposed reporting requirement added at 31 CFR 1010.316.

[38] The proposed rule relies on authority under 31 U.S.C. 5313 and 5318(a)(2) to extend several existing requirements that apply to the current requirement to file currency transaction reports to the new requirement to file transaction reports related to transactions in CVC or LTDA. It also relies on the authority of 31 U.S.C. 5318(a)(2) for the promulgation of the recordkeeping requirements on wallets held by foreign financial institutions in jurisdictions identified by FinCEN.

[39] *See, e.g.,* 31 CFR 1020.210, 1020.320, 1022.210, 1022.320.

[40] 31 CFR 1020.210, 1022.210.

[41] 31 CFR 1020.210(b)(5), 1020.220, 1022.210(d)(1).

[42] 31 CFR 1020.320, 1022.320.

[43] FinCEN guidance makes clear that CVC is a type of ''value that substitutes for currency.'' *See, e.g.,* FinCEN Guidance—Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies at pp. 3–5 (Mar. 18, 2013) (''FinCEN 2013 CVC Guidance''); FinCEN 2019 CVC Guidance at pp. 7. While LTDA does, by definition, have legal tender status, it does not meet the definition of currency in 31 CFR 1010.100 as it is not coin or paper money. Thus, like CVC, LTDA is also value that substitutes for currency.

FinCEN's guidance also states that financial institutions are subject to the collection, recordkeeping, and transmittal requirements applicable to transmittals of funds with respect to transactions in CVC or LTDA.[44] A notice of proposed rulemaking recently published by FinCEN and the Board of Governors of the Federal Reserve System proposes regulatory amendments to these same rules to clarify that they apply to transactions in CVC or LTDA, and also to lower the monetary threshold triggering the rules for certain transactions (the ''Funds Transfer/Funds Travel Rule NPRM'').[45] Under the collection and recordkeeping aspect of these rules, banks and nonbank financial institutions are required to collect and retain information related to transmittals of funds in amounts of $3,000 or more.[46] Furthermore, the transmittal aspect of these rules requires financial institutions to transmit certain information required to be collected by the funds recordkeeping rule to other banks or nonbank financial institutions participating in the transmittal.[47]

3. CTR Reporting Obligations

The existing regulations that implement the CTR reporting requirement are found at several sections of 31 CFR chapter X. The basic reporting requirement is found at 31 CFR 1010.311, and applies generally to all financial institutions as defined by FinCEN's regulations. Individual regulatory parts also refer back to 31 CFR 1010.311, such as in the regulatory parts that apply to banks and MSBs.[48] Timing, procedural, and recordkeeping requirements related to the CTR reporting requirement are found at 31 CFR 1010.306(a)(1)–(3) and (d)–(e). Identification verification and recordkeeping requirements applicable to transactions requiring a CTR are found at 31 CFR 1010.312 and are referenced in other regulatory parts.[49] Aggregation requirements that require financial institutions to aggregate across multiple branches and transactions for the purposes of determining whether the CTR reporting requirement's monetary threshold is satisfied are found at 31 CFR 1010.313 and are referenced in other regulatory parts.[50] Anti-structuring rules that apply to transactions in currency reporting requirements are found at 31 CFR 1010.314 and are referenced in other regulatory parts.[51] An exemption that applies to non-bank financial institutions obligations under the CTR reporting requirement is found at 31 CFR 1010.315 and is also referenced in other regulatory parts.[52] Finally, banks are subject to specific statutory exemptions from the CTR reporting requirement as incorporated into FinCEN's regulations at 31 CFR 1020.315; the mandatory and discretionary statutory exemptions these regulations implement are found at 31 U.S.C. 5313(d) and (e), respectively.

III. Proposed Reporting Requirement for Transactions Involving CVC or LTDA

A. Expansion of the BSA Definition of ''Monetary Instruments''

This proposed rule would add a determination at 31 CFR 1010.316(a), a new section this proposed rule would add, that CVC and LTDA are ''monetary instruments'' for the purposes of 31 U.S.C. 5313. Section 5313 authorizes the Secretary to issue reporting requirements in relation to ''transactions for the payment, receipt, or transfer of United States coins or currency (*or other monetary instruments the Secretary of the Treasury prescribes*)'' (emphasis added). The BSA defines ''monetary instruments'' to include, among other things, ''United States coins and currency'' and ''as the Secretary may prescribe by regulation, coins and currency of a foreign country, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and similar material[.]'' [53]

CVC and LTDA are ''similar material'' to ''coins and currency of a foreign country, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, [and] stock on which title is passed on delivery . . . .'' [54] The six specific instruments included in 31 U.S.C. 5312(a)(3)(B) each represent material that can serve as a substitute for U.S. coins and currency, or in other words, function as money. Like currency itself, negotiable instruments and instruments in bearer form are commodified so that they can serve monetary functions, such as by acting as a medium of exchange, a store of value, or a unit of account. CVC similarly functions as a commodified unit of exchange and a substitute for coins and currency.

For purposes of the BSA, a salient characteristic shared by the six specific instruments included in 31 U.S.C. 5312(a)(3)(B) is not the right to an underlying asset, but rather that title to the asset passes upon delivery, that is, whoever possess the instrument is considered its owner.[55] With respect to CVC and LTDA, the holder of the private key related to any such CVC or LTDA has control over that CVC or LTDA. That private key grants the holder the ability and blockchain-based authority to transfer the CVC or LTDA.[56] In essence, ownership of CVC and LTDA passes upon delivery similar to the instruments described in 31 U.S.C. 5312(a)(3)(B).

As the note to the proposed determination at 31 CFR 1010.316(a) makes clear, however, that proposed determination is *not* intended to affect the regulatory definition of ''monetary instruments'' at 31 CFR 1010.100(dd), or the use of that regulatory definition elsewhere in FinCEN's regulations, including in relation to the CTR reporting requirement at 31 CFR 1010.311 and the transportation of currency or monetary instruments reporting requirement at 31 CFR 1010.340.[57]

B. Scope of the Reporting Requirement

The proposed reporting requirement would apply to transactions involving CVC or LTDA between a bank's or MSB's hosted wallet customer and an unhosted or otherwise covered wallet. This proposed rule would apply an aggregation requirement, similar to the CTR aggregation requirement, to the proposed reporting requirement for transactions involving CVC or LTDA.

[44] *See* FinCEN 2019 CVC Guidance at pp. 11–12.

[45] Funds Transfer/Travel Rule NPRM at pp. 68005–06.

[46] *See* 31 CFR 1010.410(e) (non-bank financial institutions); 31 CFR 1020.410(a) (banks). Among the information that must be collected and retained is (a) name and address of the transmittor; (b) the amount of the transmittal order; (c) the execution date of the transmittal order; (d) any payment instructions received from the transmittor with the transmittal order; and (e) the identity of recipient's financial institution.

[47] *See* 31 CFR 1010.410(f).

[48] *See, e.g.,* 31 CFR 1020.311, 1022.311.

[49] *See, e.g.,* 31 CFR 1020.312, 1022.312.

[50] *See, e.g.,* 31 CFR 1020.313, 1022.313.

[51] *See, e.g.,* 31 CFR 1020.314, 1022.314.

[52] *See, e.g.,* 31 CFR 1022.315.

[53] 31 U.S.C. 5312(a)(3).

[54] 31 U.S.C. 5312(a)(3)(B).

[55] Some CVCs, such as stablecoins, may be redeemable for an underlying asset.

[56] *See, e.g.,* Satoshi Nakamoto, Bitcoin: A Peer-to-Peer Electronic Cash System, *available at https://bitcoin.org/bitcoin.pdf* (''Each owner transfers the coin to the next by digitally signing a hash of the previous transaction and the public key of the next owner and adding these to the end of the coin. A payee can verify the signatures to verify the chain of ownership.'') (accessed December 5, 2020).

[57] Nor is this proposed regulatory determination intended to have any impact on the definition of ''currency'' in 31 CFR 1010.100(m). Furthermore, nothing in this proposal is intended to constitute a determination that any CVC or LTDA that is within the regulatory definition of ''monetary instruments'' at 31 U.S.C. 5312(a)(3) is currency for the purposes of the federal securities laws, 15 U.S.C. 78c(47), or the federal derivatives laws, 7 U.S.C. 1–26, and the regulations promulgated thereunder.

However, only CVC or LTDA transactions would need to be aggregated together for the purposes of the proposed reporting requirement; a report would not be required when the total value of a person's CVC or LTDA transactions plus the person's currency transactions in a 24-hour period is greater than $10,000 in value, as determined by the financial institution based on the value at the time of each transaction, but the total value of the person's CVC or LTDA transactions alone is not greater than $10,000 in value, as determined by the financial institution based on the value at the time of each transaction.[58]

FinCEN is proposing an exemption to the reporting requirement that would make this requirement inapplicable to transactions between hosted wallets held at financial institutions subject to the BSA. FinCEN is also proposing to extend this exemption to CVC or LTDA transactions where the counterparty wallet is hosted by a foreign financial institution, except for a foreign financial institution in a jurisdiction listed on the Foreign Jurisdictions List, which FinCEN is proposing to establish. Initially, the Foreign Jurisdictions List would be comprised of jurisdictions designated by FinCEN as jurisdictions of primary money laundering concern (*i.e.* Burma, Iran, and North Korea), but could in the future be expanded to include jurisdictions that are identified to have significant deficiencies in their regulation of CVC or LTDA such that the application of this proposed rule's recordkeeping and reporting requirements would be appropriate.

C. Comparison to the CTR Reporting Requirements and Consideration of Extension of Current CTR Exemptions to the Proposed CVC/LTDA Transaction Reporting Requirement

Similar to the CTR reporting requirement, this proposed rule would require reporting of transactions in CVC or LTDA that aggregate to greater than $10,000 in one day. Substantive exemptions to the CTR reporting requirement can be found at 31 CFR 1010.315 and 1020.315. The exemption at 31 CFR 1010.315 exempts a non-bank financial institution (including an MSB) from the obligation to file a report otherwise required by 31 CFR 1010.311 with respect to a transaction in currency between the institution and a commercial bank. This proposed rule would not extend this exemption to the reporting requirement proposed to be added at 31 CFR 1010.316(b) related to CVC/LTDA transactions between a bank's or MSB's hosted wallet customer and an unhosted or otherwise covered wallet. FinCEN is not proposing extending this exemption because unhosted and otherwise covered wallets would generally not involve a U.S. commercial bank. FinCEN has requested comment, however, on whether these exemptions should be extended with respect to the proposed CVC/LTDA transaction reporting requirement.

The current exemptions to the CTR reporting requirement for banks at 31 CFR 1020.315 are based in the mandatory and discretionary statutory exemptions to reporting requirements imposed on banks pursuant to 31 U.S.C. 5313(d) and (e), respectively. The two sections below consider those exemptions in turn.

1. Application of Mandatory Exemptions to 31 U.S.C. 5313 Reporting Requirements to the Proposed CVC/LTDA Transaction Reporting Requirement

31 U.S.C. 5313(d) mandates that the Secretary exempt ''depository institutions''—which include the banks on which the proposed CVC/LTDA transaction reporting requirement would be imposed—from reporting requirements imposed pursuant to 31 U.S.C. 5313(a) with respect to transactions between the depository institution and: (a) Another depository institution; (b) a department or agency of the United States, any State, or any political subdivision of any State; (c) any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact between two or more States, which exercises governmental authority on behalf of the United States or any such State or political subdivision; or (d) any business or category of business the reports on which have little or no value for law enforcement purposes.

FinCEN believes these mandatory statutory exemptions are likely to be of limited practical relevance with respect to the proposed reporting requirement because of the limited likelihood that the types of institutions covered by these mandatory statutory exemptions would maintain unhosted or otherwise covered wallets. Nevertheless, FinCEN is proposing to apply the mandatory statutory exemptions to the proposed CVC/LTDA transaction reporting requirement. At this time, however, FinCEN is not proposing to determine that there is any business or category of business for which the reports on CVC or LTDA would have little or no value for law enforcement purposes.[59]

2. Consideration of Applying the Discretionary Exemptions to 31 U.S.C. 5313 Reporting Requirements to the Proposed CVC/LTDA Transaction Reporting Requirement

31 U.S.C. 5313(e) states that the Secretary may exempt a depository institution from the reporting requirements of subsection (a) with respect to transactions between the depository institution and a qualified business customer of the institution on the basis of information submitted to the Secretary by the institution in accordance with procedures which the Secretary shall establish. FinCEN's regulations incorporate this provision by including as ''exempt persons'' two categories of entities that are not within the mandatory exemptions of 31 U.S.C. 5313(d),[60] and then requiring that banks file a notice to FinCEN with respect to such persons prior to applying the exemption to discontinue the filing of CTRs.[61]

The discretionary exemptions that FinCEN has adopted relate to U.S. businesses with transaction accounts that frequently engage in transactions greater than $10,000, and certain payroll account customers.[62] Neither of these discretionary categories appear likely to be counterparties to transactions between banks' hosted wallet customers and unhosted or otherwise covered wallets. Therefore, FinCEN is not proposing to extend these provisions to the proposed CVC/LTDA transaction reporting requirement. FinCEN has requested comment on the exemptions it should apply.

[58] As noted previously, the changes this proposed rule would make are not intended to modify the CTR reporting requirement. Consistent with this intention, the proposed rule would make no change to the CTR aggregation requirements; the value of a person's CVC or LTDA transactions is not relevant to the determination of whether the person's currency transactions in aggregate require the filing of a CTR.

[59] FinCEN is therefore not extending the exemptions at 31 CFR 1020.315(b)(4)–(5) to the proposed CVC/LTDA transaction reporting requirement. 31 CFR 1020.315(b)(4)–(5) were promulgated to implement the mandatory reporting exemptions of 31 U.S.C. 5313(d) with respect to transactions in currency. ''Amendment to the Bank Secrecy Act Regulations—Exemptions From the Requirement To Report Transactions in Currency'' 62 FR 47141, 47142 (Sept. 8, 1997).

[60] *See* 31 CFR 1020.315(b)(6)–(7).

[61] *See* 31 CFR 1020.315(c)(1).

[62] *See* 31 CFR 1020.315(b)(6)–(7).

IV. Proposed Recordkeeping, Verification, and Other Procedural Requirements on Transactions Involving CVC or LTDA

A. Recordkeeping, Verification, and Other Procedural Requirements Related to the Proposed CVC/LTDA Transaction Reporting Requirement

As noted above in Section II.C.3, the basic CTR reporting requirement at 31 CFR 1010.311 is complemented by identification verification, recordkeeping, and procedural requirements, and other provisions found in other sections of 31 CFR chapter X. In particular, with respect to transactions for which a CTR must be filed, financial institutions must comply with the following related requirements:

- Pursuant to 31 CFR 1010.312, financial institutions must verify and record the identity of the individual presenting the transaction, as well as record the identity, account number, and the social security or taxpayer identification number, if any, of any person or entity on whose behalf such transaction is to be effected. The regulation also lays out specific requirements for verification.
- Pursuant to 31 CFR 1010.306(a)(1), a CTR must be filed within 15 days following the date of the reportable transaction.
- Pursuant to 31 CFR 1010.306(a)(2), a CTR must be retained for five years from the date of the report.
- Pursuant to 31 CFR 1010.306(a)(3), a CTR must be filed with FinCEN, unless otherwise specified.
- Pursuant to 31 CFR 1010.306(d), a CTR must be filed on a form prescribed by the Secretary. Pursuant to 31 CFR 1010.306(e), the CTR form may be obtained from the BSA E-Filing System.
- Pursuant to 31 CFR 1010.314, structuring transactions to evade the CTR reporting requirement is prohibited.

This proposed rule would amend these requirements. Specifically, the procedural and anti-structuring rules are proposed to be amended in a straightforward manner by adding to their scope the proposed reporting requirement at 31 CFR 1010.316. The identity verification and recordkeeping requirements are proposed to be amended to apply a new verification requirement to a financial institution's hosted wallet customer, and to require the collection of the name and physical address of the customer's counterparty, when engaging in a transaction reportable pursuant to the proposed CVC/LTDA transaction reporting requirement.

B. Recordkeeping and Verification Requirements Distinct From the Proposed CVC/LTDA Transaction Reporting Requirement

This proposed rule would add a new recordkeeping requirement at 31 CFR 1010.410(g) requiring banks and MSBs to keep records and verify the identity of their hosted wallet customers, when those customers engage in transactions with unhosted or otherwise covered wallets with a value of more than $3,000. With respect to the verification requirement for recordkeeping, the proposed rule would allow for methods analogous to those permitted for verification of hosted wallet customers in relation to transactions subject to the proposed CVC/LTDA transaction reporting requirement. The proposed recordkeeping requirement would not apply to transactions between hosted wallets (except for otherwise covered wallets).

FinCEN is proposing to establish this recordkeeping and verification requirement pursuant to 12 U.S.C. 1829b(b)(1) and 12 U.S.C. 1953, which authorize the Secretary to adopt recordkeeping requirements for banks and MSBs that have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, as well as 31 U.S.C. 5318(a), which authorizes the Secretary to require domestic banks and MSBs to maintain appropriate procedures to ensure compliance with subchapter 53 of title 31 of the U.S. Code and regulations prescribed thereunder or to guard against money laundering. As a result, the statutory exemptions of 31 U.S.C. 5313 covering transactions between depository institutions and certain other entities do not apply to these proposed requirements.

V. Section-by-Section Analysis

A. Expansion of the Definition of ''*Monetary Instruments*''

As described in Section III.B, the proposed rule would add a new provision at 31 CFR 1010.316(a) that includes a determination that CVC and LTDA are ''monetary instruments'' for the purposes of 31 U.S.C. 5313. This determination provides a basis for the proposed CVC/LTDA transaction reporting requirement proposed to be added at 31 CFR 1010.316(b).[63]

This proposed determination is *not* intended to impact the regulatory definition of ''monetary instruments'' at 31 CFR 1010.100(dd), nor that regulatory definition's use elsewhere in FinCEN's regulations, including in relation to the currency transaction reporting requirement at 31 CFR 1010.311, and the transportation of currency or monetary instruments reporting requirement at 31 CFR 1010.340.

B. Reporting Requirements on CVC and LTDA Transactions With Unhosted or Otherwise Covered Wallets

This notice proposes a new reporting requirement at 31 CFR 1010.316(b). This would require banks and MSBs to file a report similar to the CTR for transactions between their customers' CVC or LTDA hosted wallets and unhosted or otherwise covered wallets, either as senders or recipients. This reporting requirement would apply even if the user of the unhosted or otherwise covered wallet is the customer for which the financial institution holds a hosted wallet.

To maintain consistency with the CTR form, this proposed rule would require CVC and LTDA transaction reporting at a threshold of $10,000 in value, as determined by the financial institution based on the prevailing exchange rate at the time of the transaction.[64] FinCEN plans to issue a reporting form similar to but distinct from the CTR reporting form that will require the reporting of information on the filer, transaction, hosted wallet customer, and each counterparty.

The proposed rule would add aggregation requirements similar to those that apply to the requirement to file CTRs. Specifically, the proposed aggregation provision at 31 CFR 1010.313(c) would require that banks and MSBs, in calculating whether the $10,000 threshold has been met, treat multiple CVC and LTDA transactions as a single transaction if the bank or MSB has knowledge that they are by or on behalf of any person and result in value in or value out of CVC or LTDA above the threshold of $10,000 during a 24-hour period. This 24-hour period begins from the first unreported transaction.[65]

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[63] 31 CFR 1010.316(c) provides definitions for CVC and LTDA. As noted previously, CVC is defined consistently with the proposed definition in FinCEN and the Board of Governors of the Federal Reserve Board's recent Funds Transfer/Travel Rule NPRM. *See* 85 FR 68005, 68011 (Oct. 27, 2020). LTDA is defined for the first time to be any type of digital asset issued by the United States or any other country that is designated as legal tender by the issuing country and accepted as a medium of exchange in the country of issuance.

[64] The term ''prevailing exchange rate'' means a rate reasonably reflective of a fair market rate of exchange available to the public for the CVC/LTDA at the time of the transaction. Financial institutions would be required to document their method for determining the prevailing exchange rate.

[65] For example, if three $6,000 transactions with unhosted wallets are initiated by a MSB's hosted wallet customer at 7:00 a.m. on Tuesday, 7:00 p.m.

The aggregation provisions would not require that CVC/LTDA transactions be aggregated with currency transactions for the purposes of either the CTR reporting requirement threshold or the CVC/LTDA transaction reporting requirement threshold.

Because a bank or MSB may provide CVC or LTDA hosting through distinct corporate structures and from different physical locations than it provides traditional financial services, proposed 31 CFR 1010.313(c) makes clear that, for purposes of aggregation with respect to the CVC/LTDA transaction reporting requirement, a bank or MSB must include all of its offices and records, wherever they may be located. Additionally, under this proposed rule, foreign-located MSBs must comply with the proposed CVC/LTDA transaction reporting requirement, and this related aggregation requirement, with respect to their activities in the United States.[66]

With respect to counterparty information that would be required to be reported pursuant to 31 CFR 1010.316(b), the proposed rule would require the reporting of certain identifying information including, at a minimum, the name and physical address of each counterparty. Consistent with their AML/CFT programs, under the proposed rule, banks and MSBs would continue to follow risk-based procedures to determine whether to obtain additional information about their customer's counterparties or take steps to confirm the accuracy of counterparty information.

The proposed 31 CFR 1010.316 would exempt from required reporting those transactions that are between a filer's hosted wallet customer and a counterparty hosted wallet at a financial institution that is either regulated under the BSA or located in a foreign jurisdiction that is not on the Foreign Jurisdictions List. As proposed, prior to applying the exemption at 31 CFR 1010.316(d), banks and MSBs would need to have a reasonable basis to determine that a counterparty wallet is a hosted wallet at either a BSA-regulated financial institution or a foreign financial institution in a jurisdiction that is not on the Foreign Jurisdictions List. For example, in analyzing whether a counterparty's wallet is hosted by a BSA-regulated MSB, financial institutions would need to ensure that the MSB is registered with FinCEN. In making a determination of the applicability of the exemption to a wallet hosted by a foreign financial institution, banks and MSBs would need to confirm that the foreign financial institution is not located in a jurisdiction on the Foreign Jurisdictions List, and would need to apply reasonable, risk-based, documented procedures to confirm that the foreign financial institution is complying with registration or similar requirements that apply to financial institutions in the foreign jurisdiction.

As discussed in Section III.D, FinCEN also proposes amending 31 CFR 1020.315 to apply the mandatory statutory exemptions to the reporting requirements imposed pursuant to 31 U.S.C. 5313(a) to the proposed CVC/LTDA transaction reporting requirement to be added at 31 CFR 1010.316(b). However, as discussed in Section III.D, FinCEN is not proposing to conclude that there is any business or category of business the reports on which have little or no value for law enforcement purposes under the proposed CVC/LTDA transaction reporting requirement. Therefore, FinCEN is not proposing to extend the regulatory exceptions related to public companies and their subsidiaries that have been applied to such entities with respect to currency transactions pursuant to 31 CFR 1020.315(b)(4)–(5). Further, FinCEN is not proposing applying the discretionary statutory exemptions to further limit the scope of the proposed CVC/LTDA transaction reporting requirement. FinCEN is continuing to consider these issues and has sought comments on whether it should apply these exemptions differently.

Because FinCEN has only proposed extending the exemption under 31 CFR 1020.315 to entities subject to the mandatory statutory exemption listed in 31 CFR 1020.315(b)(1)–(3), FinCEN is not proposing to require a bank to file FinCEN Form 110 or a similar form in relation to such exempt persons in order to take advantage of the exemption. This is consistent with the existing special rule at 31 CFR 1020.315(c)(2)(B) for transactions in currency.

In some instances, CVC/LTDA transactions may involve multiple senders and recipients. As reflected in the proposed exemption language at 31 CFR 1010.316(d), a transaction where any one participating wallet is unhosted or otherwise covered would be subject to the proposed CVC/LTDA transaction reporting requirement. Therefore, banks and MSBs would be required to report, keep records, and engage in verification with respect to such transactions, if the aggregate amount of CVC/LTDA transactions involving unhosted or otherwise covered wallets, either sent or received from their customer's account, exceeds $10,000 in value within a 24-hour period.

C. Recordkeeping and Verification Requirements Related to the Transaction Reporting Requirement for CVC and LTDA Transactions With Unhosted or Otherwise Covered Wallets

As described in Section IV, the proposed rule would also extend to the new CVC/LTDA transaction reporting requirement provisions analogous to the identity verification, recordkeeping, and procedural requirements, and the anti-structuring rule, that apply to the CTR reporting requirement.

1. Identity Verification and Recordkeeping Requirements

The identity verification and recordkeeping requirements applicable to transactions that require the filing of a CTR are found at 31 CFR 1010.312. The proposed rule would amend this provision by adding a requirement at 31 CFR 1010.312(b) that banks and MSBs verify and keep records of their hosted wallet customers who engage in a transaction with unhosted or otherwise covered wallet counterparties. Specifically, banks and MSBs would be required to verify and record the identity of their customer engaged in a reportable transaction.[67] Under the proposed rule, in the case of a transaction in which the bank's or MSB's customer is the sender and the bank or MSB is aware at the time of the transaction that reporting is required pursuant to 31 CFR 1010.316 or 1010.313(c) (where the reporting requirement applies based on aggregation), the bank or MSB should not complete the transmission of funds until such recordkeeping and verification is complete. Similarly, in the case of a transaction in which the bank's or MSB's customer is the recipient, the bank or MSB would need to obtain the required recordkeeping and verification information as soon as practicable. In addition, under the proposed rule, banks and MSBs would be expected to incorporate policies tailored to their respective business models should the bank or MSB be

on Tuesday, and 8:00 a.m. on Wednesday, then the first two transactions would be reported, consistent with the aggregation requirement, but not the third transaction. However, the third transaction would be subsequently reported, consistent with the aggregation requirement, if there were additional transactions with unhosted or otherwise covered wallets before 8:00 a.m. on Thursday totaling more than $4,000 in value.

[66] *Cf.* FinCEN Advisory, FIN–2012–A001, ''Foreign-Located Money Services Businesses'' (Feb. 2012), *https://www.fincen.gov/sites/default/files/advisory/FIN-2012-A001.pdf.*

[67] Pursuant to the note to 31 CFR 1010.312(b), this includes verifying the identity of the person accessing the customer's account, which may be someone conducting a transaction on the customer's behalf.

unable to obtain the required information, such as by terminating its customer's account in appropriate circumstances.

FinCEN recognizes that verification of identity in the CTR context generally involves transactions in currency that are physically presented, in contrast to the CVC and LTDA transactions that are subject to the proposed CVC/LTDA transaction reporting requirement, for which this is often not the case. Accordingly, under the proposed rule, consistent with the bank's or MSB's AML/CFT program, the bank or MSB would need to establish risk-based procedures for verifying their hosted wallet customer's identity that are sufficient to enable the bank or MSB to form a reasonable belief that it knows the true identity of its customer. These procedures would be based on the bank's or MSB's assessment of the relevant risks, including those presented by the nature of their relationship with their hosted wallet customer, the transaction activity, and other activity associated with each counterparty and the CVC or LTDA assets. In the case of a bank, which is subject to very similar requirements pursuant to its obligations to obtain CIP information and engage in ongoing customer due diligence (''CDD''), the bank may be able to leverage information it has previously collected and is already obligated to collect.[68] The same may be true for MSBs which must maintain internal controls as part of an effective money laundering program that is reasonably designed to prevent the money services business from being used to facilitate money laundering and the financing of terrorist activities.[69]

2. Procedural Requirements and the Anti-Structuring Rule

a. Procedural Requirements

The proposed rule would amend several procedural requirements that apply to the CTR reporting requirement to ensure their application to the proposed CVC/LTDA transaction reporting requirement as well. These include the requirements of 31 CFR 1010.306(a)(1), which applies a 15-day deadline from the date of a reportable transaction for the filing of the new report; (a)(2), which requires the retention of a copy of each filed report for five years from the date of the report; (a)(3), which requires reports to be filed with FinCEN unless otherwise specified); (d), which requires reports to be filed on form prescribed by the Secretary; and (e), which states that forms used to make reports may be obtained on FinCEN's BSA E-Filing System.

The proposed rule would also make several clerical edits. It would amend 31 CFR 1010.310, which previously provided an overview of the CTR requirement, so that it describes both the CTR requirement and the proposed CVC/LTDA transaction reporting requirement. The proposed rule would also conform the relevant cross-references in Parts 1020 and 1022 to the new requirements,[70] and would add cross-references to the new reporting requirement at 31 CFR 1020.316 and 31 CFR 1022.316.

b. Anti-Structuring Rule

The proposed rule would amend the definition of structuring at 31 CFR 1010.100(xx) to refer to the new reporting requirement at 31 CFR 1010.316 and would also modify the prohibition on structuring at 31 CFR 1010.314 to refer to the proposed reporting requirement. In order to make the proposed reporting requirement effective, it is necessary to ensure that parties engaged in structuring to avoid the new reporting requirement are subject to penalties. Because the proposed reporting requirement at 31 CFR 1010.316 would be imposed pursuant to 31 U.S.C. 5313(a), the proposed amended structuring prohibition at 31 CFR 1010.314 is consistent with 31 U.S.C. 5324.

D. Recordkeeping and Verification Requirements for Transactions Greater than $3,000

Under the proposed recordkeeping provision, to be added at 31 CFR 1010.410(g), banks and MSBs would be required to keep records and verify the identity of their customers engaging in transactions involving the withdrawal, exchange or other payment or transfer, by, through, or to such financial institution of CVC or LTDA, as those terms are defined in § 1010.316(c), with a value of more than $3,000, as determined by the bank or MSB based on the prevailing exchange rate at the time of the transaction.

With respect to counterparty information for which banks and MSBs would be required to collect records pursuant to 31 CFR 1010.410(g), the proposed rule would require that banks and MSBs collect, at a minimum, the name and physical address of each counterparty, and other information the Secretary may prescribe on the reporting form implementing the proposed CVC/LTDA transaction reporting requirement. Banks and MSBs would, under the proposed rule, continue to follow risk-based procedures, consistent with their AML/CFT program, to determine whether to obtain additional information about their customer's counterparties or take steps to confirm the accuracy of counterparty information.

Transactions with a value of greater than $10,000 would be subject to both the reporting requirement of 31 CFR 1010.316(b) and the recordkeeping and verification requirements of 31 CFR 1010.410(g). However, FinCEN expects that banks and MSBs would be able to employ a single set of information collection and verification procedures to satisfy both requirements, and has made the verification requirements consistent.[71] Furthermore, FinCEN has proposed to apply to these recordkeeping and verification requirements the exemption for transactions between hosted wallets (except for otherwise covered wallets).[72] The same considerations, discussed in Section V.B, that govern the application of the exemption to the proposed CVC/LTDA transaction reporting requirement, such as the need for banks or MSBs to have a documented basis for applying an exemption, would also govern the application of this exemption. In addition, no aggregation would be required for the purpose of the recordkeeping requirement at 31 CFR 1010.410(g).

Furthermore, banks and MSBs would be subject to similar programmatic requirements under the recordkeeping requirement at 31 CFR 1010.410(g) as they would be under the verification requirement for the proposed CVC/LTDA transaction reporting requirement. Specifically, in the case of a transaction in which the bank's or MSB's customer is the sender and recordkeeping and verification is required pursuant to 31 CFR 1010.410(g), the bank or MSB should not complete the transmission of funds until such recordkeeping and verification is complete. Similarly, in the case of a transaction in which the bank's or MSB's customer is the recipient, the bank or MSB should obtain the required recordkeeping and verification information as soon as

[68] *See* 31 CFR 1020.210(b)(5); 31 CFR 1020.220(a).

[69] *See* 31 CFR 1022.210(a).

[70] Specifically, the proposed rule would make relevant conforming changes to 31 CFR 1020.310, 1020.312, 1020.313, 1022.310, 1022.312, and 1022.313.

[71] *Cf., e.g.,* 31 CFR 1010.410(g)(2), *with* 31 CFR 1010.312(b) (verification is only required under either provision for hosted wallet customers transacting through unhosted or otherwise covered wallets).

[72] *Cf.* 31 CFR 1010.410(g)(4), *with* 31 CFR 1010.316(d).

practicable. In addition, banks and MSBs would be expected to incorporate policies tailored to their respective business models should the bank or MSB be unable to obtain the required information, such as by terminating its customer's account in appropriate circumstances.

For transactions subject to the proposed recordkeeping requirement at 31 CFR 1010.410(g), a bank or MSB would be required to obtain and retain an electronic record of information about its customer, the amount and execution date of the transaction, and the counterparty. Unlike other recordkeeping requirements, such as 31 CFR 1010.410(e) and 1020.410(a), the recordkeeping requirement in the proposed rule would require the electronic retention of information. FinCEN is proposing to require electronic recordkeeping based on the fact that such recordkeeping is the practical way in which businesses engaged in CVC or LTDA transactions are likely to track their data and the most efficient form in which data can be provided to law enforcement and national security authorities.

Furthermore, under 31 CFR 1010.410(g)(3) as proposed, the information that a financial institution would be required to retain under paragraphs (g)(1) and (g)(2) of that section must be retrievable by the bank or MSB by reference to the name or account number of its customer, or the name of its customer's counterparty. This information would not need not be retained in any particular manner, so long as the bank or MSB is able to retrieve the information. FinCEN is proposing these requirements to ensure that the information retained by banks and MSBs is efficiently searchable in response to lawful information requests.

VI. Request for Comment

FinCEN welcomes comment on all aspects of this proposed rule. FinCEN encourages all interested parties to provide their views.

With respect to the effect of expanding the scope on the definition of ''monetary instruments'' in the BSA, FinCEN in particular requests comment on the following question from financial institutions and members of the public:

(1) Has FinCEN been sufficiently clear that the impact of the definitional change to ''monetary instruments'' would be limited to the reporting, recordkeeping, verification, and other requirements of this proposed rule, and not to preexisting regulatory obligations such as the CTR reporting requirement at 31 CFR 1010.311?

With respect to the reporting requirements in proposed 31 CFR 1010.316, FinCEN in particular requests comment on the following questions from law enforcement, financial institutions, and members of the public:

(2) Describe the costs from complying with the proposed reporting requirement.

(3) Describe the benefits to law enforcement from the data obtained from the proposed reporting requirement.

(4) Has FinCEN struck a reasonable balance between financial inclusion and consumer privacy and the importance of preventing terrorism financing, money laundering, and other illicit financial activity? If not, what would be a more appropriate way to balance these objectives?

(5) Describe how the costs of complying with the proposed reporting requirement, or the benefits to law enforcement from the data obtained from the proposed reporting requirement, would vary were FinCEN to adopt a higher or lower threshold than $10,000.

(6) Describe how the costs of complying with the proposed reporting requirement, or the benefits to law enforcement from the data obtained from the proposed reporting requirement, would vary were FinCEN to apply the reporting requirement to all CVC/LTDA transactions by hosted wallets, including those with hosted wallet counterparties.

(7) Should FinCEN add additional jurisdictions to the Foreign Jurisdictions List or remove jurisdictions currently on that list? Are there any particular considerations FinCEN should take into account when adding or removing jurisdictions?

(8) Has FinCEN provided sufficient clarity to financial institutions on the scope of the aggregation requirements that apply to the proposed CVC/LTDA transaction reporting requirement?

(9) Discuss the costs and benefits of modifying the aggregation requirement to require aggregation for the purposes of the proposed CVC/LTDA transaction reporting requirement across both fiat and CVC/LTDA transactions.

(10) Has FinCEN properly considered the extension of the mandatory and discretionary statutory exemptions at 31 U.S.C. 5313(d)–(e) that are currently applicable to the CTR reporting requirement to the proposed CVC/LTDA transaction reporting requirement? Has FinCEN extended exemptions either too broadly or too narrowly? Was FinCEN correct to not extend the exemption from the CTR reporting requirement at 31 CFR 1010.315 related to transactions between a non-bank financial institution and a commercial bank to the proposed CVC/LTDA transaction reporting requirement?

(11) Should FinCEN extend the obligation to file reports under the proposed CVC/LTDA transaction reporting requirement to financial institutions other than banks and MSBs (*e.g.,* brokers-dealers, futures commission merchants, mutual funds, etc.)? What would be the cost and benefits of extending the proposed CVC/LTDA transaction reporting requirements to other financial institutions?

With respect to the proposed recordkeeping, verification, and other requirements in connection with CVC/LTDA transactions, FinCEN in particular requests comment on the following questions from law enforcement, financial institutions, and members of the public:

(12) Describe the costs from complying with the proposed recordkeeping and verification requirements.

(13) Describe the benefits to law enforcement from being able to access data verified and obtained based on the proposed recordkeeping and verification requirements.

(14) Could the verification requirements be adjusted to enhance the benefits to law enforcement without a significant change to the costs to banks and MSBs, or to reduce the costs to banks and MSBs without a significant change in the benefit to law enforcement?

(15) Describe the potential changes to the costs and benefits that would be available to law enforcement were FinCEN to maintain the reporting requirement of 31 CFR 1010.316 but also require that banks and MSBs verify the identity of the counterparties of their hosted wallet customers.

(16) Is it necessary for the anti-structuring prohibition to be extended to the proposed CVC/LTDA transaction reporting requirement?

With respect to the proposed recordkeeping requirements in 31 CFR 1010.410(g), FinCEN in particular requests comment on the following questions from law enforcement, financial institutions, and members of the public:

(17) Would it be appropriate for FinCEN to require additional data be retained pursuant to 31 CFR 1010.410(g)?

(18) Describe the costs from complying with the proposed recordkeeping and verification requirements.

(19) Describe the benefits to law enforcement from being able to access data verified and obtained based on the proposed recordkeeping and verification requirements.

(20) Could the verification requirements be adjusted to enhance the benefits to law enforcement without a significant change to the costs to banks and MSBs, or to reduce the costs to banks and MSBs without a significant change in the benefit to law enforcement?

(21) Describe the potential changes to the costs and benefits that would be available to law enforcement were FinCEN to maintain the recordkeeping requirement of 31 CFR 1010.410(g) but also require that banks and MSBs verify the identity of the counterparties of their hosted wallet customers.

(22) Is it reasonable to require that records be retained in electronic form? Are the retrievability criteria reasonable?

(23) Should FinCEN extend the obligation to keep records under the proposed CVC/LTDA transaction reporting requirement to financial institutions other than banks and MSBs (*e.g.,* broker-dealers, futures commission merchants, mutual funds, etc.)?

(24) Describe technical challenges to implementation to could impact reasonable ability to implement these requirements.

VII. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires an agency to provide notice of proposed rulemaking in the **Federal Register** and an opportunity for interested persons to participate in the rulemaking by submitting comments on the proposal.[73] No minimum period for comment is prescribed, although agencies must provide the public with a ''meaningful opportunity'' to comment on a proposal.[74] The APA also requires publication of the final version of a rule at least thirty days before the rule's effective date.

These requirements do not apply, however, to rules involving a ''foreign affairs function'' or where ''good cause'' is shown for rules with respect to which ''notice and public procedure'' is ''impracticable, unnecessary, or contrary to the public interest.'' [75] As described below, the proposed rule is not subject to notice-and-comment requirements because it falls within each of these exceptions. Nevertheless, FinCEN is publishing its proposed rule in the **Federal Register** and inviting comments, and will consider any comments received.

FinCEN has determined that a longer period of public comment is not necessary and would frustrate the objectives of the rule by unduly delaying implementation of measures to curb illicit finance and threats to United States national interests. FinCEN notes that in addition to the comment period being provided, the agency has directly engaged with the cryptocurrency industry on multiple occasions and in a variety of formats over the past year on the AML risks arising in connection with cryptocurrency and carefully considered information and feedback received from industry participants. These engagements have included a FinCEN Exchange event in May 2019 on virtual currency with representatives from virtual currency money transmitters, third-party service providers, federal government agencies, a federal task force, and depository institutions that included discussion of methods to identify vulnerabilities, disrupt terrorist and proliferation financing, and guard against other financial crimes; [76] visits to cryptocurrency businesses in California in February 2020; a working session in March 2020 with cryptocurrency industry leaders, compliance experts, and senior Treasury Department and FinCEN officials that included discussion of supervisory and regulatory challenges facing digital assets, including cryptocurrency; [77] and a FinCEN Exchange event on cryptocurrency and ransomware in November 2020 that included discussion of emerging trends and typologies, and recovery of victims' funds.[78] Recently, FinCEN also has received outreach from industry specifically addressing potential regulatory requirements for unhosted wallets, including letters from CoinCenter, the Blockchain Association, Blockchain.com, the Global Digital Asset & Cryptocurrency Association, Circle, and the Association for Digital Asset Markets.

The proposed rule is a vital part of FinCEN's efforts to curb illicit finance, and, subject to feedback received during the comment period, FinCEN believes rapid implementation is critical to the successful accomplishment of the proposed rule's objectives. Undue delay in implementing this rule would encourage movement of unreported or unrecorded assets implicated in illicit finance from hosted wallets at financial institutions to unhosted or otherwise covered wallets, such as by moving CVC to exchanges that do not comply with AML/CFT requirements. Such delay presents an opportunity to illicit actors who have substantial proceeds in regulated financial institutions and who want to be able to move those funds without detection into the darker, unregulated corners of the CVC ecosystems: Withdraw the funds quickly with no required reporting to federal authorities, or withdraw the funds after the rule takes effect with detailed mandatory reporting to federal authorities. Conversely, participants with funds at regulated financial institutions who wish to transact with illicit actors operating outside that regulated environment are similarly enabled to proceed with those transactions immediately without detailed mandatory reporting to federal authorities, but face significant reporting obligations if they wait until after a period of delayed implementation. FinCEN has concluded that the incentives that would be created by an undue implementation delay could seriously undermine the interests the rule is designed to advance. In addition, the substantial concerns about national security, terrorism, ransomware, money laundering, and other illicit financial activities discussed above, and the need for an effective response in a rapidly changing area of major national concern, support making the amendments in the proposed rule effective as quickly as is feasible.

The considerations are reinforced by the inapplicability of the APA's notice-and-comment requirements to the proposed rule. As noted, the APA provides an exemption from notice-and-comment requirements where ''there is involved . . . a foreign affairs function of the United States,'' and while this exemption is not to be ''interpreted loosely'' to reach any function having an impact beyond U.S. borders,[79] it is applicable wherever a foreign affairs

[73] *See generally* 5 U.S.C. 553.

[74] *See N. Carolina Growers' Ass'n, Inc.* v. *United Farm Workers,* 702 F.3d 755, 770 (4th Cir. 2012); *Rural Cellular Ass'n* v. *FCC,* 588 F.3d 1095, 1101 (D.C. Cir. 2009).

[75] *See* 5 U.S.C. 553(a)(1), (b)(3)(B), (d)(3).

[76] *See* Press Release, FinCEN, May 3, 2019, *available at https://www.fincen.gov/resources/financial-crime-enforcement-network-exchange* (last accessed Dec. 18, 2020).

[77] *See* Press Release, U.S. Dep't of the Treasury, Mar. 2, 2019, *available at https://home.treasury.gov/news/press-releases/sm926* (last accessed Dec. 18, 2020).

[78] *See* Press Release, FinCEN, Nov. 12, 2020, *available at https://www.fincen.gov/news/news-releases/fincen-holds-virtual-fincen-exchange-ransomware* (last accessed Dec. 18, 2020).

[79] *See Mast Indus., Inc.* v. *Regan,* 596 F. Supp. 1567, 1581 (Ct. Int'l Trade 1984) (quoting H.R.Rep. No. 79–1980, at 23 (1946), H.R.Rep. No. 79–1980, at pp. 23 (1946)).

function is ''involved.'' This exemption is distinct from the APA's good cause exception,[80] and reaches matters affecting relations with other governments to a substantial extent, such as where adherence to the APA's requirements would ''provoke definitely undesirable international consequences.'' [81]

The proposed rule advances foreign policy and national security interests of the United States, using a statute that was designed in part for that purpose. As the Supreme Court has explained, one of Congress's core aims in enacting the Bank Secrecy Act was to respond to threats associated with international financial transactions.[82] Those concerns are plainly implicated where a foreign financial institution is not subject to adequate AML/CFT regulation, or where individuals outside the United States transact without using a financial institution at all. With the increasingly geographically dispersed operating models of CVC systems and financial institutions, both in their organizational and operational structures as well as in their services to customers in many jurisdictions, most CVC and LTDA activity involves cross-border value transfer or cross-border operations. For example, the Bitcoin network operates across nodes around the world. Only approximately 17% of the nodes on the Bitcoin network operate in the United States.[83]

The requirements of the proposed rule directly involve one or more foreign affairs functions of the United States. The illicit financing targeted by these requirements involves substantial international dimensions. Among the objectives of these requirements is the application of appropriate controls to curb malign actions of hostile foreign states facilitated by means of CVC/LTDA, to prevent evasion of United States sanctions regimes, to combat the financing of global terrorism, and to address other threats originating in whole or in substantial part outside the United States, including the proliferation of ransomware attacks, transnational money laundering, and international trafficking in controlled substances, stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms, and toxic chemicals. Unduly delaying the implementation of the proposed rule would hinder the efforts of the United States government to perform important national security and foreign affairs functions.[84] In addition, as explained in the discussion of the good cause exception, FinCEN expects that malign actors may exploit such a delay by moving assets to unhosted wallets and away from regulated financial institutions to escape financial transparency.[85]

Furthermore, and consistent with the policy interests underlying this rule, FinCEN notes that the requirements being imposed represent an important part of the leadership role of the United States in the development of international standards applicable to global financial networks, both in general and with respect to CVC/LTDA in particular.[86] In addition to the foreign affairs functions involved in efforts to combat illicit financing, the measures being adopted directly concern the movement of currency and its equivalents (*i.e.,* value that substitutes for currency) across national borders, which has long been viewed as a critical aspect of foreign policy, international relations, and global economic standing.[87]

In addition to the foreign affairs exemption, the APA permits an agency to forgo otherwise applicable notice-and-comment procedures where the agency ''for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [88] It has long been recognized that the APA's notice-and-comment requirements may run counter to the public interest ''when the very announcement of a proposed rule itself can be expected to precipitate activity by affected parties that would harm the public welfare.'' [89] This is especially so in connection with financial regulation where the ''announcement of a proposed rule would enable the sort of financial manipulation the rule sought to prevent.'' [90] In such circumstances ''notice and comment could be dispensed with in order to prevent the amended rule from being evaded.'' [91] As noted above, FinCEN is concerned about the consequences of undue delay in the implementation of the proposed rule, and in particular that such delay could accelerate or cause the movement of assets implicated in illicit finance from hosted wallets at financial institutions to unhosted or otherwise covered wallets, such as by moving CVC to exchanges that do not comply with AML/CFT requirements. These concerns squarely implicate the APA's good cause exception. Good cause may also be supported where delay in implementation ''could result in serious harm.'' [92] For example, agency good cause findings have been sustained in connection with anti-terrorism measures, such as rules adopted to prevent airplane hijacking.[93] While serious harm most commonly involves threats to physical health and safety, agency good cause findings based on other concerns, such as the prevention of substantial financial fraud, have also survived challenge.[94] FinCEN has determined that the substantial concerns about national security, terrorism, ransomware, money laundering, and other illicit financial activities discussed above, and the need for an effective response in a rapidly changing area of major national concern, support making the amendments in the proposed rule effective as quickly as is feasible.

[80] *See Mast,* 596 F. Supp. at pp. 1581.

[81] *Id.*

[82] *See California Bankers Assn.* v. *Shultz,* 416 U.S. 21, 27–28 (1974).

[83] ''Global Bitcoin Nodes Distribution,'' Bitnodes, *https://bitnodes.io/* (accessed Dec. 2, 2020).

[84] *See Rajah* v. *Mukasey,* 544 F.3d 427, 438 (2d Cir. 2008) (reasoning that notice-and-comment process can be ''slow and cumbersome,'' thereby impairing national interests).

[85] *See Am. Ass'n of Exporters & Importers-Textile & Apparel Grp.* v. *United States,* 751 F.2d 1239, 1249 (Fed. Cir. 1985) (noting incentive to engage in activities to manipulate trade levels that prior announcement of restricted quotas would create).

[86] *See City of New York* v. *Permanent Mission of India to United Nations,* 618 F.3d 172, 201–02 (2d Cir. 2010). As commentators have noted, the United States has played a leading role in the development of international AML/CFT measures, including through unilateral action establishing templates for global standards. *See* Laura K. Donohue, Anti-Terrorist Finance in the United Kingdom and United States, 27 Mich. J. Int'l L. 303, 381 (2006).

[87] *See Schultz,* 416 U.S. at pp. 27–28. Numerous provisions of the BSA single out transactions with foreign elements for special treatment. *See, e.g.,* 31 U.S.C. 5314 (reports on transactions with foreign financial agencies), 5316 (importation and exportation of monetary instruments); *see also* 31 U.S.C. 5315(a)(1), (3) (declaring congressional findings that, *inter alia,* ''moving mobile capital can have a significant impact on the proper functioning of the international monetary system'' and that authority should be provided to collect information on capital flows to beyond authorities under the Trading with the Enemy Act and the Bretton Woods Agreement Act).

[88] 5 U.S.C. 553(b)(3)(B).

[89] *Mobil Oil Corp.* v. *Dept of Energy,* 728 F.2d 1477, 1492 (Temp. Emer. Ct. App. 1983).

[90] *See* U.S. Dep't of Justice, Attorney General's Manual on the Administrative Procedure Act at pp. 31, quoted in *Utility Solid Waste Activities Group* v. *Environmental Protection Agency,* 236 F.3d 749, 755 (D.C. Cir. 2001).

[91] *Mack Trucks, Inc.* v. *E.P.A.,* 682 F.3d 87, 95 (D.C. Cir. 2012) (citation and quotation marks omitted).

[92] *Jifry* v. *FAA,* 370 F.3d 1174, 1179 (D.C. Cir. 2004).

[93] *See id.; see also Airport Operators Council Intern.* v. *Shaffer,* 354 F. Supp. 79 (D.D.C. 1973).

[94] *See Disabled in Action of Metro. New York, Inc.* v. *Brezenoff,* 506 F. Supp. 244, 248 (S.D.N.Y. 1980); *see also Northern Arapahoe Tribe* v. *Hodel,* 808 F.2d 741, 751 (10th Cir. 1987) (finding good cause based on need to preserve wildlife in light of impending hunting season).

VIII. Regulatory Analysis

A. Executive Orders 13563, 12866, and 13771

Executive Orders 13563 and 12866 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, and 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. Although the review requirements of Executive Order 12866 do not apply to this proposed rule because it involves a foreign affairs function, in the interest of maximizing transparency, FinCEN has analyzed the economic effects of this proposed rule consistent with the principles of the Order.

FinCEN believes the primary cost of complying with the proposed rule is captured in its Paperwork Reduction Act (44 U.S.C. 3507(d)) (''PRA'') burden estimates described in detail below, which amount to 1,284,349 hours. FinCEN estimated in its recent OMB control number renewal for SAR requirements that the average labor cost of storing SARs and supporting documentation, weighed against the relevant labor required, was $24 per hour.[95] FinCEN assesses that this is a reasonable estimate for the labor cost of the requirements that would be imposed by this rule. Therefore a reasonable minimum estimate for the burden of administering this rule is approximately $30.8 million annually (1,284,349 hours multiplied by $24 per hour). However, the PRA burden does not include certain costs, such as information technology implementation costs solely resulting from the proposed rule. FinCEN specifically requests comment regarding the costs associated with implementing these requirements.

FinCEN notes that although institutions that provide CVC or LTDA wallet hosting services are, *ipso facto,* likely to be capable of handling the implementation of the proposed reporting requirement, the initial costs of implementation may be non-trivial. For instance, institutions may incur costs in the initial stages if they set up a process for fitting existing data they maintain into XML format.

The benefits from the proposed rule are expected to include enhanced law enforcement ability to investigate, prosecute and disrupt the financing of international terrorism and other priority transnational security threats, as well as other types of financial crime, by obtaining improved visibility into financial flows into unhosted wallets and improved attribution of CVC transactions involving unhosted and otherwise covered wallets.[96] FinCEN believes that the collection of CVC and LTDA indicators will significantly enhance law enforcement's and regulators' ability to leverage blockchain analytics to obtain attribution and move investigations forward in an expeditious manner.

The cost of terrorist attacks can be immense. For instance, one public report estimated the cost of terrorism globally at $33 billion in 2018, though this cost was primarily borne outside the United States.[97] The cost of a major terrorist attack, such as the September 11 attacks, can reach tens of billions of dollars.[98] Of course, it is difficult to quantify the contribution of a particular rule to a reduction in the risk of a terrorist attack. However, even if the proposed rule produces very small reductions in the probability of a major terrorist attack, the benefits would exceed the costs.

The proposed rule would contribute to the ability of law enforcement to investigate a wide array of priority transnational threats and financial crimes, including terrorism, proliferation financing, sanctions evasion, money laundering, human trafficking, and child exploitation.

FinCEN considered several alternatives to the proposed rule. First, FinCEN considered imposing a reporting requirement on all CVC/LTDA transactions. However, FinCEN determined that existing AML requirements typically were sufficient to mitigate enough of the risks of illicit finance involving transactions between hosted wallets at BSA-regulated institutions that it did not appear justified to impose an additional transaction reporting requirement that all banks and MSBs report all such transactions. If FinCEN reevaluates this conclusion in light of comments to the proposed rule, FinCEN would likely extend the discretionary reporting requirement exemptions similar to the rules that apply to banks under 31 CFR 1020.315 such that filers could submit a FinCEN Form 110 or similar form to exempt certain customers that engage in consistent patterns of legal transactions.

Second, FinCEN considered only applying the exemption at 31 CFR 1010.316(d) to counterparty hosted wallets at BSA-regulated financial institutions and not extending it to hosted wallets at foreign financial institutions in jurisdictions not on the Foreign Jurisdictions List. However, FinCEN determined that given the inherently international nature of CVC and LTDA transactions, and the fact that certain other jurisdictions apply an AML regime to financial institutions hosting CVC or LTDA wallets, it would be appropriate to initially not impose additional requirements with respect to wallets hosted by financial institutions in jurisdictions not on the Foreign Jurisdictions List. However, FinCEN will carefully analyze comments to determine whether additional jurisdictions should be added to the Foreign Jurisdictions List.

Third, FinCEN considered applying a lower threshold for the proposed CVC/LTDA transactions than the $10,000 threshold. While imposing a lower threshold for CVC/LTDA transactions would enhance the ability of law enforcement and national security authorities to obtain attribution on a larger number of wallets, FinCEN determined that it would be beneficial for the reporting requirement included in the proposed rule to have a threshold consistent with the CTR reporting requirement for fiat transactions. FinCEN will carefully consider comments as to whether a lower or higher reporting threshold would be appropriate for the proposed CVC/LTDA transaction reporting requirement.

Fourth, FinCEN considered extending the proposed CVC/LTDA transaction reporting requirement to different types of financial institutions besides banks and MSBs. Based on the current market structure, FinCEN determined that it would be appropriate to limit the proposed rule's application to banks and MSBs. FinCEN will carefully evaluate comments as to whether the CVC/LTDA custody market in its current form, or as a result of how it is expected to develop in the future, justifies extending the proposed CVC/LTDA transaction reporting requirement to other types of financial institutions such as those in the securities and commodities industries.

[95] 85 FR 31598, 31604 and 31607 (May 26, 2020).

[96] At the moment, only a limited number of transactions occur involving LTDA, although many countries are developing LTDA.

[97] *See* Institute for Economics and Peace, Global Terrorism Index, 2019 (Nov. 2019), *https://visionofhumanity.org/app/uploads/2019/11/GTI-2019web.pdf.*

[98] For example, the New York Comptroller estimated in 2002 that the direct physical and human cost of the September 11 attacks on New York was over $30.5 billion. *See* City of New York Comptroller, ''One Year Later: The Fiscal Impact of 9/11 on New York City'' (Sept. 4, 2002), *https://comptroller.nyc.gov/wp-content/uploads/documents/impact-9-11-year-later.pdf.*

Fifth, FinCEN considered imposing the proposed CVC/LTDA transaction reporting requirement at 31 CFR 1010.316(b), as well as the proposed recordkeeping requirement at 31 CFR 1010.410(g), without associated verification requirements. However, FinCEN determined that it is reasonable to require verification at the time a hosted wallet customer engages in CVC/LTDA transactions that transfer significant value involving unhosted or otherwise covered wallets. The proposed verification requirement would enhance the ability of financial institutions to provide accurate information in their CVC/LTDA transaction reporting, as well as to identify suspicious activity. FinCEN also considered proposing verification requirements that required gathering specific documentation consistent with the verification requirements applicable to CTR reporting, but determined that it would be more appropriate to allow banks and MSBs to rely on risk-based verification procedures.

Executive Order 13771 requires an agency to identify at least two existing regulations to be repealed whenever it publicly proposes for notice and comment or otherwise promulgates a new regulation. The reporting, recordkeeping, and verification requirements proposed in this notice involve a national security function. Therefore, Executive Order 13771 does not apply.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') (5 U.S.C. 601 *et seq.*) requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed regulation applies to all banks and MSBs and likely would affect a substantial number of small entities. FinCEN has therefore prepared an initial regulatory flexibility analysis pursuant to the RFA. FinCEN welcomes comments on all aspects of the initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the comment period.

1. Statement of the Need for, and Objectives of, the Proposed Regulation

This proposed rule would adopt recordkeeping, verification, and reporting requirements for certain deposits, withdrawals, exchanges, or other payments or transfers of CVC or LTDA by, through, or to a bank or MSB that involve an unhosted or otherwise covered wallet. FinCEN is proposing to define otherwise covered wallets as those wallets that are held at a financial institution that is not subject to the BSA and is located in a foreign jurisdiction identified by FinCEN on a Foreign Jurisdictions List.

First, this proposed rule would require banks and MSBs to file a report with FinCEN containing certain information related to a customer's CVC or LTDA transaction and counterparty (including name and physical address), and to verify the identity of their customer, if a counterparty to the transaction is using an unhosted or otherwise covered wallet and the transaction is greater than $10,000 (or the transaction is one of multiple CVC transactions involving such counterparty wallets and the customer flowing through the bank or MSB within a 24-hour period that aggregate to value in or value out of greater than $10,000). Second, this proposed rule would require banks and MSBs to keep records of a customer's CVC or LTDA transaction and counterparty, including verifying the identity of their customer, if a counterparty is using an unhosted or otherwise covered wallet and the transaction is greater than $3,000.

Although analytic techniques can be used to combat illicit finance through CVC or LTDA, they are not a panacea. Blockchain analysis can be rendered less effective by a number of factors, including the scale of a blockchain network, the extent of peer-to-peer activity (*i.e.,* transactions between unhosted wallets), the use of anonymizing technologies to obscure transaction information, and a lack of information concerning the identity of transferors and recipients in particular transactions. Additionally, several types of AEC are increasing in popularity and employ various technologies that inhibit investigators' ability both to identify transaction activity using blockchain data and to attribute this activity to illicit activity conducted by natural persons.

The requirements FinCEN is proposing would therefore provide greater insight into transacting parties with a nexus to one or more potentially illicit transactions in several respects. These include directly as a result of the information collected, maintained, and reported in relation to transactions above the recordkeeping or reporting thresholds and also through information identified in relation to structured transactions given the new structuring prohibition that would be imposed. This greater insight will contribute to the ability of law enforcement to investigate a wide array of priority transnational threats and financial crimes, including terrorism, proliferation financing, sanctions evasion, money laundering, human trafficking, and child exploitation. The proposed rule's reporting requirements are similar to the reporting requirements applicable to cash transactions imposed by the CTR reporting requirement. Furthermore the recordkeeping requirements resemble the recordkeeping requirements applicable to transmittals of funds between financial institutions.

2. Small Entities Affected by the Proposed Regulation

This proposed regulation applies to all banks and MSBs and likely would affect a substantial number of small entities. As described in the PRA section that follows, based upon current data there are 5,306 banks, 5,236 credit unions, and 365 MSBs that would be impacted by the proposed rule changes. Based upon current data, for the purposes of the RFA, there are at least 3,817 small Federally-regulated banks and 4,681 small credit unions.[99] FinCEN believes that most money transmitters are small entities.[100] Because the proposed rule would apply to all of these small financial institutions, FinCEN concludes that this proposed rule would apply to a substantial number of small entities.

FinCEN anticipates that for most small banks and credit unions the impact of the proposed changes will be minor. While FinCEN is aware that such institutions, in light of developments such as the OCC Custody Guidance and the creation of the SPDI charter in Wyoming, are likely to engage in a growing amount of CVC transactions, that trend is still in the early stages. FinCEN anticipates the burden on banks will become more comparable to that on MSBs over time, as banks engage in more custody transactions involving CVC or LTDA. Likewise, FinCEN does not believe that any banks or MSBs currently facilitate a significant number of transactions involving sovereign digital currencies.

Based on the conclusions just mentioned, the primary impact of the

[99] The Small Business Administration (''SBA'') defines a depository institution (including a credit union) as a small business if it has assets of $600 million or less. The information on small banks is published by the Federal Deposit Insurance Corporation (''FDIC'') and was current as of March 31, 2020.

[100] The SBA defines an entity engaged in ''Financial Transactions Processing, Reserve, and Clearinghouse Activities'' to be small if it has assets of $41.5 million or less. FinCEN assesses that money transmitters most closely align with this SBA category of entities.

proposed rules on small businesses will be on small businesses acting as money transmitters. FinCEN notes that although institutions that provide CVC or LTDA wallet hosting services are, *ipso facto,* likely to be capable of handling the implementation of the proposed reporting requirement, the initial costs of implementation may be non-trivial. For instance, institutions may incur costs in the initial stages if they set up a process for fitting existing data they maintain into XML format.

3. Compliance Requirements

Compliance costs for entities that would be affected by these regulations are generally, reporting, recordkeeping, and information technology implementation and maintenance costs. Data are not readily available to determine the costs specific to small entities and FinCEN invites comments about compliance costs, especially those affecting small entities.

This proposed rule would adopt recordkeeping, verification, and reporting requirements for certain deposits, withdrawals, exchanges, or other payments or transfers of CVC or LTDA by, through, or to a bank or MSB that involve an unhosted or otherwise covered wallet. First, this proposed rule would require banks and MSBs to file a report with FinCEN containing certain information related to a customer's CVC or LTDA transaction and counterparty (including name and physical address), and to verify the identity of their customer, if a counterparty to the transaction is using an unhosted or otherwise covered wallet and the transaction is greater than $10,000 (or the transaction is one of multiple CVC transactions involving such counterparty wallets and the customer flowing through the bank or MSB within a 24-hour period that aggregate to value in or value out of greater than $10,000). Second, this proposed rule would require banks and MSBs to keep records of a customer's CVC or LTDA transaction and counterparty, including verifying the identity of their customer, if a counterparty is using an unhosted or otherwise covered wallet and the transaction is greater than $3,000.

4. Duplicative, Overlapping, or Conflicting Federal Rules

FinCEN is unware of any Federal rules that duplicate, overlap with, or conflict with the changes to the BSA regulation proposed herein. These rules are meant to be analogues to the recordkeeping requirements applicable to transmittals of funds between financial institutions and the CTR reporting requirements applicable to transactions in currency.

5. Significant Alternatives to the Proposed Regulations

FinCEN considered several alternatives to the proposed regulatory changes. First, FinCEN considered imposing a reporting requirement on all CVC/LTDA transactions. However, FinCEN determined that existing AML requirements typically were sufficient to mitigate enough of the risks of illicit finance involving transactions between hosted wallets at BSA-regulated institutions that it did not appear justified to impose an additional transaction reporting requirement that all banks and MSBs report all such transactions.

Second, FinCEN considered only applying the exemption at 31 CFR 1010.316(d) to counterparty hosted wallets at BSA-regulated financial institutions and not extending it to hosted wallets at foreign financial institutions in jurisdictions not on the Foreign Jurisdictions List. However, FinCEN determined that it would be appropriate to initially not impose additional requirements with respect to wallets hosted by financial institutions in jurisdictions not on the Foreign Jurisdictions List.

Third, FinCEN considered applying a lower threshold for the proposed CVC/LTDA transactions than the $10,000 threshold. FinCEN determined that it would be beneficial for the reporting requirement included in the proposed rule to have a threshold consistent with the CTR reporting requirement for fiat transactions.

Fourth, FinCEN considered extending the proposed CVC/LTDA transaction reporting requirement to different types of financial institutions besides banks and MSBs. Based on the current market structure, FinCEN determined that it would be appropriate to limit the proposed rule's application to banks and MSBs.

Fifth, FinCEN considered imposing the proposed CVC/LTDA transaction reporting requirement at 31 CFR 1010.316(b), as well as the proposed recordkeeping requirement at 31 CFR 1010.410(g), without associated verification requirements. However, FinCEN determined that it is reasonable to require verification at the time a hosted wallet customer engages in CVC/LTDA transactions that transfer significant value involving unhosted or otherwise covered wallets. FinCEN also considered proposing verification requirements that required gathering specific documentation consistent with the verification requirements applicable to CTR reporting, but determined that it would be more appropriate to allow banks and MSBs to rely on risk-based verification procedures.

FinCEN welcomes comment on the overall regulatory flexibility analysis, especially information about compliance costs and alternatives.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by the state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. See section VIII.A for a discussion of the economic impact of this proposed rule and regulatory alternatives.

D. Paperwork Reduction Act

The reporting and recordkeeping requirements contained in this proposed rule have been submitted by FinCEN to OMB for review in accordance with the PRA. Under the Paperwork Reduction Act, 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 OMB. Written comments and recommendations for the information collection can be submitted by visiting *www.reginfo.gov/public/do/PRAMain.* Find this particular notice by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Comments are welcome and must be received by January 7, 2021. In accordance with requirements of the PRA and its implementing regulations, 5 CFR part 1320, the following information concerning the collections of information are presented to assist those persons wishing to comment on the information collections.

1. Change in the Definition of ''Monetary Instruments''

The change proposed in this notice to the definition of monetary instruments would impose no direct burden on the public.

2. Reporting Requirement Related to CVC and LTDA: [31 CFR 1010.306(a)(1)–(3), (d)–(e), 1010.313, 1010.316, 1020.313, 1020.315, 1020.316, 1022.313, 1022.316]

The proposed rule would require banks and MSBs to report information related to CVC and LTDA transactions above $10,000 between their hosted wallet clients and unhosted or otherwise covered wallets. The proposed aggregation rules that would apply to CVC and LTDA transactions are broadly similar to those that apply to the CTR reporting requirement; aggregation is not required, however, between a person's CVC/LTDA and currency transactions. The mandatory exemptions of 31 U.S.C. 5313(d) apply to the proposed CVC/LTDA transaction reporting requirement, as incorporated in 31 CFR 1020.315.

Description of Recordkeepers: Banks and MSBs that conduct CVC or LTDA transactions on behalf of hosted wallet clients as senders or recipients in an amount above $10,000.

Estimated Number of Recordkeepers: 10,907 financial institutions. FinCEN estimates that there are approximately 5,306 federally regulated banks and 5,236 federally regulated credit unions.[101] FinCEN, for purposes of these estimates, will assume that all of these banks and credit unions engage nominally in transactions involving CVC. FinCEN estimates that, as of November 2020, 365 MSBs engage in CVC transactions.[102] The FinCEN MSB registration form does not require that companies disclose whether they engage in CVC transactions. This estimate is therefore based on adding the number of MSBs that indicated they engage in CVC transactions in an optional field on the MSB registration form, and the number that did not so indicate but which, based on FinCEN's research, FinCEN believes engage in CVC transactions. (5,306 + 5,236 + 365 = 10,907).

Estimated Average Annual Burden Hours Per Recordkeeper: FinCEN notes that in the recent Funds Transfer/Travel Rule NPRM, FinCEN estimated that the burden hours per bank was nominally one hour. FinCEN is retaining the same estimate for this rule. While FinCEN is aware that banks, in light of developments such as the OCC Custody Guidance and the creation of the SPDI charter in Wyoming, are likely to engage in a growing amount of CVC transactions, that trend is still in the early stages. FinCEN anticipates the burden on banks will become more comparable to that on MSBs over time, as banks engage in more custody transactions involving CVC or LTDA.

In the Funds Transfer/Travel Rule NPRM PRA analysis, FinCEN estimated that the burden per MSB to comply with the collection and recordkeeping requirement at the transactional threshold of $3,000 was 240 hours per institution, and that the burden per MSB to comply with the transmission requirement at the transactional threshold of $3,000 was 180 hours per institution. The burden analysis below assumes that the transmittal requirement burden in the Funds Transfer/Travel Rule NPRM context is analogous to the reporting requirement burden under the proposed CVC/LTDA transaction reporting requirement.[103] However, the burden must be adjusted for four factors: (i) The fact that the $10,000 threshold under the CVC/LTDA transaction reporting requirement is greater than the $3,000 threshold in the Funds Transfer/Travel Rule NPRM; (ii) the fact that the burden analyzed in the Funds Transfer/Travel Rule NPRM relates to transactions between hosted wallets and not transactions from hosted to unhosted wallets, and there may be more or fewer hosted-to-unhosted transactions at any level; (iii) the fact that some transactions below the transaction reporting threshold may be subject to reporting due to aggregation requirements; and (iv) the fact that the reporting burden under the proposed CVC/LTDA transaction reporting requirement may be more complex than the transmission requirement under the Funds Transfer/Travel Rule NPRM.[104]

As FinCEN noted in the Funds Transfer/Travel Rule NPRM PRA analysis, the estimated average burden hours would vary depending on the number of transactions conducted by a financial institution's customers with unhosted or otherwise covered wallets. In a recent publication commenting on the recent Funds Transfer/Funds Travel NPRM, the blockchain analytics firm CipherTrace estimated that the proposed decrease in the applicable threshold for international transactions from $3,000 to $250 would increase the number of reportable transactions per month from approximately 27,300 to approximately 79,000.[105] Applying a constant elasticity model,[106] FinCEN estimates that approximately 60% as many transactions would occur above the $10,000 threshold.

In order to estimate the ratio of unhosted-to-hosted transactions to hosted-to-hosted transactions, FinCEN analyzed blockchain data related to all identifiable transactions by each of two major exchanges in September 2020 using blockchain analytic tools. FinCEN found that the ratio of unhosted-to-hosted to hosted-to-hosted transactions were approximately 1.52 and 2.39 in the $3,000 to $10,000 transaction range for the two exchanges, respectively. In the greater than $10,000 range the ratios were 1.40 and 1.64, respectively. In the analysis below, FinCEN uses the larger ratios, 2.39 and 1.64. Thus FinCEN will assume that 164% as many transactions would be covered by the reporting requirements at the $10,000 threshold under the proposed rule than the transmission requirements at the same threshold in the Funds Transfer/Travel Rule NPRM. Similarly, in the $3,000 to $10,000 range, FinCEN will assume 239% as many transactions would be covered by the proposed rule's recordkeeping and verification requirements described in the next section in comparison to the recordkeeping requirements in the Funds Transfer/Travel Rule NPRM.

Thus, at the $10,000 threshold, we assume that only 60% as many transactions are occurring as at the $3,000 level, but that the number of such transactions which are unhosted-to-hosted are 164% of the amount of such transactions that are hosted-to-

[101] According to the FDIC there were 5,103 FDIC-insured banks as of March 31, 2020. According to the Board of Governors of the Federal Reserve System, there were 203 other entities supervised by the Board or other Federal regulators, as of June 16, 2020, that fall within the definition of bank. (20 Edge Act institutions, 15 agreement corporations, and 168 foreign banking organizations). According to the National Credit Union Administration, there were 5,236 federally regulated credit unions as of December 31, 2019.

[102] In the Funds Transfer/Travel Rule NPRM, FinCEN estimated that there were 530 MSB filers. Certain of these, however, are filers that were previously registered with FinCEN and that subsequently allowed their expirations to lapse. As a result of their expirations lapsing, FinCEN has removed those filers from the burden calculation.

[103] As discussed in the next section, FinCEN assumes that the recordkeeping requirement burden in the Funds Transfer/Travel Rule NPRM context is analogous to the recordkeeping/verification burden related to CVC/LTDA transaction reporting.

[104] FinCEN anticipates that the number of transactions subject to reporting and recordkeeping related to otherwise covered wallets hosted by foreign financial institutions located in jurisdictions on the Foreign Jurisdictions List will be modest and does not calculate additional burden in relation to this aspect of the rule.

[105] CipherTrace, ''FinCEN's Proposed Rule Change for Travel Rule Threshold Would More Than Double Compliance Events at US VASPs'' (Nov. 13, 2020), *https://ciphertrace.com/fincens-proposed-rule-change-for-travel-rule-would-trigger-more-than-double-the-compliance-events-at-us-vasps/* (accessed Dec. 1, 2020).

[106] Specifically, FinCEN fit an equation of the model $Y = CX^{\alpha}$ to the data from CipherTrace, where Y equals the number of transactions above a given threshold, X equals the threshold, C is a constant, and α is the percent change in Y per one-percent change in X. FinCEN used the calibrated values of C and α to extrapolate to the number of transactions above the $10,000 threshold.

hosted, for a combined total scaling factor of 98.4%. To account for the fact that some transactions less than $10,000 will need to be aggregated due to aggregation requirements, we will assume that the total scaling factor is 148% (98.4% * 1.5).

In contrast to the PRA analysis used for the Funds Transfer/Travel Rule NPRM, the reporting burden will possibly be more complicated than the requirement to transmit information in the Funds Transfer/Travel Rule NPRM given the variety of information required by the reporting form. For purposes of calculations, FinCEN assumes that the reporting burden will be twice as complex.[107] Therefore the total scaling factor applied to the Funds Transfer/Travel Rule NPRM PRA burden estimate for transmission burden is 2.96 (2.96 = 2 × 1.48). As a result, the estimated burden per MSB is 533 hours (180 hours (from Funds Transfer/Travel Rule NPRM PRA analysis) × 2.94).

Estimated Total Additional Annual Burden Hours: 10,542 hours (10,542 banks × 1 hour/bank) + 194,545 hours (365 MSBs × 533 hours/MSB) = 205,087 hours.

3. Recordkeeping and Verification Requirements Related to CVC and LTDA: [31 CFR 1010.312, 1010.410(g), 1022.312, 1022.312]

The proposed rule would require banks and MSBs to keep records of, and verify the identity of their hosted wallet customers who participate in, transactions subject to the CVC/LTDA transaction reporting requirements, *i.e.* CVC/LTDA transactions involving hosted wallet customers and unhosted or otherwise covered wallets related with a value aggregating to $10,000 or more. The proposed recordkeeping requirement at 31 CFR 1010.410(g) likewise would require banks and MSBs to keep records of, and verify the identity of their hosted wallet customers who engage in, transactions with a value of more than $3,000. Furthermore, under the proposed rule, for transactions that are greater than $3,000, or that aggregate to more than $10,000, the name and physical address of each counterparty must be collected and, in the case of reportable transactions, reported.

Description of Recordkeepers: Banks and MSBs that conduct CVC or LTDA transactions on behalf of hosted wallet clients as senders or recipients in an amount above $3,000, or that aggregate to an amount above $10,000.

Estimated Number of Recordkeepers: 10,907 financial institutions. FinCEN estimates that there are approximately 5,306 federally regulated banks and 5,236 federally regulated credit unions. FinCEN assesses that all of these banks and credit unions nominally engage in transactions involving CVC. FinCEN estimates that there are 365 MSBs that engage in CVC transactions.

Estimated Average Annual Burden Hours per Recordkeeper: As noted in the previous section, FinCEN believes that the burden estimate for recordkeeping in the Funds Transfer/Travel Rule NPRM (240 hours per MSB) is analogous to the burden estimate for recordkeeping and verification requirements pursuant to the proposed CVC/LTDA transaction reporting requirement.

All transactions subject to reporting would also subject to recordkeeping and verification requirements. Therefore, the estimate that 148% as many transactions will be subject to the proposed reporting requirement as compared to the transactions subject to transmission requirements proposed by the Funds Transfer/Travel Rule NPRM, also applies to the recordkeeping and verification requirements of the proposed rule. However, this increase needs to be supplemented with the increase in transactions that would be subject to recordkeeping and verification under 31 CFR 1010.410(g), as proposed, which are between $3,000 and $10,000. Using the constant elasticity model described in the previous section, the number of hosted-to-hosted transactions between $3,000 and $10,000 is approximately 40% of the estimated number of transactions about $10,000. Applying the 239% scale factor used in the previous section to calculate the proportionate number of hosted-to-unhosted transactions, and making no adjustment for the fact that some transactions in this $3,000 to $10,000 range would contribute to aggregation for the purposes of the proposed CVC/LTDA transaction reporting requirement and already be subject to verification, the total number of transactions subject to verification and recordkeeping due to 31 CFR 1010.410(g) would increase by an additional 96% (0.4 * 2.39 = 0.956), for a total scaling factor of 244% (2.44 = 1.48 + 0.96).

However, FinCEN notes that the recordkeeping and verification requirement in the proposed rule is likely to be more burdensome than the collection and recordkeeping requirements of the Funds Transfer/Travel Rule NPRM. In particular, the requirements dealt with in the Funds Transfer/Travel Rule NPRM do not require verification in most cases. In contrast, this proposed rule would require verifying the hosted wallet customer in each transaction subject to the reporting or recordkeeping requirements, as well as collecting each counterparty's name and physical address. As a result of this greater burden, FinCEN assumes, for the purpose of this burden estimate, that the recordkeeping and verification burden is five times greater per transaction, under the proposed rule, than the burden imposed under the recordkeeping requirements of the Funds Transfer/Travel Rule NPRM. Therefore the total scaling factor applied to the Funds Transfer/Travel Rule NPRM PRA burden estimate for transmission burden is 12.2 (12.2 = 5 × 2.44). As a result, the estimated burden per MSB is 2,928 hours (240 hours (from Funds Transfer/Travel Rule NPRM PRA analysis) × 12.2).

Estimated Total Additional Annual Burden Hours: 10,542 hours (10,542 banks × 1 hour/bank) + 1,068,720 hours (365 MSBs × 2,928 hours/MSB) = 1,079,262 hours.

4. Total Annual Burden Hours Estimate Under the Proposed Rule

205,087 (reporting requirements) + 1,079,262 hours (recordkeeping and verification requirements) = 1,284,349 hours.

5. Questions for Comment

In addition to the questions listed above, FinCEN specifically invites comment on: (a) The accuracy of the estimated burden associated with the collection of information; (b) how the quality, utility, and clarity of the information to be collected may be enhanced; and (c) how the burden of complying with the collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

List of Subjects in 31 CFR Parts 1010, 1020, and 1022

Administrative practice and procedure, Banks, Banking, Currency, Foreign banking, Foreign currencies, Investigations, Penalties, Reporting and recordkeeping requirements, Terrorism.

Authority and Issuance

For the reasons set forth in the preamble, Parts 1010, 1020, and 1022 of chapter X of Title 31 of the Code of Federal Regulations are proposed to be amended as follows:

[107] The burden of collecting counterparty information that must be reported on the reporting form is considered in the next section.

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 2. Amend § 1010.100 by revising paragraph (xx) to read as follows:

§ 1010.100 General definitions.

* * * * *

(xx) *Structure (structuring).* For purposes of § 1010.314, a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, or, as defined in § 1010.316(c), convertible virtual currency, and digital assets with legal tender status, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under §§ 1010.311, 1010.313, 1020.315, 1010.316, 1021.311 and 1021.313 of this chapter. ''In any manner'' includes, but is not limited to, the breaking down of a single sum of currency exceeding $10,000 into smaller sums, including sums at or below $10,000, or the conduct of a transaction, or series of currency transactions at or below $10,000. The transaction or transactions need not exceed the $10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition.

* * * * *

■ 3. Amend § 1010.306, by revising the text of paragraphs (a), (d), and (e) to read as follows:

§ 1010.306 Filing of reports.

(a)(1) A report required by § 1010.311, § 1010.316, or § 1021.311 of this chapter, shall be filed by the financial institution within 15 days following the day on which the reportable transaction occurred.

(2) A copy of each report filed pursuant to §§ 1010.311, 1010.313, 1010.316, 1020.315, 1021.311 and 1021.313 of this chapter, shall be retained by the financial institution for a period of five years from the date of the report.

(3) All reports required to be filed by §§ 1010.311, 1010.313, 1010.316, 1020.315, 1021.311 and 1021.313 of this chapter, shall be filed with FinCEN, unless otherwise specified.

* * * * *

(d) Reports required by § 1010.311, 1010.313, 1010.316, 1010.340, § 1010.350, 1020.315, 1021.311 or 1021.313 of this chapter shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.

(e) Forms to be used in making the reports required by § 1010.311, 1010.313, 1010.316, 1010.350, 1020.315, 1021.311 or 1021.313 of this chapter may be obtained from BSA E-Filing System. Forms to be used in making the reports required by § 1010.340 may be obtained from the U.S. Customs and Border Protection or FinCEN.

■ 4. Revise § 1010.310 to read as follows:

§ 1010.310 Reports of transactions in currency.

Sections 1010.310 through 1010.314 and 1010.316 set forth the rules for the reporting by financial institutions of transactions in currency, convertible virtual currency, and digital assets with legal tender status. Unless otherwise indicated, the transactions in currency reporting requirements in §§ 1010.310 through 1010.314 apply to all financial institutions. The transactions in convertible virtual currency and digital assets with legal tender status requirements apply to banks and money services businesses. Each financial institution should refer to subpart C of its chapter X part for any additional transactions in currency reporting requirements.

■ 5. Revise § 1010.312 to read as follows:

§ 1010.312 Identification required.

(a) Transactions in Currency: Before concluding any transaction with respect to which a report is required under § 1010.311, 1010.313(b), 1020.315, 1021.311, or 1021.313 of this chapter, a financial institution shall verify and record the name and address of the individual presenting a transaction, as well as record the identity, account number, and the social security or taxpayer identification number, if any, of any person or entity on whose behalf such transaction is to be effected. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.,* a Provincial driver's license with indication of home address). Verification of identity in any other case shall be made by examination of a document, other than a bank signature card, that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (*e.g.,* a driver's license or credit card). A bank signature card may be relied upon only if it was issued after documents establishing the identity of the individual were examined and notation of the specific information was made on the signature card. In each instance, the specific identifying information (*i.e.,* the account number of the credit card, the driver's license number, *etc.*) used in verifying the identity of the customer shall be recorded on the report, and the mere notation of ''known customer'' or ''bank signature card on file'' on the report is prohibited.

(b) Transactions in Convertible Virtual Currency or Digital Assets with Legal Tender Status: Before concluding any transaction with respect to which a report is required under § 1010.313(c) or § 1010.316 of this chapter, a bank or money services business shall verify and record the identity of its customer engaging in the transaction. Consistent with the bank's or money service business's anti-money laundering and countering the financing of terrorism program, the bank or money services business should establish risk-based procedures for verifying the identity of its customer. The procedures must enable the bank or money services business to form a reasonable belief that it knows the true identity of its customer engaging in a transaction. These procedures must be based on the bank or money services business's assessment of the relevant risks, including those presented by the nature of their relationship with its customer, the transaction activity, and other activity associated with the convertible virtual currency or digital assets with legal tender status involved in the transaction.

Note to paragraph (b): If a bank or money services business has knowledge that a person has accessed the bank's or money services business's customer's wallet to conduct a reportable transaction who is not the bank's or money services business's customer, the bank or money services business should treat that person as a customer for the purposes of this paragraph, and verify both the person who accessed the account and the customer.

■ 6. Revise § 1010.313 to read as follows:

§ 1010.313 Aggregation.

(a) *Multiple branches.* A financial institution includes all of its domestic branch offices, and any recordkeeping facility, wherever located, that contains records relating to the transactions of the institution's domestic offices, for

purposes of the transactions in currency reporting requirements in this chapter.

(b) *Multiple transactions in currency.* In the case of financial institutions other than casinos, for purposes of the transactions in currency reporting requirements in this chapter, multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than $10,000 during any one business day (or in the case of the U.S. Postal Service, any one day). Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit.

(c) *Multiple transactions in convertible virtual currency or digital assets with legal tender status.* In the case of banks and money services businesses, for purposes of the transactions in convertible virtual currency and digital assets with legal tender status reporting requirements in this chapter, multiple convertible virtual currency and digital assets with legal tender status transactions shall be treated as a single transaction if the bank or money services business has knowledge that they are by or on behalf of any person and result in value in or value out of convertible virtual currency or digital assets with legal tender status with a value of more than $10,000 during a 24-hour period. A bank or money services business includes all of its offices and records, wherever they may be located, for purposes of reporting requirements in this chapter for their transactions in convertible virtual currency or digital assets with legal tender status.

■ 7. Amend § 1010.314 by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 1010.314 Structured transactions.

No person shall for the purpose of evading the transactions in currency or transactions in convertible virtual currency or digital assets with legal tender status reporting requirements of this chapter with respect to such transaction:

(a) Cause or attempt to cause a domestic financial institution to fail to file a report required under the transactions in currency or transactions in convertible virtual currency or digital assets with legal tender status reporting requirements of this chapter;

(b) Cause or attempt to cause a domestic financial institution to file a report required under the transactions in currency or transactions in convertible virtual currency or digital assets with legal tender status reporting requirements of this chapter that contains a material omission or misstatement of fact; or

* * * * *

■ 8. Add § 1010.316 to read as follows:

§ 1010.316 Filing obligations for reports of transactions in convertible virtual currency and digital assets with legal tender status.

(a) For purposes of this section only, FinCEN has determined that ''monetary instruments'' as defined by 31 U.S.C. 5312(a)(3) includes convertible virtual currency and digital assets with legal tender status.

Note to paragraph (a): The determination in paragraph (a) authorizes the promulgation of reporting requirements for transactions in convertible virtual currency and digital assets with legal tender status pursuant to 31 U.S.C. 5313(a). However, the determination in paragraph (a) is intended to have no impact on the definition of the term ''monetary instruments'' at § 1010.100(dd) or as used elsewhere in this chapter, including in relation to the currency transaction reporting requirement at § 1010.311 and the transportation of currency or monetary instruments reporting requirement at § 1010.340. Therefore, other requirements in this chapter that depend on the definition of ''monetary instruments'' are not affected by the determination in paragraph (a).

(b) Except as exempted by paragraph (d) or otherwise exempted by regulation, each bank or money services business, as defined in § 1010.100, shall file a report of each deposit, withdrawal, exchange, or other payment or transfer, by, through, or to such financial institution which involves a transaction in convertible virtual currency or a digital asset with legal tender status with a value of more than $10,000. Such report shall include, in a form prescribed by the Secretary, the name and address of each counterparty, and such other information as the Secretary may require.

(c) For purposes of paragraphs (a) and (b):

(1) Convertible virtual currency means a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status.

(2) Digital assets with legal tender status means any type of digital asset issued by the United States or any other country that is designated as legal tender by the issuing country and accepted as a medium of exchange in the country of issuance.

(d) Banks and money services businesses are not required to file a report under paragraph (b) in relation to a transaction in convertible virtual currency or a digital asset with legal tender status that is between the financial institution's customer and a counterparty whose account is held at a financial institution regulated under the BSA, or at a foreign financial institution, except for a foreign financial institution in a jurisdiction listed on the List of Foreign Jurisdictions Subject to this section and § 1010.410(g) Recordkeeping, which is maintained on FinCEN's website on the Resources page. If a single transaction involves multiple counterparties, the transaction is only subject to this exemption if the account of each counterparty to the transaction is held at a financial institution regulated under the BSA, or at a foreign financial institution, except for a foreign financial institution in a jurisdiction listed on the List of Foreign Jurisdictions Subject to this section and § 1010.410(g) Recordkeeping.

■ 9. Amend § 1010.410 by adding paragraph (g) to read as follows:

§ 1010.410 Records to be made and retained by financial institutions.

* * * * *

(g) Each bank or money services business, as defined by 31 CFR 1010.100, is subject to the requirements of this paragraph (g) with respect to a withdrawal, exchange or other payment or transfer, by, through, or to such financial institution which involves a transaction in convertible virtual currency or a digital asset with legal tender status, as those terms are defined in § 1010.316(c), with a value of more than $3,000.

(1) *Recordkeeping Requirements:* For each withdrawal, exchange, or other payment or transfer, by, through, or to such financial institution which involves a transaction in convertible virtual currency or a digital asset with legal tender status, as those terms are defined in § 1010.316(c), a bank or money services business shall obtain and retain an electronic record of the following information:

(i) The name and address of the financial institution's customer;

(ii) The type of convertible virtual currency or legal tender digital assets used in the transaction;

(iii) The amount of convertible virtual currency or legal tender digital assets in the transaction;

(iv) The time of the transaction;

(v) The assessed value of the transaction, in dollars, based on the prevailing exchange rate at the time of the transaction;

(vi) Any payment instructions received from the financial institution's customer;

(vii) The name and physical address of each counterparty to the transaction of the financial institution's customer, as well as other counterparty information the Secretary may prescribe as mandatory on the reporting form for transactions subject to reporting pursuant to § 1010.316(b);

(viii) Any other information that uniquely identifies the transaction, the accounts, and, to the extent reasonably available, the parties involved; and,

(ix) Any form relating to the transaction that is completed or signed by the financial institution's customer.

(2) *Verification:* In addition to obtaining and retaining the information required in paragraph (g)(1) of this section, before concluding any transaction in relation to which records must be retained under this paragraph, a financial institution shall verify the identity of its customer engaging in the transaction. Consistent with the financial institution's anti-money laundering and countering the financing of terrorism program, the financial institution should establish risk-based procedures for verifying the identity of its customer. The procedures must enable the financial institution to form a reasonable belief that it knows the true identity of its customer engaging in a transaction. These procedures must be based on the financial institution's assessment of the relevant risks, including those presented by the nature of its relationship with its customer, the transaction activity, and other activity associated with the convertible virtual currency or digital assets with legal tender status involved in the transaction.

Note to paragraph (g)(2): If a bank or money services business has knowledge that a person has accessed the bank's or money services business's customer's wallet to conduct a transaction for which records must be maintained who is not the bank's or money services business's customer, the bank or money services business should treat that person as a customer for the purposes of this paragraph, and verify both the person accessing the account and the customer.

(3) *Retrievability.* The information that a financial institution must retain under paragraphs (g)(1) and (g)(2) of this section shall be retrievable by the financial institution by reference to the name or account number of the financial institution's customer, or the name of a counterparty to the financial institution's customer's transaction. This information need not be retained in any particular manner, so long as the financial institution is able to retrieve the information required by this paragraph, either by accessing records directly or through reference to some other record maintained by the financial institution.

(4) *Exceptions.* Banks and money services businesses are not required to retain records under this subsection in relation to a transaction in convertible virtual currency or a digital asset with legal tender status that is between the financial institution's customer and a counterparty whose account is held at a financial institution regulated under the BSA, or at a foreign financial institution, except for a foreign financial institution in a jurisdiction listed on the List of Foreign Jurisdictions Subject to 31 CFR 1010.316 Reporting and § 1010.410(g) Recordkeeping, which is maintained on FinCEN's website on the Resources page.

PART 1020—RULES FOR BANKS

■ 10. The authority citation for part 1020 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 11. Revise § 1020.310 to read as follows:

§ 1020.310 Reports of transactions in currency, convertible virtual currency, and digital assets with legal tender status.

The reports of transactions in currency and transactions in convertible virtual currency and digital assets with legal tender status requirements for banks are located in subpart C of part 1010 of this chapter and this subpart.

■ 12. Revise § 1020.312 to read as follows:

§ 1020.312 Identification required.

Refer to § 1010.312 of this chapter for identification requirements for reports of transactions in currency and transactions in convertible virtual currency and digital assets with legal tender status filed by banks.

■ 13. Revise § 1020.313 to read as follows:

§ 1020.313 Aggregation.

Refer to § 1010.313 of this chapter for reports of transactions in currency and transactions in convertible virtual currency and digital assets with legal tender status aggregation requirements for banks.

■ 14. Amend § 1020.315 by:

■ a. Revising paragraphs (a), (b)(4) and (5), (b)(6) introductory text and (b)(7) introductory text;

■ b. Adding paragraph (c)(2)(iii); and

■ c. Revising (g)(1) and (3), and (h).

The addition and revisions read as follows:

§ 1020.315 Transactions of exempt persons.

(a) *General.* (1) No bank is required to file a report otherwise required by § 1010.311 with respect to any transaction in currency between an exempt person and such bank, or, to the extent provided in paragraph (e)(6) of this section, between such exempt person and other banks affiliated with such bank. (A limitation on the exemption described in this paragraph (a) is set forth in paragraph (f) of this section.)

(2) No bank is required to file a report otherwise required by § 1010.316 with respect to any transaction in convertible virtual currency or digital assets with legal tender status between an exempt person defined in paragraphs (b)(1) to (3) of this section and such bank, or, to the extent provided in paragraph (e)(6) of this section, between such exempt person and other banks affiliated with such bank. (A limitation on the exemption described in this paragraph (a) is set forth in paragraph (f) of this section.)

(b) * * *

(4) Solely for purposes of the exemption applicable to any transaction in currency in paragraph (a)(1) of this section, any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common stock or analogous equity interests have been designated as a NASDAQ National Market Security listed on the NASDAQ Stock Market (except stock or interests listed under the separate ''NASDAQ Capital Markets Companies'' heading), provided that, for purposes of this paragraph (b)(4), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(5) Solely for purposes of the exemption applicable to any transaction in currency in paragraph (a)(1) of this section, any subsidiary, other than a bank, of any entity described in paragraph (b)(4) of this section (a ''listed entity'') that is organized under the laws of the United States or of any State and at least 51 percent of whose common stock or analogous equity interest is owned by the listed entity, provided that, for purposes of this paragraph (b)(5), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(6) Solely for purposes of the exemption applicable to any transaction in currency in paragraph (a)(1) of this section, to the extent of its domestic operations and only with respect to transactions conducted through its exemptible accounts, any other commercial enterprise (for purposes of this section, a ''non-listed business''), other than an enterprise specified in paragraph (e)(8) of this section, that:

* * * * *

(7) Solely for purposes of the exemption applicable to any transaction in currency in paragraph (a)(1) of this section, with respect solely to withdrawals for payroll purposes from existing exemptible accounts, any other person (for purposes of this section, a ''payroll customer'') that:

* * * * *

(c) * * *

(2) * * *

(iii) A bank is not required to file a FinCEN Form 110 with respect to the transfer of convertible virtual currency or digital assets with legal tender status to or from any exempt person as described in paragraphs (b)(1) to (3) of this section.

* * * * *

(g) * * *

(1) No bank shall be subject to penalty under this chapter for failure to file a report required by § 1010.311 or § 1010.316 of this chapter with respect to a transaction in currency, convertible virtual currency, or digital assets with legal tender status by an exempt person with respect to which the requirements of this section have been satisfied, unless the bank:

* * * * *

(3) A bank that files a report with respect to a currency, convertible virtual currency, or digital asset with legal tender status transaction by an exempt person rather than treating such person as exempt shall remain subject, with respect to each such report, to the rules for filing reports, and the penalties for filing false or incomplete reports that are applicable to reporting of transactions in currency, convertible virtual currency, or digital assets with legal tender status by persons other than exempt persons.

(h) Obligations to file suspicious activity reports and maintain system for monitoring transactions in currency, convertible virtual currency, or digital assets with legal tender status.

(1) Nothing in this section relieves a bank of the obligation, or reduces in any way such bank's obligation, to file a report required by § 1020.320 with respect to any transaction, including any transaction in currency, convertible virtual currency, or digital assets with legal tender status, that a bank knows, suspects, or has reason to suspect is a transaction or attempted transaction that is described in § 1020.320(a)(2)(i), (ii), or (iii), or relieves a bank of any reporting or recordkeeping obligation imposed by this chapter (except the obligation to report transactions in currency, convertible virtual currency, or digital assets with legal tender status, pursuant to this chapter to the extent provided in this section). Thus, for example, a sharp increase from one year to the next in the gross total of currency transactions made by an exempt customer, or similarly anomalous transactions trends or patterns, may trigger the obligation of a bank under § 1020.320.

■ 15. Add § 1020.316 to read as follows:

§ 1020.316 Convertible virtual currency and digital assets with legal tender status filing obligations.

Refer to § 1010.316 of this chapter for reports of transactions in convertible virtual currency and digital assets with legal tender status filing obligations for banks.

PART 1022—RULES FOR MONEY SERVICES BUSINESSES

■ 16. The authority citation for part 1022 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 17. Revise § 1022.310 to read as follows:

§ 1022.310 Reports of transactions in currency, convertible virtual currency, and digital assets with legal tender status.

The reports of transactions in currency and transactions in convertible virtual currency and digital assets with legal tender status requirements for money services businesses are located in subpart C of part 1010 of this chapter and this subpart.

■ 18. Revise § 1022.312 to read as follows:

§ 1022.312 Identification required.

Refer to § 1010.312 of this chapter for identification requirements for reports of transactions in currency and transactions in convertible virtual currency and digital assets with legal tender status filed by money services businesses.

■ 19. Revise § 1022.313 to read as follows:

§ 1022.313 Aggregation.

Refer to § 1010.313 of this chapter for reports of transactions in currency and transactions in convertible virtual currency and digital assets with legal tender status aggregation requirements for money services businesses.

■ 20. Add § 1022.316 to read as follows:

§ 1022.316 Convertible virtual currency and digital assets with legal tender status filing obligations.

Refer to § 1010.316 of this chapter for reports of transactions in convertible virtual currency filing obligations for money services businesses.

By the Department of the Treasury.

Kenneth A. Blanco,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2020–28437 Filed 12–18–20; 4:20 pm]

BILLING CODE 4810–02–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2020–OESE–0172]

Proposed Priorities, Requirements, and Definitions—Expanding Opportunity Through Quality Charter Schools Program (CSP)—National Dissemination Grants

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priorities, requirements, and definitions.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education proposes priorities, requirements, and definitions for the Expanding Opportunity Through Quality Charter Schools Program (CSP)—National Dissemination Grants, Assistance Listing Number 84.282T. We may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2021 and later years. We take this action to ensure that CSP National Dissemination Grants are aligned with the statutory purposes of the CSP and address key national policy issues. Specifically, the proposed priorities, requirements, and definitions focus on disseminating best practices for strengthening charter school authorizing and oversight; improving charter school access to facilities and facility financing; increasing educational choice for students with disabilities, English learners, and other traditionally underserved student groups, including Native American students and students in rural communities.

DATES: We must receive your comments on or before January 22, 2021.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal

or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Help.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed priorities, requirements, and definitions, address them to Cheryl Ford, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E207, Washington, DC 20202–5970.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Cheryl Ford, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E207, Washington, DC 20202–5970. Telephone: (202) 401–1366. Email: *charterschools@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, and definitions. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, and definitions, we urge you to identify clearly the specific section of the proposed priority, requirement, or definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priorities, requirements, and definitions by accessing *Regulations.gov.* Due to the current COVID–19 public health emergency, the Department buildings are not open to the public. However, upon reopening, you may also inspect the comments in person at 400 Maryland Avenue SW, Room 3E207, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities, requirements, and definitions. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The major purposes of the CSP are to expand opportunities for all students, particularly traditionally underserved students, to attend charter schools and meet challenging State academic standards; provide financial assistance for the planning, program design, and initial implementation of charter schools; increase the number of high-quality charter schools available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other public schools; encourage States to provide facilities support to charter schools; and support efforts to strengthen the charter school authorizing process.

Through CSP National Dissemination Grants, the Department provides funds on a competitive basis to support efforts by eligible entities to help increase the number of high-quality charter schools available to our Nation's students by disseminating best practices regarding charter schools.

Program Authority: Section 4305(a)(3)(B) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 7221d(a)(3)(B).

Background: The Department last conducted a National Dissemination Grants competition in FY 2018. In that competition, we invited applications for projects designed to disseminate best practices for strengthening charter school authorizing and oversight or improving charter school access to facilities and facility financing, both key policy issues facing charter schools on a national scale. This document proposes similar priorities, requirements, and definitions as the last competition in order to continue to address these key policy issues. These priorities, requirements, and definitions take into consideration the continuing growth of charter schools across the Nation and the increasing need to support the capacity and oversight of all charter schools. The priorities also recognize the important role that charter schools can play in increasing educational choice for students with disabilities, English learners, and other traditionally underserved student groups including Native American students and students in rural communities.

Proposed Priorities

This document contains four proposed priorities. These priorities are:

Proposed Priority 1—Strengthening Charter School Authorizing and Oversight.

Background: One of the statutory purposes of the CSP is to support efforts to strengthen the charter school authorizing process to improve performance management, including transparency, oversight and monitoring (including financial audits), and evaluation of charter schools. Also, the CSP supports quality, accountability, and transparency in the operational performance of all authorized public chartering agencies, including State educational agencies (SEAs), local educational agencies (LEAs), and other authorizing entities. Specifically, the CSP State Entity Grants program has a strong focus on authorizing, including a requirement that grantees reserve a portion of funds to provide technical assistance to authorized public chartering agencies and work with them to improve authorizing quality. This priority would support that emphasis by prioritizing projects that propose to develop, identify, or expand, and disseminate information on best practices in authorizing and the oversight of charter schools by authorized public chartering agencies.

Authorizers are responsible for conducting rigorous application reviews to ensure new charter schools can be of high quality. They are also responsible for establishing clear and consistent policies to hold schools accountable for

meeting their academic, financial, and operational performance goals, as well as complying with all applicable laws—including civil rights laws requiring equal access. Through this priority, the Department expects that the implementation of strong authorizing practices will proliferate and continuously improve the quality of the charter school sector.

Proposed Priority: Projects that are designed to develop, identify, or expand, and disseminate information on best practices in authorizing and overseeing charter schools by authorized public chartering agencies in one or more of the following areas:

(a) Conducting charter school application reviews.

(b) Establishing governance standards and practices for charter schools.

(c) Promoting and monitoring the compliance of charter schools and authorized public chartering agencies with Federal, State, and local academic, financial, governance, operational (including school safety), or other applicable requirements.

(d) Evaluating the performance of charter schools or authorized public chartering agencies.

(e) Facilitating the replication and expansion of high-quality charter schools.

(f) Improving the academic, financial, or operational performance of charter schools.

(g) Closing persistently underperforming charter schools.

To meet this priority, an applicant must propose to disseminate best-practices information in multiple locations in at least two States with a charter school law.

Proposed Priority 2—Targeting Educational Agencies with the Most Need.

Background: This priority would target information dissemination efforts toward those entities with the greatest need, which include States with new or significantly revised charter school laws or policies.

To increase opportunities for authorized public chartering agencies to establish new, high-quality operational procedures, and because the period following enactment or revision of charter school laws and policies is most critical to their successful implementation, this priority would focus on States where new or revised charter school laws and policies have been adopted within the last five years. In addition, the priority would target dissemination efforts to aid the development of authorized public chartering agencies that support 10 or fewer schools and, accordingly, have limited resources related to economies of scale, or include struggling schools under their purview.[1]

Through this priority, the Department would support projects that target information on best practices to improve the overall quality of, and the ability of State entities to grow, the charter school sector within their States.

Proposed Priority: Projects that propose to target information dissemination to one or more of the following:

(a) States that have enacted laws in the last five years allowing charter schools to open.

(b) States that in the last five years have significantly changed their laws, regulations, or policies regarding authorizing or oversight of charter schools by authorized public chartering agencies.

(c) Authorized public chartering agencies with fewer than 10 charter schools.

(d) Authorized public chartering agencies that authorize a significant number of charter schools experiencing significant low performance or non-compliance with Federal, State, or local academic, financial, governance, operational (including school safety), or other applicable requirements.

Proposed Priority 3—Improving Charter School Access to Facilities and Facility Financing.

Background: Limited access to adequate facilities and to funding for facilities, including per-pupil facilities aid, remains a significant issue impacting growth in the number of charter schools available to students throughout the United States. To help address this issue, this priority would support projects that develop, identify, or expand, and disseminate information on, best practices in supporting charter schools in accessing and financing facilities.

Proposed Priority: Projects that are designed to develop, identify, or expand, and disseminate information on, best practices in supporting charter schools in accessing and financing facilities, including in one or more of the following areas:

(a) Access to public and private (including philanthropic) funding, including from a Qualified Opportunity Fund under section 1400Z–2 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act (115 Pub. L. 97), for one or more of the following, as needed to open or to replicate or expand a charter school:

(1) The acquisition (by purchase, lease, donation, or otherwise) of an interest (including an interest held by a third party for the benefit of the school) in improved or unimproved real property.

(2) The construction of new facilities, or the renovation, repair, or alteration of existing facilities.

(3) The predevelopment costs required to assess sites for purposes of paragraph (a)(1) or (a)(2) of this priority.

(4) The acquisition of other tangible property.

(b) Access to public facilities, including the right of first refusal.

(c) Access to per-pupil facilities aid to charter schools to provide the schools with funding that is dedicated solely to charter school facilities.

(d) Access to credit enhancements and other subsidies.

(e) Access to bonds or mill levies by charter schools, or by other public entities for the benefit of charter schools.

(f) Planning for facility acquisition by charter schools, including comprehensive analysis of facility needs.

To meet this priority, an applicant must propose to disseminate best-practices information in multiple locations in at least two States with a charter school law.

Proposed Priority 4—Empowering Underserved Students and Their Families to Choose a High-Quality Education that Meets Their Unique Needs.

Background: One of the statutory purposes of the CSP is to expand opportunities for children with disabilities, English learners, and other traditionally underserved students to attend charter schools and meet challenging State academic standards. This priority is intended to target funding to projects that help provide educational choice to these underserved student groups, which include educationally disadvantaged children, students who reside or attend schools in Qualifed Opportunity Zones (*i.e.,* designated distressed communities), students who are Native American, and students who are served by rural local educational agencies.

An applicant addressing this proposed priority would describe how its proposed project is designed to increase access to charter schools for one or more of these groups. An applicant might address this priority, for instance: (1) Through its plan to develop, identify, or expand best practices related to serving students in

[1] National Organization of Charter School Authorizers(NACSA). (2009). A Report on NACSA's Authorizer Survey. Chicago: National Organization of Charter School Authorizers. Retrieved from *www.qualitycharters.org/wp-content/uploads/2015/08/NACSA_2008-SOCA.pdf.*

one or more of these underserved groups; (2) through disseminating best practices in areas with high concentrations of one or more of these student groups; or (3) by targeting its project work in areas in which students in one or more of the student groups are at risk of educational failure or otherwise in need of special assistance or support.

Proposed Priority: Projects that are designed to address increasing access to charter schools for one or more of the following groups of children or students:

(a) Educationally disadvantaged children.

(b) Children or students who reside or attend school in a Qualified Opportunity Zone, as designated by the Secretary of the Treasury under section 1400Z–1 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act.

(c) Students who are Native Americans. Specifically, projects serving students in this category must focus on addressing the unique educational needs of Native American students, such as through the use of instructional programs and teaching methods that reflect and preserve Native American language, culture, and history.

(d) Children or students in communities served by rural local educational agencies.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements

Background: In an effort to improve project outcomes, the Department is proposing requirements that are necessary for the proper consideration of applications for National Dissemination Grants in order to increase the likelihood of success of applicants' proposed projects. In disseminating best practices regarding charter schools, grantees would contribute to the efficient use of taxpayer dollars in supporting the charter school sector and increasing the number of high-quality charter schools available to our Nation's students. We also propose eligibility requirements, to ensure that grantees have the preparation and experience to implement a National Dissemination Grant successfully.

Proposed Requirements: We propose the following requirements for this program. We may apply one or more of these requirements in any year in which this program is administered.

Applicants for funds under this program must address one or more of the following application requirements:

(a) Provide a project plan, including a logic model (as defined in 34 CFR 77.1), that describes the purpose of the project; includes clearly specified, measurable project objectives that are aligned with the project purpose; and includes the specific strategies and initiatives that will be implemented to accomplish project objectives. For each project objective, the project plan must include one or more of the following—

(i) *Inputs and Resources:* Identification of the specific costs that will be allocated to the proposed project. These costs must represent the inputs and resources (*e.g.,* personnel, contracted services, supplies, and equipment) that are necessary to generate and support grant project activities, and are necessary to produce project outputs. Applicants must ensure that the total project costs, as identified in this section, are consistent with U.S. Department of Education Budget Information Non-Construction Programs Form 524, 34 CFR 75.210 and responses to applicable selection criteria;

(ii) *Project Activities:* Identification of the specific activities proposed to be funded under the grant; the estimated cost of those activities under the grant project; and how these activities are linked to the target grant project outputs and outcomes;

(iii) *Project Outputs:* Identification of the specific project deliverables, work products, and other outputs of the proposed project, including the cost of those outputs (if not already itemized in response to paragraph (a)(ii) Project Activities). Examples of outputs include—

(1) Best practice publications and products;

(2) Evaluation reports; and

(3) Presentation of a session at a conference delivering best practices for stakeholders.

(iv) *Project Outcomes:* Identification of the anticipated project outcomes or effects as a result of the proposed project.

(b) Provide a management plan that describes clearly defined responsibilities, timelines, and milestones for executing the project and achieving project outcomes.

(c) Provide a dissemination plan that includes the number and description of States, charter schools, or authorized public chartering agencies to which best-practices information will be disseminated, as well as a description of the mechanisms the applicant will use to disseminate information on its proposed projects.

(d) Provide an evaluation plan that includes performance measures that are aligned to the project purpose, project objectives, and project outcomes as well as to the intended outcomes of the proposed project.

Proposed Eligibility Requirements: Eligibility for a grant under this competition is limited to SEAs; State charter school authorizing boards; State Governors; charter school support organizations; authorized public chartering agencies; and public and private nonprofit organizations that operate, manage, or support charter schools.

Eligible applicants may apply as a partnership or consortium and, if so applying, must comply with the requirements for group applications set forth in 34 CFR 75.127–129.

Public and private nonprofit organizations that operate, manage, or support charter schools must apply in partnership with one or more SEAs, State charter school boards, State Governors, charter school support organizations, or authorized public chartering agencies.

Proposed Funding Restrictions: Grant funds may be used only for activities that are related to the development, identification, expansion, and dissemination of information on best practices regarding the priority to which the applicant is responding and that are included in the grantee's approved application. Grantees may not use grant funds to conduct charter school authorizing activities, or to open new charter schools, or replicate or expand existing charter schools. Grantees may

not use grant funds to acquire or finance the acquisition of a charter school facility, including through credit enhancement, direct lending, or subgrants. Grantees may not use grant funds for general organizational operating support beyond the costs associated with this grant project. No more than 5 percent of grant funds may be used for direct administration of the grant project.

Proposed Definitions

We propose the following definitions for this program. We may apply one or more of these definitions in any year in which the program is in effect.

Background: In order to ensure a common understanding of the proposed priorities and requirements, we propose definitions that are critical to the policy and statutory purposes of the National Dissemination Grant program. We propose these definitions to clarify expectations for eligible entities applying for National Dissemination Grants and to ensure that the review process for applications for National Dissemination Grants remains as transparent as possible. The proposed definition for ''rural local educational agency'' is based on the definition from the Secretary's Final Supplemental Priorities and Definitions for Discetionary Grant Programs published in the **Federal Register** on March 2, 2018 (83 FR 9096). The proposed definition for ''educationally disadvantaged children'' is based on section 1115(c)(2) of the ESEA (20 U.S.C. 6315).

Educationally disadvantaged children means a student in one or more of the categories described in section 1115(c)(2) of the ESEA, which include children who are economically disadvantaged, children with disabilities, migrant students, English learners, neglected or delinquent students, homeless students, and students who are in foster care.

Native American means an Indian (including an Alaska Native), as defined in section 6151(3) of the ESEA, Native Hawaiian, or Native American Pacific Islander.

Rural local educational agency means an LEA that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title V, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's website at *https://oese.ed.gov/offices/office-of-formula-grants/rural-insular-native-achievement-programs/rural-education-achievement-program/.*

Final Priorities, Requirements, and Definitions: We will announce the final priorities, requirements, and definitions in a document published in the **Federal Register**. We will determine the final priorities, requirements, and definitions after considering responses to the proposed priorities, requirements, and definitions and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use one or more of these priorities, requirements, and definitions, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

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

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

OMB has determined that this proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2021, any new incremental costs associated with a new rule must be fully offset by the elimination of existing costs through deregulatory actions. Because the proposed regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed priorities, requirements, and definitions only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that

this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Potential Costs and Benefits

The Department believes that this proposed regulatory action would impose minimal costs on eligible entities, whose participation in this program is voluntary, and expects that participants would include in their proposed budgets a request for funds to support compliance with any cost-bearing requirements, if necessary. We believe any costs associated with this regulatory action would be outweighed by its benefits, which include helping ensure that CSP funds support the dissemination of best practices on topics critical to the charter school sector and contribute to an increased number of high-quality educational options available to the Nation's students.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The proposed priorities, requirements, and definitions contain information collection requirements (ICR) for the program application package. As a result of the proposed priorities, requirements, and definitions, we will seek approval to use the 1894–0006 collection and 34 CFR 75.210. In Table 1 below, we assume 15 applicants each spend 40 hours preparing their applications.

TABLE 1—NATIONAL DISSEMINATION GRANTS PROGRAM INFORMATION COLLECTION STATUS

OMB control No.	Expiration	Current burden (total hours)	Proposed burden (total hours)	Proposed action under final priorities
1894–0006	January 31, 2021 ...	0	Applicants: 600 hours	Obtain approval under 1894–0006.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed priorities, requirements, and definitions easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation.

Participation in this program is voluntary and limited to entities seeking to disseminate best-practice information regarding charter schools. The Department anticipates that approximately 15 entities will apply for National Dissemination Grants in a given year and estimates that fewer than half of these entities will be small entities. For this limited number of small entities, any cost-bearing requirements imposed by this regulatory action can be defrayed with grant funds, as discussed in the *Regulatory Impact Analysis* section of this document.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2020–28411 Filed 12–22–20; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2020–0589; FRL–10017–39–Region 9]

Air Plan Approval; Arizona; Stationary Sources; New Source Review Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Arizona Department of Environmental Quality's (ADEQ) portion of the Arizona State Implementation Plan (SIP). These revisions are primarily intended to make corrections to the ADEQ's SIP-approved rules for the issuance of New Source Review (NSR) permits for stationary sources under the Clean Air Act (CAA or Act). This proposed action will update the ADEQ's NSR rules in the SIP and correct the remaining deficiencies in the ADEQ's NSR program that we identified in final EPA rulemaking actions in 2015 and 2016. Additionally, we are proposing a finding that the ADEQ's SIP-approved NSR permitting program meets requirements for visibility protection for major NSR sources under the Act and are proposing to remove Federal Implementation Plans (FIPs) related to these requirements. We are seeking comment on our proposed action and plan to follow with a final action.

DATES: Comments must be received on or before January 22, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2020–0589 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Lisa Beckham, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3811 or by email at *beckham.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

Definitions

For this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *ADEQ* mean or refer to the Arizona Department of Environmental Quality.

(iii) The initials *ARS* mean or refer to the Arizona Revised Statutes.

(iv) The initials *CBI* mean or refer to confidential business information.

(v) The initials *CFR* mean or refer to Code of Federal Regulations.

(vi) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(vii) The initials *FIP* mean or refer to Federal Implementation Plan.

(viii) The initials *MMBtu/hr* mean or refer to million British thermal units per hour.

(ix) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(x) The initials *NESHAP* mean or refer to National Emission Standards for Hazardous Air Pollutants.

(xi) The initials *NNSR* mean or refer to Nonattainment New Source Review.

(xii) The initals NO_2 mean or refer to nitrogen dioxide.

(xiii) The initials NO_X mean or refer to oxides of nitrogen.

(xiv) The initials *NSPS* mean or refer to New Source Performance Statndards.

(xv) The initials *NSR* mean or refer to New Source Review.

(xvi) The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (fine particulate matter).

(xvii) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(xviii) The initials *SIP* mean or refer to State Implementation Plan.

(xix) The initials SO_2 mean or refer to sulfur dioxide.

(xx) The words *State* or *Arizona* mean the State of Arizona, unless the context indicates otherwise.

(xxi) The initials *TSD* mean or refer to the technical support document for this action, unless the context indicates otherwise.

I. The State's Submittals

A. What did the State submit?

The ADEQ is the governor's designee for submitting official revisions of the Arizona SIP to the EPA. This proposal evaluates three SIP revisions submitted by the ADEQ on March 29, 2019,[1] January 14, 2020, and July 22, 2020.[2]

[1] This submittal was transmitted with a cover letter dated March 20, 2019 from Timothy S. Franquist, Director, Air Quality Division, ADEQ to Michael Stoker, Regional Administrator, EPA Region IX.

[2] This submittal was made via the EPA's eSIP submission system—State Plan electronic

The submittals include several rules and demonstrations related to the ADEQ's NSR program.

Table 1 of this preamble lists the rules addressed by this proposal with the dates on which they became effective under State law. The ADEQ's January 14, 2020 submittal requested that specific paragraphs from certain revised rules be added to the Arizona SIP. The ADEQ's July 22, 2020 submittal clarifies that the ADEQ requests that the entirety of each revised rule (with one exception) be included in the SIP, rather than only the selected paragraphs identified in the earlier submittal. As such, Table 1 of this preamble reflects the updated rule submission request in the July 22, 2020 submittal. The submitted rules are from the Arizona Administrative Code, Title 18—Environmental Quality, Chapter 2—Department of Environmental Quality—Air Pollution Control, Articles 1, 3, and 4.

TABLE 1—SUBMITTED RULES

Rule	Title	State effective date
R18–2–101, except (20)	Definitions	[3] 2/1/2020
R18–2–301	Definitions	2/1/2020
R18–2–302	Applicability; Registration; Classes of Permits	3/21/2017
R18–2–302.01	Source Registration Requirements	2/1/2020
R18–2–304	Permit Application Processing Procedures	2/1/2020
R18–2–306	Permit Contents	3/21/2017
R18–2–306.01	Permits Containing Voluntarily Accepted Emission Limitations and Standards	3/21/2017
R18–2–317	Facility Changes Allowed Without Permit Revisions—Class I	8/7/2012
R18–2–317.01	Facility Changes that Require a Permit Revision—Class II	8/7/2012
R18–2–317.02	Procedures for Certain Changes that Do Not Require a Permit Revision—Class II	8/7/2012
R18–2–319	Minor Permit Revisions	3/21/2017
R18–2–320	Significant Permit Revisions	3/21/2017
R18–2–334	Minor New Source Review	2/1/2020
R18–2–406	Permit Requirements for Sources Located in Attainment and Unclassifiable Areas	2/1/2020

On September 29, 2019 and July 14, 2020, the March 29, 2019 and January 14, 2020 submittals, respectively, were determined complete by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On November 17, 2020, the EPA determined that the July 22, 2020 submittal met the completeness criteria in 40 CFR part 51, appendix V.

The proposed SIP revisions will apply to all areas and sources in Arizona for which the ADEQ has permitting jurisdiction. The ADEQ has permitting jurisdiction for the following stationary source categories in all areas of Arizona: Smelting of metal ores, coal-fired electric generating stations, petroleum refineries, Portland cement plants, and portable sources. The ADEQ also has permitting jurisdiction for major and minor sources in the following counties: Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Mohave, Navajo, Santa Cruz, Yavapai, and Yuma. Finally, ADEQ has permitting jurisdiction over major sources in Pinal County (currently delegated to Pinal County) and any source in Maricopa, Pima, or Pinal County for which the ADEQ asserts jurisdiction.

B. Are there other versions of the rules in the Arizona SIP?

Table 2 lists the existing rules in the Arizona SIP that would be superseded or removed from the Arizona SIP as part of our proposed action. If the EPA were to take final action as proposed herein, these rules generally would be replaced in the SIP by the submitted set of rules listed in Table 1 of this document.

TABLE 2—RULES TO BE SUPERSEDED OR REMOVED

Rule	Title	EPA approval date	**Federal Register** citation
R18–2–101	Definitions	May 4, 2018	83 FR 19631
R18–2–301	Definitions	November 2, 2015	80 FR 67319
R18–2–302	Applicability; Registration; Classes of Permits	November 2, 2015	80 FR 67319
R18–2–302.01	Source Registration Requirements	November 2, 2015	80 FR 67319
R18–2–304	Permit Application Processing Procedures	November 2, 2015	80 FR 67319
R18–2–306	Permit Contents	November 2, 2015	80 FR 67319
R18–2–306.01	Permits Containing Voluntarily Accepted Emission Limitations and Standards.	November 2, 2015	80 FR 67319
R18–2–319	Minor Permit Revisions	November 2, 2015	80 FR 67319
R18–2–320	Significant Permit Revisions	November 2, 2015	80 FR 67319
R18–2–334	Minor New Source Review	November 2, 2015	80 FR 67319
R18–2–406	Permit Requirements for Sources Located in Attainment and Unclassifiable Areas.	May 4, 2018	83 FR 19631

Collaboration System (SPeCS) for SIPs—on July 22, 2020. A copy of the submission form is available in the docket for this action. Due to an apparent typographical error, the cover letter for the submittal was erroneously dated as July 21, 2017 rather than July 21, 2020. Additionally, an Excel spreadsheet that is part of the submittal but that was not submitted through the SPeCS was submitted to the EPA via email on July 21, 2020. The spreadsheet and transmittal email are also included in the docket for this action.

[3] We note that this rule contains a new provision stating that a particular revised subsection, R18–2–101(131)(f), will take effect on the effective date of the EPA Administrator's action approving it as part of the Arizona SIP. Therefore, the revised version of R18–2–101(131)(f) would become effective on the effective date of our approval of the current submittal of R18–2–101.

TABLE 2—RULES TO BE SUPERSEDED OR REMOVED—Continued

Rule	Title	EPA approval date	**Federal Register** citation
R9–3–217, paragraph A	Attainment Areas; Classification and Standards	April 23, 1982	47 FR 17483

C. What is the purpose of the submittals?

On March 29, 2019, the ADEQ submitted a SIP submittal intended to resolve a conditional approval relating to the permitting of fine particular matter ($PM_{2.5}$) precursors in $PM_{2.5}$ nonattainment areas. The ADEQ supplemented the submittal on January 14, 2020 (the March 29, 2019 submittal and January 14, 2020 supplement are collectively referred to hereinafter as the ''Ammonia $PM_{2.5}$ NSR submittal''). The January 14, 2020 supplement also included other minor and technical rule revisions to the ADEQ's NSR program. On July 22, 2020, the ADEQ submitted a SIP revision to address outstanding deficiencies in its NSR program, pertaining primarily to the ADEQ's minor NSR program, that were identified by the EPA in a final rule action in 2015 (referred to hereinafter as the ''2020 Minor NSR submittal''). In the 2020 Minor NSR submittal, the ADEQ also requested that the EPA remove the visibility FIPs at 40 CFR 52.27 and 52.28 as applied to major sources subject to the ADEQ's permitting jurisdiction, as its SIP-approved NSR program requirements also satisfy the CAA visibility requirements in 40 CFR 51.307.

The EPA's technical support document (TSD) has more information about the content of these submittals (collectively referred to hereinafter as the ''2019–20 NSR submittals'').

II. The EPA's Evaluation

A. How is the EPA evaluating the submittals?

The EPA has reviewed the rules and other materials submitted for SIP approval by the ADEQ that are the subject of this action for compliance with the CAA's general requirements for SIPs in CAA section 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i);[4] the EPA's regulations for stationary source permitting programs in 40 CFR part 51, subpart I; and the CAA requirements for SIP revisions in CAA section 110(l) and 193.

With respect to procedures, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. The EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, a public comment period of at least 30 days, and an opportunity for a public hearing.

With respect to substantive requirements, we have reviewed the submittals that are the subject of our current action in accordance with the CAA and applicable regulatory requirements, focusing primarily on those that apply to minor NSR programs under 110(a)(2)(C) of the Act, Prevention of Significant Deterioration (PSD) permit programs under part C of title I of the Act, and Nonattainment NSR (NNSR) permit programs under part D of title I of the Act. The 2019–20 NSR submittals are primarily intended to correct the remaining deficiencies in the ADEQ's NSR program that we previously identified in final rule actions, as discussed below, and therefore we reviewed them both to determine whether those corrections had been made and to more generally ensure that the submitted rule revisions comply with the CAA and applicable regulatory requirements. In addition, we reviewed the ADEQ's NSR regulations to determine whether they meet the CAA visibility requirements in 40 CFR 51.307 for sources subject to PSD and NNSR review.

As background, on November 2, 2015 (80 FR 67319), the EPA published a final limited approval and limited disapproval of a 2012 SIP revision submittal to the ADEQ portion of the Arizona SIP (referred to hereinafter as the EPA's ''2015 NSR action'').[5] Our 2015 NSR action updated the ADEQ's SIP-approved NSR permitting program, but identified deficiencies that needed to be corrected for the EPA to grant full approval of the ADEQ's NSR program. Thus, our 2015 NSR action triggered an obligation for the EPA to promulgate a Federal Implementation Plan (FIP) to address the deficiencies that were the basis for our limited disapproval action unless the State of Arizona corrected the deficiencies, and the EPA approved the related plan revisions, within two years of that final action. In addition, to avoid sanctions under section 179 of the Act, the ADEQ had 18 months from December 2, 2015, the effective date of our 2015 NSR action, to correct those deficiencies related to part D of title I of the Act.

On June 22, 2016 (81 FR 40525), the EPA also published a separate but related final limited disapproval action for the ADEQ's NNSR program, as the ADEQ's program did not fully address $PM_{2.5}$ precursors as required by section 189(e) of the Act (referred to hereinafter as the EPA's ''2016 $PM_{2.5}$ precursor action''). This action triggered an obligation for the EPA to promulgate a FIP to address this deficiency unless the State of Arizona corrected the deficiency, and the EPA approved the related plan revisions, within two years of the final action. In addition, to avoid sanctions under section 179 of the Act, the ADEQ had 18 months from the July 22, 2016 effective date of our 2016 $PM_{2.5}$ precursor action to correct the deficiency as it related to part D of title I of the Act.

On May 4, 2018 (83 FR 19631), the EPA published a final rule approving revisions to the ADEQ's NSR program, primarily related to the PSD and NNSR programs (referred to hereinafter as the ''2018 Major NSR action''). The 2018 Major NSR action corrected a substantial portion of the deficiencies identified in our 2015 NSR action and our 2016 $PM_{2.5}$ precursor action. The 2018 Major NSR action also included a conditional approval of the ADEQ's NNSR program related to one specific component of the deficiency identified in our 2016 $PM_{2.5}$ precursor action, discussed in greater detail in Section II.B.5 of this preamble. We note that concurrent with our proposed conditional approval action in 2018, we made an interim final determination that the State of Arizona had satisfied the requirements of part D of the CAA permitting program for areas under the jurisdiction of ADEQ with respect to

[4] CAA section 110(a)(2)(A) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and CAA section 110(a)(2)(E)(i) requires that states have adequate personnel, funding, and authority under state law to carry out their proposed SIP revisions.

[5] We also finalized other actions, which included a partial disapproval related to the fine particulate matter ($PM_{2.5}$) significant monitoring concentration, and limited approvals, without corresponding limited disapprovals, related to section 189(e) of the Act.

$PM_{2.5}$ precursors under section 189(e).[6] The effect of our interim final determination was that the imposition of sanctions that had been triggered was deferred. Following the 2018 Major NSR action, several outstanding deficiencies in the ADEQ's NSR program remained.

The submittals that are the subject of this proposed action are intended to correct the remaining deficiencies identified in our 2015 NSR action and the deficiency that formed the basis for our conditional approval in our 2018 Major NSR action, so that the ADEQ's NSR program would be fully approved. In addition, in the 2020 Minor NSR submittal, the ADEQ requested that we remove the visibility FIPs at 40 CFR 52.27 and 40 CFR 52.28, which would result from our determining that the ADEQ's NSR regulations meet the CAA visibility requirements in 40 CFR 51.307 for sources subject to PSD and NNSR review under the ADEQ's permitting jurisdiction. Our analysis focuses on these issues; however, we also reviewed the submitted rules and rule revisions to ensure that they otherwise adhere to the relevant CAA requirements.

For reference, the docket for the present action includes the EPA's TSDs for the 2015 NSR action and the 2018 Major NSR action, a June 22, 2015 EPA memorandum, and the notice of proposed rulemaking for our 2016 $PM_{2.5}$ precursor action. The TSD for our 2015 NSR action, which was prepared in support of the EPA's proposal that preceded our final 2015 NSR action, contains a detailed discussion of the NSR program, its requirements, and the deficiencies we identified in the ADEQ's 2012 NSR SIP submittal. We note that there were several proposed deficiencies discussed in the 2015 TSD that we subsequently determined, in our final action, did not serve as bases for our limited disapproval. The June 22, 2015 EPA memorandum provides the list of deficiencies from our 2015 NSR action that formed the basis for our final limited disapproval of the ADEQ's 2012 NSR SIP submittal, many of which were addressed in our 2018 Major NSR action. Our 2016 $PM_{2.5}$ precursor action did not include a separate TSD; our notice of proposed rulemaking from May 2, 2016 (81 FR 26186) provides our detailed analysis supporting that limited disapproval action.

B. Do the submittals meet the evaluation criteria for NSR programs?

Our 2015 NSR action, including our proposed action on March 18, 2015 (80 FR 14044), provides a detailed discussion of the approval criteria for the NSR program and how the ADEQ's NSR rules that we reviewed in that action generally meet the approval criteria despite certain deficiencies that required correction in order for the EPA to fully approve the ADEQ's NSR program. In this action, we are focusing our review on the revisions that the ADEQ made to correct the remaining deficiencies we identified in our 2015 NSR action and the deficiency that formed the basis for our conditional approval in our 2018 Major NSR action. We also reviewed other revisions the ADEQ made in the 2019–20 NSR submittals to ensure that the revised language is consistent with applicable requirements of the Act and the EPA regulations. In addition, we reviewed the ADEQ's NSR program regulations to determine whether they satisfied the CAA visibility review requirements in 40 CFR 51.307 for sources subject to PSD or NNSR review under the ADEQ's permitting jurisdiction.

We are proposing approval of the 2019–20 NSR submittals because they would correct the remaining deficiencies in the ADEQ's NSR program that we identified in our 2015 NSR action and that formed the basis for our conditional approval in our 2018 Major NSR action, and because they are otherwise consistent with the requirements for NSR programs and the Act. Our detailed analysis of the ADEQ's 2019–20 NSR submittals is provided in the TSD for this action. Below we briefly discuss the remaining previously identified deficiencies that this action, if finalized, would correct.

1. Deficiencies Corrected Related to Required Legally Enforceable Procedures

The ADEQ has corrected deficiencies related to the required legally enforceable procedures for minor NSR permitting programs in 40 CFR 51.160. Most of the corrections were rule revisions and are described below. Additionally, the ADEQ needed to provide a basis for the exclusion of certain stationary sources from its NSR program. Those demonstrations are also described further below.

In our 2015 NSR action, the EPA found that, in some instances, the ADEQ's 2012 NSR submittal did not ensure that a source would not interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS) in neighboring areas outside the ADEQ's permitting jurisdiction consistent with 40 CFR 51.160(a) and (b). We find that the ADEQ has corrected this issue by revising the definition for ''attainment area'' and by revising the ADEQ rules R18–2–302.01, R18–2–334, and R18–2–406 to use terms that reference the NAAQS instead of state standards and clearly apply the NAAQS to neighboring areas. See R18–2–101(19), R18–2–302.01(C), R18–2–334(C)(2) and (F), and R18–2–406(A)(5). The revisions to R18–2–101(19) and R18–2–406(A)(5) were approved into the Arizona SIP in our 2018 Major NSR action. The ADEQ also corrected an issue under 40 CFR 51.160(a) and (b) in R18–2–302.01 by adding a reference to ''or maintenance'' of a standard, instead of just ''attainment of a standard'' at R18–2–302.01(C)(4).

In our 2015 NSR action, the EPA found that for sources subject to the ADEQ's registration program at R18–2–302.01, the 2012 NSR submittal did not demonstrate that the ADEQ's NSR program met the requirement to ensure that sources subject to NSR review comply with the applicable portions of the control strategy, as required by 40 CFR 51.160(b)(1). The ADEQ has corrected this issue by revising R18–2–302.01(E) accordingly.

As discussed in our 2015 NSR action, the ADEQ's registration program at R18–2–302.01 did not previously contain enforceable procedures for the owner or operator to submit the necessary information for the ADEQ to determine whether a source will violate the applicable control strategy or interfere with attainment or maintenance of the NAAQS as required by 40 CFR 51.160(c). The ADEQ corrected this issue by revising R18–2–302.01(A)(3) to remove a reference to R18–2–327(C), a rule not in the SIP, and to instead use the term ''maximum capacity to emit with elective limits,'' which is a newly defined term that is used in conjunction with another newly defined term ''maximum capacity to emit.'' See R18–2–301(12) and (13). The term that was previously used, ''uncontrolled potential to emit,'' is no longer defined or used in the ADEQ's NSR program. We find these revisions and the new definitions for ''maximum capacity to emit'' and ''maximum capacity to emit with elective limits'' acceptable.

Previously, the ADEQ's program did not meet the requirement that the applicant submit information related to the nature and amounts of emissions, for certain kinds of emissions units, as required by 40 CFR 51.160(c)(1). For Class I and Class II permit applications, R18–2–304 previously allowed sources to avoid providing emissions information for ''insignificant activities,'' as defined in R18–2–101(68). The ADEQ corrected this issue by revising R18–2–304 to specify that emissions information from

[6] See 83 FR 1195 (January 10, 2018) and 83 FR 1212 (January 10, 2018).

insignificant activities must be provided to the extent necessary to determine applicability of the minor and major NSR programs (R18–2–334 and Article 4 of ADEQ's rules, respectively). See R18–2–304(F)(8).

Previously, for sources subject to the ADEQ's registration program at R18–2–302.01, the ADEQ's program did not meet the requirement in 40 CFR 51.160(d) that its procedures provide that approval of construction or modification will not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy. The ADEQ corrected this issue by adding this requirement for sources subject to R18–2–302.01, at R18–2–302.01(I).

The EPA found in our 2015 NSR action that the ADEQ's registration program at R18–2–302.01 did not meet the requirement to use appendix W to 40 CFR part 51 for air quality modeling as required by 40 CFR 51.160(f)(1). The ADEQ corrected this issue by revising R18–302.01(C) to reference a ''screening model,'' a newly defined term in revised R18–2–301 that requires the use of appendix W.

In our 2015 NSR action, we found that the ADEQ's program had several deficiencies related to 40 CFR 51.160(e) because the 2012 NSR SIP submittal did not provide an adequate basis for certain sources that are excluded from the ADEQ's minor NSR permitting program. 40 CFR 51.160(e) requires the ADEQ to provide a basis for the types and sizes of facilities, buildings, structures, or installations that will be subject to review under 40 CFR 51.160. That is, 40 CFR 51.160(e) allows state minor NSR programs to exclude some new minor sources and minor modifications to the extent they are inconsequential to attainment or maintenance of the NAAQS. We are now proposing approval of the ADEQ's NSR program under 40 CFR 51.160(e). The demonstrations provided by the ADEQ address: The ADEQ's NSR permitting exemption thresholds, as they apply in nonattainment areas; the ADEQ's $PM_{2.5}$ NSR permitting threshold in attainment and nonattainment areas; the exemption of certain small fuel burning equipment; and the exemption of agricultural equipment used in normal farm operations.

With respect to the minor NSR permitting thresholds, the ADEQ looked at the 2014 National Emissions Inventory for sources in Arizona to determine the percentage of emissions and stationary sources covered by the ADEQ's minor NSR program.[7] The results show the percentage of stationary sources and emissions expected to be covered by the ADEQ's NSR program as compared to the entire state, areas of the state subject to the ADEQ minor NSR jurisdiction (*i.e.,* all counties except Maricopa, Pima, and Pinal), and the four counties subject to state minor NSR jurisdiction that include nonattainment areas (Cochise, Gila, Santa Cruz, and Yavapai). This updated analysis, the results of which are included in our TSD, shows that the ADEQ's minor NSR program may cover a significantly higher percentage of stationary source emissions than originally determined, including in nonattainment areas.[8] The ADEQ's updated analysis follows the same approach that the EPA used in developing the minor NSR program for Indian country, which we find acceptable. Additionally, the ADEQ's 2020 Minor NSR submittal contains a discussion of the types of emission sources that largely contribute to nonattainment in the nonattainment areas for which the ADEQ has minor NSR permitting jurisdiction. This discussion shows that minor sources are not currently significant contributors to the nonattainment issues in these areas.

While $PM_{2.5}$ emissions data were not available for the original source distribution analysis in the 2012 NSR SIP submittal, the updated analysis shows that, based on the minor NSR threshold for $PM_{2.5}$, the ADEQ's NSR program is expected to cover a high percentage of emissions in both attainment and nonattainment areas (greater than 95% in nonattainment areas). We find that the ADEQ's minor NSR threshold for $PM_{2.5}$ provides adequate assurance that the sources exempted from regulation under the minor NSR program by the threshold would be inconsequential to attainment and maintenance of the NAAQS.

In our 2015 NSR action, we found that the ADEQ needed to provide an interpretation of the exemption for small fuel burning equipment, rated less than one million British thermal units per hour (MMBtu/hr), in state law at Arizona Revised Statutes (ARS) section 49–426(B), and how it does, or does not, apply in the context of its major and minor NSR programs, and, to the extent such equipment is not subject to NSR review, the ADEQ's basis for determining that equipment exempted under this provision does not need to be reviewed as part of the ADEQ's minor NSR program under 40 CFR 51.160(e). The 2020 Minor NSR submittal explains that only those stationary sources that consist solely of equipment with a cumulative heat input rate of less than 1 MMBtu/hr are eligible for the exemption in ARS section 49–426(B). Because the exemption is only available to those stationary sources that consist solely of fuel burning equipment with a cumulative rating of 1 MMBtu/hr, such sources will already be below the ADEQ's permitting exemption thresholds. Thus, we find this exemption and explanation acceptable.

The 2020 Minor NSR submittal contains a detailed discussion describing the ADEQ's reasoning and analysis for the exemption for agricultural equipment used in normal farm operations in ADEQ rule R18–2–302. See 2020 Minor NSR submittal, 9–13, 24–25. The analysis is summarized here. The State of Arizona exempts ''agricultural equipment used in normal farm operations'' from the general requirement to obtain a permit. See ARS 49–426(A). The ADEQ implements this exemption in its permitting program by exempting ''agricultural equipment used in normal farm operations'' from the requirement to obtain a registration or permit at R18–2–302(C). The exemption does not apply if the source is a ''major source'' or if ''operation without a permit would result in a violation of the Act.'' Additionally, agricultural equipment used in normal farm operations does not include equipment classified as a source that requires a permit under title V of the Act, or that is subject to a standard under 40 CFR parts 60, 61, or 63.

In our 2015 NSR action, we stated that the ADEQ needed to identify whether ''agricultural equipment used in normal farm operations'' could potentially be expected to occur at a stationary source subject to title V of the Act, 40 CFR parts 60, 61, or 63, or major NSR, and, if so, whether such equipment is subject to NSR review at such sources. The ADEQ has clarified that the exemption at R18–2–302(C) represents the ADEQ's interpretation of the agricultural exemption in ARS section 49–426(A)

[7] The 2012 NSR SIP submittal used data from only Maricopa County. The ADEQ is not the permitting authority for stationary sources in Maricopa County, which has lower permitting thresholds. The ADEQ explains that Maricopa County is a large urban area that may have many small sources that can contribute to nonattainment areas, but the nonattainment areas for which the ADEQ has minor NSR permitting jurisdiction are significantly different and more rural.

[8] The ADEQ's 2012 analysis showed that the ADEQ expected to cover, approximately, between 35% to 80% of emissions through its minor and major NSR programs. See our TSD for the 2015 NSR action, 25, Table 5. The updated analysis in Table 3 of the TSD for this proposed action shows that the ADEQ is expected to cover between 69% to 100% of emissions through its minor and major NSR programs.

and stated that the ''rule has been recognized as valid by the Arizona Attorney General in its opinion supporting the state's title V program in 1993.'' [9] The EPA deferred to this opinion in approving ADEQ's title V program in 1996. The ADEQ also clarified that the ADEQ interprets its permitting requirements such that its permitting determinations (including for the registration program) are made on a source-wide basis. For an exemption to apply, all the pollutant-emitting activities within the same stationary source must qualify for the exemption. Therefore, if equipment used in normal farm operations is located at the same stationary source as non-exempt equipment that requires a permit, such as at a major source, a title V source, or a source subject to a standard under 40 CFR part 60, 61, or 63, then permit requirements, and potentially NSR, extend to the entire source, including the equipment used in the farm operations. This also means that the exemption is potentially available only to minor sources.

While the term ''normal farm operations'' is not specifically defined by statute or rule, the ADEQ finds the State's Agricultural Best Management Practices (Ag BMP) program for PM_{10} nonattainment areas provides guidance on the State's interpretation for the types of activities that constitute normal farm operations, as described under the Ag BMP statute at ARS section 49–457(P)(1). The activities include: Tillage, planting, and harvesting; areas of a commercial farm that are not normally in crop production (*i.e.,* fallow); areas of a commercial farm that are normally in crop production; significant agricultural earthmoving activities; traffic over unpaved access connections or unpaved roads or feed lanes; animal waste handling and transporting; arenas, corrals, and pens; and canals. The ADEQ also interprets the normal farm operations exemption to apply to crop and feed processing equipment that produces only fugitive emissions. We consider all the identified activities to be sources of fugitive emissions.

The ADEQ's current SIP-approved NSR program already exempts fugitive emissions in determining whether a stationary source is subject to minor NSR permitting requirements. See R18–2–302(F). While this exemption does not apply to stationary sources that belong to certain source categories, referred to as ''section 302(j) category'' sources, normal farm operations are not section 302(j) category sources. See R18–2–101(129). This fugitive emissions exemption for determining minor NSR applicability reflects the same approach that the EPA took for its minor NSR program developed for Indian country. See 40 CFR 49.151 through 49.161, including the definition for ''minor source'' and ''modification'' at 40 CFR 49.152. In the ADEQ's experience, the overwhelming majority of normal farm operations would be excluded from permitting on this basis, even if the normal farm operations exemption were not available. Farm emissions tend to consist almost exclusively of fugitive dust generated by the disturbance of soils.

The ADEQ also recognizes that it is possible for equipment used in normal farm operations to be part of a stationary source that produces stack emissions greater than the permitting exemption threshold. In most cases, the ADEQ believes that such a stationary source would not qualify for the exemption. R18–2–302(C) provides that equipment used in normal farm operations ''does not include equipment classified as a source that requires a permit under title V of the Act, or that is subject to'' an New Source Performance Standard (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP). In addition, permit applicability is determined on a stationary-source-wide basis. Thus, if a stationary source that engaged in normal farm operations qualified as a title V source or included equipment subject to an NSPS or NESHAP, the entire source would require a permit and potentially be subject to minor NSR if its emissions were above the NSR permitting exemption thresholds. In the ADEQ's experience, most permitted sources include one or more pieces of equipment subject to an NSPS. It is therefore likely that if equipment used in normal farm operations were collocated with equipment with stack emissions exceeding the permitting exemption thresholds, at least some of that equipment would be subject to an NSPS, and the normal farm operations exemption would not apply. Additionally, a source with equipment subject to a NESHAP or a source that qualifies as a title V source would not be exempted.

Finally, the ADEQ stated that under R18–2–302(C), equipment used in normal farm operations is not exempt if ''operation [of the equipment] without a permit would result in a violation of the Act,'' which provides a final safeguard. In the few remaining potential situations where equipment used in normal farm operations is located at a stationary source with stack emissions above the permitting exemption threshold that is not subject to 40 CFR parts 60, 61, 63 or title V, the ADEQ will invoke this provision to ensure that any such source does not endanger attainment or maintenance of the NAAQS or enforcement of the control strategy.

In sum, the ADEQ has demonstrated that its exemption for agricultural equipment used in normal farm operations is extremely limited in scope, and the potential sources exempted from permitting would be inconsequential to attainment and maintenance of the NAAQS. This determination is based on the ADEQ's interpretation of the narrow manner in which the exemption applies, the limited types of operations that are considered to be ''normal farm operations,'' and the ADEQ's retention of authority to address any potentially exempt sources that may endanger attainment or maintenance of the NAAQS or enforcement of the control strategy. We agree that the vast majority of these operations are likely already exempted from the ADEQ's SIP-approved minor NSR program under the general exemption for excluding fugitive emissions in permitting applicability determinations. We find the ADEQ's basis and explanation for the exemption from minor NSR review for agricultural equipment used in normal farm operations to be acceptable.

2. Deficiencies Corrected Related to Public Availability of Information

In our 2015 NSR action, the EPA identified several deficiencies with the ADEQ's NSR program concerning the requirements related to public availability of information in 40 CFR 51.161. First, the ADEQ's program did not ensure that all minor sources subject to NSR review under the ADEQ's NSR program, as the ADEQ defined it pursuant to 40 CFR 51.160(e), are subject to public notice and comment consistent with 40 CFR 51.161(a). The ADEQ corrected this deficiency by revising R18–2–334 to remove the previous public notice exemption for certain permit applications. Additionally, the 2020 Minor NSR submittal clarifies that the use of the term ''construction,'' as defined in R18–2–101(32), in R18–2–302.01 ensures that modifications to a registered source at or above the permitting exemption thresholds will be subject to public notice. Next, the ADEQ's registration program at R18–2–302.01 previously did not contain sufficient enforceable procedures for sources taking ''elective

[9] Attorney General's Opinion at 2 (November 15, 1993) (Appendix D of the 2020 Minor NSR submittal).

limits'' to limit their potential to emit in a manner that allows the source to avoid the public participation requirements in 40 CFR 51.161(a), while otherwise being subject to the registration program. The ADEQ corrected this deficiency by adding additional specificity to how elective limits are set, ensuring that such limits will include the time period over which the limitations apply, and ensuring sufficient recordkeeping to demonstrate compliance. See R18–2–302.01(F).

The ADEQ's NSR program also did not include sufficient public notice procedures for registrations or the proposed disapproval of an application consistent with 40 CFR 51.161(a). The ADEQ revised R18–2–330 to clarify the public notice procedures for registrations and to require public notice for a proposed disapproval of an application. See R18–2–330(A). We approved the revisions to R18–2–330 in our 2018 Major NSR action but did not note in that action that the revisions corrected this deficiency.[10]

Finally, in our 2015 NSR action, the EPA identified as a deficiency that the ADEQ's NSR program did not provide notice to the necessary parties identified in 40 CFR 51.161(d) for sources required to obtain registrations under R18–2–302.01. The ADEQ corrected this deficiency by adding this requirement at R18–2–302.01(B)(4).

3. Deficiencies Corrected Related to Administrative Procedures

40 CFR 51.163 requires each NSR program to include the administrative procedures that will be followed in reviewing new and modified sources, as specified in 40 CFR 51.160(a). In our 2015 NSR action, we found that the ADEQ's 2012 NSR SIP submittal contained administrative procedures consistent with 40 CFR 51.163; however, not all the procedures referenced in the 2012 NSR SIP submittal were submitted for inclusion into the SIP. The ADEQ corrected this deficiency by submitting R18–2–317, R18–2–317.01, and R18–2–317.02. These rules generally identify the types of changes at Class I and II sources that do or do not require a permit revision and require that projects triggering minor or major NSR review obtain permit revisions in advance. We have reviewed these rules for inclusion in the ADEQ's SIP-approved NSR program and find them acceptable.

4. Resolution of Minor NSR Program Deficiencies

For the reasons stated above, we propose to find that the 2019–2020 NSR submittals correct all remaining deficiencies in the ADEQ's minor NSR program that were identified in our 2015 NSR action as the basis for our limited disapproval.

5. Resolution of $PM_{2.5}$ NNSR Program Deficiency

The only outstanding deficiency in the ADEQ's NNSR program identified in our earlier actions relates to the treatment of ammonia as a precursor to $PM_{2.5}$ for the West Central Pinal and Nogales $PM_{2.5}$ nonattainment areas. As background, in 2016, the EPA finalized regulatory requirements for SIPs related to implementing the 2012 $PM_{2.5}$ NAAQS (''2012 $PM_{2.5}$ implementation rule'').[11] The 2012 $PM_{2.5}$ implementation rule included regulatory requirements that states must adopt in permitting programs in $PM_{2.5}$ nonattainment areas to address the requirements for $PM_{2.5}$ precursors for major stationary sources under section 189(e) of the Act. For purposes of the NNSR program, the EPA specified that $PM_{2.5}$ precursors in $PM_{2.5}$ nonattainment areas include NO_X, VOC, SO_2, and ammonia. See 40 CFR 51.165(a)(1)(xxxvii)(C)(2).

In the EPA's 2016 $PM_{2.5}$ precursor action, we finalized a narrow, limited disapproval action for deficiencies in the ADEQ's NNSR program related to $PM_{2.5}$ precursors in $PM_{2.5}$ nonattainment areas.[12] For $PM_{2.5}$ nonattainment areas, CAA section 189(e) requires that the control requirements applicable under plans in effect under part D of the CAA for major stationary sources of $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the EPA determines that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standards in the area. In our 2016 $PM_{2.5}$ precursor action, we determined that the ADEQ's 2012 NSR SIP submittal did not fully satisfy the major NNSR requirements for $PM_{2.5}$ under section 189(e) of the Act for the Nogales and West Central Pinal $PM_{2.5}$ nonattainment areas, based on our finding that the submittal did not include rules regulating VOCs or ammonia as $PM_{2.5}$ precursors under the NNSR program, nor did it include a demonstration showing that the regulation of VOCs and ammonia was not necessary under section 189(e).[13]

In our 2018 Major NSR action, we found that the ADEQ's April 28, 2017 SIP revision submittal (''2017 Major NSR submittal''), which mostly pertained to NSR program updates for major sources, contained revisions that updated the ADEQ's NNSR program to address all the deficiencies with that program that were identified in our 2015 NSR action. We also found that the ADEQ's 2017 Major NSR submittal addressed the deficiencies we identified in our 2016 $PM_{2.5}$ precursor action related to $PM_{2.5}$ precursors in $PM_{2.5}$ nonattainment areas, with one exception: We found that the ADEQ's rule revisions did not fully meet the requirements of the 2012 $PM_{2.5}$ implementation rule as it relates to ammonia as a $PM_{2.5}$ precursor. Specifically, while the ADEQ's NNSR program included ammonia as a precursor to $PM_{2.5}$, at R18–2–101(124)(a)(iv), we found that the 2017 Major NSR submittal did not define the threshold at which emissions increases of ammonia are considered ''significant'' for determining when modifications at existing major sources of ammonia are major modifications subject to NNSR, as required by 40 CFR 51.165(a)(1)(x)(F).[14]

Accordingly, while our 2018 Major NSR action approved the rule revisions in the ADEQ's 2017 Major NSR submittal, our action also included a conditional approval with respect to ammonia as precursor to $PM_{2.5}$ emissions in $PM_{2.5}$ nonattainment areas. A December 6, 2017 commitment letter from the ADEQ provided adequate assurance that the remaining NNSR program deficiency related to ammonia as a $PM_{2.5}$ precursor in $PM_{2.5}$ nonattainment areas would be addressed in a timely manner, consistent with CAA section 110(k)(4). Our 2018 Major NSR action conditionally approved the ADEQ's NSR program with respect to ammonia as a $PM_{2.5}$ precursor based on this commitment. The ADEQ's Ammonia $PM_{2.5}$ NSR submittal satisfies the requirements of our conditional approval and corrects this outstanding deficiency.

Specifically, the ADEQ's Ammonia $PM_{2.5}$ NSR submittal includes a rule revision that sets a rate of 40 tons per year as ''significant'' in reference to the significant emission rate (SER) used to

[10] A copy of the SIP-approved R18–2–330 is included in the docket for this action.

[11] *See* Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements, 81 FR 58010 (August 24, 2016).

[12] See 81 FR 40525.

[13] See id. Our 2016 proposed action contained a detailed discussion of the ADEQ's $PM_{2.5}$ NSR program and this limited disapproval issue. *See* Proposed Rule, Limited Disapproval of Air Plan Revisions; Arizona; New Source Review; PM $_{2.5}$. 81 FR 26185 (May 2, 2016).

[14] See 83 FR 19631.

determine those projects that constitute a major modification at major sources of ammonia. See R18–2–101(131)(f). A SER of 40 tpy for ammonia has been approved by the EPA for several other $PM_{2.5}$ nonattainment areas,[15] and the ADEQ set this value in consultation with EPA Region 9. Our approval of the submitted ammonia SER will resolve the remaining deficiency that formed the basis for our conditional approval in our 2018 Major NSR action, and therefore we are proposing to remove the conditional approval language from 40 CFR 52.119(a), as the condition has been met. We also note that the sanctions and sanctions clocks triggered by our 2016 $PM_{2.5}$ precursor action, as discussed in Section II.A of this preamble, would be permanently terminated on the effective date of our final approval of the Ammonia $PM_{2.5}$ NSR submittal.[16]

6. Resolution of PSD Program Deficiency

In our 2015 NSR action, we determined that the ADEQ had adopted the PSD increments, or maximum allowable increases, in R18–2–218—*Limitation of Pollutants in Classified Attainment Areas,* but noted that in other rules, the ADEQ used the terms ''increment'' or ''incremental ambient standard'' where it appeared the intent was to refer to the standards established in R18–2–218 and identified in the ADEQ's rules as the ''maximum allowable increases.'' The ADEQ's April 2017 NSR submittal included corrections to these provisions, which now consistently refer to these maximum allowable increases. See R18–2–406(E), R18–2–412(G)(2)(b), R18–2–101(51). However, we noted in our 2018 Major NSR action that the ADEQ needed to also correct this issue in R18–2–319(A)(3) and R18–2–320(B)(6). While the ADEQ had revised these rules to address this issue, these rules were not included in the April 2017 NSR submittal. The 2020 Minor NSR submittal contains R18–2–319 and R18–2–320 with the necessary corrections. Thus, we find that this deficiency identified in our 2015 NSR action has been fully addressed.

7. Additional Revisions Made to the ADEQ's NSR Program

In 2017, the EPA finalized revisions to the Guideline on Air Quality Models at Appendix W of 40 CFR part 51.[17] The revisions became effective on May 22, 2017.[18] The ADEQ updated its NSR program to reference 40 CFR part 51, appendix W as of June 30, 2017 in R18–2–301, R18–2–334, and R18–2–406. The updated cross-reference in these ADEQ rules to 40 CFR part 51, appendix W incorporates the latest revisions to the Guideline on Air Quality Models. Our proposed approval of R18–2–301, R18–2–334, and R18–2–406 will ensure that the ADEQ portion of the Arizona SIP is updated to incorporate these new revisions.

In addition to the other revisions discussed above, the ADEQ has made other minor revisions and updates to some of the submitted rules that have not yet been approved into the Arizona SIP. Two final rule actions completed by the ADEQ, which are included in the docket for this action, show the specific revisions that have been made to the rules in the 2019–20 NSR submittals. In the ADEQ's February 10, 2017 final rule, see revisions to R18–2–301, R18–2–302, R18–302.01, R18–304, R18–2–306, R18–2–306.01, R18–2–319, R18–2–320, and R18–2–334. In the ADEQ's December 20, 2019 final rule, see revisions to R18–2–101, R18–2–301, R18–2–302.01, R18–2–304, R18–2–334, and R18–2–406. We have reviewed each of the changes and determined that they are acceptable and do not create any new disapproval issues. The changes generally relate to correcting typographical errors, clarifying rule language, and moving permit application requirements from an appendix to R18–2–304.

C. Evaluation of Rules Requested To Be Removed From the SIP

Table 2 of this preamble identifies the rules, or portions thereof, that the ADEQ has requested to be removed from the Arizona SIP, and which we are proposing in this action to remove from the Arizona SIP. All but one of these rules will be replaced by the newer rules in the 2019–20 NSR submittals that are the subject of our current action. Except for R9–3–217, paragraph A, the rules we are proposing to replace are older versions of the rules in the 2019–20 NSR submittals. The older versions contained deficiencies that the ADEQ needed to correct, or language that the ADEQ otherwise determined needed to be updated to enhance the ADEQ's program or to ensure that it meets new requirements. The removal of these older rules would not relax any requirements in the Arizona SIP. For the reasons stated above, we find the removal of these rules from the SIP to be acceptable and we propose to approve the ADEQ's request to remove these rules from the SIP.

D. Approval of Program for Visibility Protection in Class I Areas

The ADEQ's 2020 Minor NSR submittal requests that the EPA remove the FIPs at 40 CFR 52.145(b) related to visibility protection in Class I areas at 40 CFR 51.307, as they pertain to major stationary sources for which the ADEQ has PSD or NNSR jurisdiction. The relevant substantive visibility FIP requirements that currently apply to such sources are found at 40 CFR 52.27 (PSD sources) and 40 CFR 52.28 (NNSR sources). These FIPs were established for sources subject to the ADEQ's PSD and NNSR programs because the EPA had not approved the ADEQ's visibility program under 40 CFR 51.307. Approval of the ADEQ's visibility program under 40 CFR 51.307 would mean that these FIPs are no longer needed to satisfy the CAA visibility program requirements at 40 CFR 51.307 for sources subject to the ADEQ's PSD and NNSR programs. The evaluation in Attachment 1 to our TSD for this action includes the results of our review from 2017 of how the ADEQ's NSR program rules meet each of the required elements for CAA visibility programs in 40 CFR 51.307. Based on our review, we have determined that the ADEQ's PSD and NNSR program rules satisfy the requirements of 40 CFR 51.307, and we are proposing to approve the ADEQ's SIP-approved NSR rules as meeting those requirements. In conjunction with our SIP approval of ADEQ's visibility program for major sources subject to review under the PSD and NNSR programs, we also propose to revise the applicability of the visibility FIPs at 40 CFR 52.27 and 40 CFR 52.28 as they pertain to Arizona at 40 CFR 52.145(b), as these FIPs will no longer apply to sources subject to review under ADEQ's PSD and NNSR programs. This revision will clarify the application of these FIPs in Arizona following our final action.

We note that the visibility FIP at 40 CFR 52.28 would continue to apply to sources within Arizona subject to review under the CAA NNSR program that are or would be located on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Similarly, the FIP at 40 CFR 52.28 would also remain in place for sources in Arizona subject to review

[15] For example, the EPA has approved an ammonia SER of 40 tpy for Alleghany County, Pennsylvania (85 FR 36161, June 15, 2020); Knox County, Tennesse (83 FR 46880, September 17, 2018); Imperial County, California 84 FR 44545, (August 26, 2019); and Los Angeles—South Coast Air Basin, CA (83 FR 61551, November 30, 2018).

[16] See 83 FR 19631, 19633, 19634 (May 4, 2018).

[17] 82 FR 5182 (January 17, 2017).

[18] 82 FR 14324 (March 20, 2017).

under the Pima County Division of Environmental Quality's SIP-approved NNSR program. The EPA has previously approved the visibility review requirements in the Maricopa County Air Quality Department's SIP-approved NNSR program as satisfying the requirements in 40 CFR 51.307. See 84 FR 13543 (April 19, 2019). We also note that for sources within Arizona subject to PSD review that are or would be located on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, the FIP at 40 CFR 52.27 would not apply; rather, the PSD FIP at 40 CFR 52.21 that otherwise applies to such sources [19] includes requirements that fully address the visibility program requirements at 40 CFR 51.307.

E. Do the rules meet the evaluation criteria under Sections 110(a)(2)(A), 110(a)(2)(E)(i), 110(l) and 193 of the Clean Air Act?

CAA section 110(a)(2)(A) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable. We have determined that the rules listed in Table 1 of this preamble are clear and legally enforceable and therefore satisfy this requirement.

CAA section 110(a)(2)(E)(i) requires SIPs to provide ''necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof).'' In the EPA's recent actions on Arizona's Infrastructure SIP for the 2010 nitrogen dioxide (NO_2) and 2010 sulfur dioxide (SO_2) NAAQS, we conducted a detailed evaluation of Arizona legal authorities that provide for the ADEQ's implementation and enforcement of CAA requirements related to that Infrastructure SIP, as well as information showing that the ADEQ has adequate funding and personnel to implement the relevant CAA SIP requirements, and approved that SIP submittal with respect to CAA section 110(a)(2)(E)(i).[20] Accordingly, the ADEQ has provided the necessary assurances that the ADEQ will have adequate personnel, funding, and authority under State law to carry out the proposed revisions to the ADEQ's SIP, consistent with CAA section 110(a)(2)(E)(i).

Section 110(l) states: ''Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.'' With respect to the procedural requirements of CAA section 110(l), based on our review of the public process documentation included in the submittal, we find that the ADEQ has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to submittal of this SIP revision and has satisfied these procedural requirements under CAA section 110(l). With respect to the substantive requirements of section 110(l), we have determined that our action on the 2019–20 NSR submittals would, as described herein, strengthen the applicable SIP. This action is primarily intended to correct numerous deficiencies in the ADEQ's NSR program and provides other revisions to enhance and update the program. Accordingly, this action will not interfere with attainment and reasonable further progress, or any other applicable requirement.

Section 193 of the Act, which was added by the Clean Air Act Amendments of 1990, includes a savings clause which provides, in pertinent part: ''No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.'' We find that the provisions included in 2019–20 NSR submittals would ensure equivalent or greater emission reductions as compared to the current SIP-approved NSR program in the nonattainment areas under ADEQ's jurisdiction. Further, this action does not modify any pre-1990 requirements applicable to nonattainment areas. For the reasons set forth above, our proposed approval of the 2019–20 NSR submittals is consistent with section 193 of the Act.

F. Conclusion

As discussed in detail above, we propose to find that the ADEQ has corrected all remaining deficiencies identified as the bases for limited disapproval in our 2015 NSR action and the basis for our conditional approval in our 2018 Major NSR action. In addition, we reviewed all other changes the ADEQ made to its NSR program in the submitted rules for consistency with CAA requirements to ensure that no new disapproval issues have been created. With the corrections and demonstrations discussed above, our prior limited disapproval in 2015 and conditional approval in 2018 will become a full approval of the ADEQ's minor NSR program, PSD program, and NNSR program, and we are proposing full approval of the 2019–20 NSR submittals. The new and revised rules evaluated herein meet the applicable CAA requirements. Our proposed action would have the effect of updating the ADEQ's SIP-approved NSR program and correcting previously identified deficiencies and recognizing that the ADEQ's NSR program requirements also satisfy the CAA visibility requirements in 40 CFR 51.307.

III. Public Comment and Proposed Action

Pursuant to section 110(k)(3) of the CAA and for the reasons provided above, the EPA is proposing to approve the revisions to the ADEQ portion of the Arizona SIP that govern the issuance of permits for stationary sources, under section 110(a)(2)(C) of the Act and parts C and D of title I of the Act. Specifically, the EPA is proposing to approve the new and amended ADEQ regulations listed in Table 1 of this preamble, as a revision to the ADEQ portion of the Arizona SIP. In addition, the EPA is proposing to remove the existing SIP-approved rules listed in Table 2 of this preamble. Further, for the West Central Pinal and Nogales $PM_{2.5}$ nonattainment areas, the sanctions and sanctions clock triggered by our 2016 $PM_{2.5}$ precursor action under CAA section 179 would be permanently terminated on the effective date of our final approval of the Ammonia $PM_{2.5}$ NSR submittal. Finally, we are also proposing that the ADEQ's SIP-approved program meets the visibility requirements in 40 CFR 51.307 for NSR programs and are proposing to remove the existing visibility FIPs for sources subject to review under the ADEQ's SIP-approved PSD or NNSR

[19] See 40 CFR 52.144(a) and (b).

[20] See 83 FR 42214 (September 20, 2018); including ''Technical Support Document for Notice of Final Rulemaking: Evaluation of Arizona's Infrastructure SIP for 2010 NO2 and 2010 SO_2'' July 30. 2018 (document ID number EPA–R09–OAR–2015–0472–0042), 24–28.

permitting program. We are proposing this action because we find that the 2019–20 NSR submittals meet the applicable requirements under parts C and D of title I of the CAA, and that our action is consistent with sections 110(a)(2), 110(l) and 193 of the Act.

We will accept comments from the public on this proposal until January 22, 2021. If we take final action to approve the 2019–20 NSR submittals, our final action will incorporate the identified rule(s) into the federally enforceable SIP.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the ADEQ rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 8, 2020.

John Busterud,

Regional Administrator, Region IX.

[FR Doc. 2020–27952 Filed 12–22–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2020–0695; FRL–10018–78–Region 7]

Air Plan Approval; Missouri; Removal of Kansas City, Missouri Reid Vapor Pressure Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of revision to the Missouri State Implementation Plan (SIP), submitted by the Missouri Department of Natural Resources (MoDNR) on September 15, 2020. The proposed revision removes the Kansas City, Missouri low Reid Vapor Pressure (RVP) requirement which required gasoline sold in the Kansas City, Missouri area to have a seven pounds per square inch Reid Vapor Pressure from June 1 to September 15. The majority of the state is subject to the Clean Air Act (CAA) nine pounds per square inch Reid Vapor Pressure from June 1 to September 15. If approved the Kansas City, Missouri area would be subject to the Clean Air Act Reid Vapor Pressure requirement. In addition, EPA anticipates issuing a separate proposal for the Kansas side of the Kansas City metro area.

DATES: Comments must be received on or before January 22, 2021.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2020–0695 to *https://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jed Wolkins, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7588; email address: *wolkins.jed@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2020–0695, at *https://www.regulations.gov*. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

II. What is being addressed in this document?

The EPA is proposing to approve a revision to the Missouri SIP, submitted by the MoDNR on September 15, 2020. The proposed revision removes the Kansas City, Missouri; Clay, Jackson, and Platte Counties; seven pounds per square inch (psi) Reid Vapor Pressure (RVP) requirement. The approved SIP, 10 CSR 10–2.330, requires gasoline sold in the three counties to have an RVP of seven psi or less from June 1 through September 15.[1] If the SIP revision is approved, the Kansas City, Missouri area would be subject to the CAA RVP requirement of nine psi or less from June 1 through September 15.[2] Missouri has asked EPA to remove 10 CSR 10–2.330, Control of Gasoline Reid Vapor Pressure from the SIP.

III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from February 18, 2020 to April 2, 2020 and received three comments. Missouri adequately responded to the comments but did not change the removal based on the comments. In addition, as explained below, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. Background

The EPA established a 1-hour ozone NAAQS in 1971.[3] 36 FR 8186 (April 30, 1971). On March 3, 1978, the EPA designated Clay, Platte and Jackson counties (hereinafter referred to in this document as the ''Kanas City area'') in nonattainment of the 1971 1-hour ozone NAAQS, as required by the CAA Amendments of 1977. 43 FR 8962 (March 3, 1978). On February 8, 1979, the EPA revised the 1-hour ozone NAAQS, referred to as the 1979 ozone NAAQS. 44 FR 8202 (February 8, 1979).

The EPA redesignated the Kansas City area to attainment of the 1979 1-hour ozone standard and approved the ozone maintenance plan on July 23, 1992. 57 FR 27939 (June 23, 1992). Pursuant to section 175A of the CAA, the first 10-year maintenance period for the 1-hour ozone standard began on July 23, 1992, the effective date of the redesignation approval.

In 1995, the Kansas City area violated the 1979 1-hour ozone standard. Missouri revised the control strategy and contingency measures in the maintenance plan, which was approved on June 24, 2002. 67 FR 20036 (April 24, 2002). The revised control strategy included 10 CSR 10–2.330, *Control of Gasoline Reid Vapor Pressure*.

On January 1, 1997, Missouri adopted the seven and two tenths (7.2) pounds per square inch (psi) Reid Vapor Pressure (RVP) limit from June 1 to September 15.[4] EPA approved this rule into the SIP on April 24, 1998.[5] On April 3, 2001, Missouri revised the rule to seven (7.0) psi limit from June 1 to September 15.[6] EPA approved this rule into the SIP on February 13, 2002.[7]

On April 30, 2004, the EPA published a final rule in the **Federal Register** stating the 1979 ozone NAAQS would no longer apply (*i.e.,* would be revoked) for an area one year after the effective date of the area's designation for the 8-hour ozone NAAQS. 69 FR 23951 (April 30, 2004). The Kansas City Area was designated as an unclassifiable area for the 1997 8-hour ozone NAAQS, effective June 15, 2004. *See id.* However, on May 3, 2005, EPA published a final rule designating the Kansas City area as an attainment area for the 1997 8-hour ozone NAAQS based on new monitoring data. *See* 70 FR 22801 (May 3, 2005). The effective date of the revocation of the 1979 1-hour ozone standard for the Kansas City area was June 15, 2005. *See* 70 FR 44470 (August 3, 2005). Missouri achieved the required maintenance of the 1979 1-hour ozone standard in 2014.

On September 15, 2020, Missouri requested that the EPA remove 10 CSR 10–2.330 from the SIP. Section 110(l) of the CAA prohibits EPA from approving a SIP revision that interferes with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA.

V. What is the EPA's analysis of Missouri's SIP request?

EPA is making the preliminary determination that the ozone NAAQS is the primary focus for the noninterference demonstration required by section 110(l) of the CAA because the RVP requirements result primarily in emissions benefits for VOCs and NO_X. VOCs and NO_X emissions are precursors for ozone. NO_X emissions are precursors for particulate matter. NO_2 is a component of NO_X. There are no emissions reductions attributable to the emissions of carbon monoxide (CO), lead and sulfur dioxide (SO_2) from RVP requirements.

In Missouri's September 15, 2020 submission the State provided a technical demonstration to support the request to remove Missouri's 7.0 psi RVP requirement from the active measures portions of the Missouri SIP. In that technical demonstration, Missouri provided Motor Vehicle Emissions Simulator (MOVES) results,

[1] The Missouri rule allows an additional one psi for gasoline containing 9 to 10% ethanol.

[2] The CAA allows an additional one psi for gasoline containing up to 15% ethanol.

[3] The 1-hour ozone NAAQS was originally promulgated as a photochemical oxidant standard. See 36 FR 8186 (April 30, 1971). In 1979, the EPA substituted the word ''ozone'' for ''photochemical oxidant''. See 44 FR 8202 (February 8, 1979). In doing so, the EPA stated that ''(t)he intent of the standard (total-oxidant reduction), the control strategies, and the index of Progress toward attainment (measured ozone levels) remain unchanged.'' Id. at 8203.

[4] The Missouri rule allowed an additional one psi for gasoline containing 9 to 10% ethanol.

[5] 63 FR 20318.

[6] The Missouri rule allows an additional one psi for gasoline containing 9 to 10% ethanol.

[7] 67 FR 6658.

modeling the emissions of VOCs and NO_X associated with changing the high ozone season RVP requirements from the state-level requirement of 7.0 psi to the federal requirement of 9.0 psi. EPA evaluated the state's assumptions and inputs used in MOVES, and EPA finds the state analysis is appropriate. Specifically, MDNR compared what the projected emissions in the year 2020 (the year the program is requested to be rescinded) would be, assuming a RVP level of 7.0 psi and 9.0 psi, respectively, in two separate modeling simulations. The comparison revealed an increase in emissions of 0.17 tons for NO_X and 0.71 tons for VOC, per ozone season day, would result from the change to the federal requirement from June 1 through September 15. While the modeling showed a slight increase in NO_X and VOC emissions resulting from the use of 9.0 psi RVP as opposed to 7.0 psi, the most appropriate analysis is whether emissions in the future years would increase and potentially interfere with maintenance of the NAAQS. The State compared actual emissions from 2017 using a RVP of 7.0 psi to emissions modelled for the years 2020 using a RVP of 9.0 psi. Table 1 below provides the results of this analysis.

TABLE 1—COMPARATIVE EMISSIONS FOR CHANGE TO RVP

	2017 7.0 psi RVP (tons per ozone season day)	2020 7.0 psi RVP (tons per ozone season day)	2020 9.0 psi RVP (tons per ozone season day)	Decrease in 2020 9.0 psi RVP compared to 2017 7.0 psi RVP (tons per ozone season day)
NO_X	57.01	43.51	43.68	13.33
VOC	31.25	28.11	28.82	2.43

As Table 1 indicates, NO_X and VOC emissions in the Kansas City Area would decrease from 2017 to 2020, even with the increase due to ozone season fuel RVP of 9.0 psi. The modeling demonstration shows the slight increase in emissions is being mitigated area-wide by a steady decrease in tailpipe emissions. This is the result of a cleaner new vehicle fleet replacing the older fleet[8] and the decrease in the sulfur content in gasoline as required by EPA's Tier 3 motor vehicle emission and fuel standards, which were implemented beginning on January 1, 2017.[9]

The Kansas City, Missouri area is designated attainment/unclassifiable or attainment for the 1979, 1997, 2008, and 2015 ozone standards. While the 1979 maintenance plan is approved into the SIP, the 1979 NAAQS has been revoked for the Kansas City area. There are no other ozone maintenance plans for the Kansas City area in the SIP. The highest monitor design value in the Kansas City area is 68 parts per billion (ppb), which is below the 2015 ozone NAAQS of 70 ppb.[10] Based on the state's modeling analysis, along with air quality data, EPA is making the preliminary determination that the slight increase in NO_X and VOC emissions resulting from the use of 9.0 psi RVP fuel will not interfere with the Kansas City area's ability to maintain the ozone NAAQS, or any other applicable requirement. The EPA is making this determination based on MOVES modeling that indicates that on-road VOC and NO_X emissions in 2020 with gasoline meeting the 9.0 psi RVP requirement remain below the emissions levels in 2017, a year in which the area's design value was also below the 2015 ozone standard of 70 ppb.

The Kansas City area is designated as attainment or unclassifiable for the 2006 24-hour $PM_{2.5}$, 2012 annual $PM_{2.5}$, 1971 annual NO_2, and 2010 1-hour NO_2 standards. There are no maintenance plans for any of these standards. The highest $PM_{2.5}$ design value is 75% of the standard. The highest NO_2 design value is 50% of the standard. As discussed above the area has a decrease from 2017 to 2020 in NO_X and VOC emissions. Based on this data together with air quality data, EPA is making the preliminary determination that the slight increase in NO_X and VOC emissions in 2020 and the downward trend in on-road VOC and NO_X emissions resulting from this change will not interfere with the Area's ability to maintain the any $PM_{2.5}$ or NO_2 NAAQS, or any other applicable requirement.

The Platte and Clay Counties of the Kansas City area are designated as attainment or unclassifiable for the SO_2 standards. Jackson county is designated as nonattainment. There are no maintenance plans for any of these standards. The most recent (2017–2019) highest SO_2 design value is in Jackson County and is less than 15% of the standard. The RVP standard has no effect on SO_2 emissions. Based on this data together with air quality data, EPA is making the preliminary determination that the change will not interfere with the Area's ability to attain or maintain the SO_2 NAAQS, or any other applicable requirement.

The Kansas City area is designated as attainment or unclassifiable for the CO and lead standards. There are no maintenance plans for any of these standards. The highest CO design value is less than 20% of the standard. There is no lead monitoring in the area. The RVP standard has no effect on CO or lead emissions. Based on this data together with air quality data, EPA is making the preliminary determination that the change will not interfere with the area's ability to maintain the CO or lead NAAQS, or any other applicable requirement. EPA is making the preliminary determination that the change will not interfere with reasonable progress towards natural visibility in Missouri's Class 1 areas nor any Class 1 area in another state Missouri impacts.

VI. What action is the EPA taking?

We are proposing to approve Missouri's removal of the state RVP requirement from the SIP for the Kansas City, Missouri area. As discussed above the removal of the RVP requirement will not affect the area's ability to attain or maintain any air quality standard. We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

VII. Incorporation by Reference

In this document, the EPA is proposing to amend regulatory text that includes incorporation by reference. As described in the proposed amendments to 40 CFR part 52 set forth below, the EPA is proposing to remove provisions of the EPA-Approved Missouri

[8] As vehicle owners purchase new vehicles, the older vehicles slowly are removed from the vehicles on the road. A used vehicle maybe purchased and driven by several owner, but eventually the older, more polluting vehicles are removed from the road. Manufactures' fleets in 1994 are allowed 0.6 gram/mile NO_X emissions. Manufactures' fleets in 2004 are allowed 0.07 gram/mile Nox emissions. Manufactures' fleets in 2025 will be allowed 0.03 gram/mile NO_X emissions.

[9] Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards (See 79 FR 23414, April 28, 2014.)

[10] Based on the most recent quality assured data design values (2017–2019).

Regulations from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 14, 2020.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

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–AA Missouri

§ 52.1320 [Amended]

■ 2. In § 52.1320, the table in paragraph (c) is amended by removing the entry ''10–2.330'' under the heading ''Chapter 2-Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area''.

■ 3. In § 52.1323, paragraph (n) is revised to read as follows:

§ 52.1323 Approval status.

* * * * *

(n) Missouri rule 10 CSR 10–2.330 was rescinded on January 22, 2021.

* * * * *

[FR Doc. 2020–28119 Filed 12–22–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2020–0053; FRL–10017–71]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities (November 2020)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before January 22, 2021.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the pesticide petition (PP) of interest as shown in the body of this document, by one of the following methods:

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

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

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

II. What action is the Agency taking?

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

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov.* As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

New Tolerance Exemptions for Non-Inerts (Except PIPS)

1. *PP* 9F8781. EPA–HQ–OPP–2019–0515. Valent BioSciences LLC, 870 Technology Way, Libertyville, IL 60048, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the plant regulator 1-Aminocyclopropanecarboxylic acid (ACC) in or on apple and stone fruit. The analytical methods Ultra High-Performance Liquid Chromatography-Tandem Mass Spectrometry is available to EPA for the detection and measurement of the pesticide residues.

2. *PP* 9F8802. (EPA–HQ–OPP–2020–0328). Certis USA LLC, 9145 Guilford Rd., Suite 175, Columbia, MD 21046, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the insecticide Spodoptera frugiperdamultiplenucleopolyhedrovirusisolate NPV003 in or on all food commodities. The petitioner believes no analytical method is needed because it is requesting an exemption from the requirement of a tolerance.

New Tolerance Exemptions for PIPS

PP 0F8839. (EPA–HQ–OPP–2020–0546). Bayer CropScience LP, 800 N. Lindbergh Blvd., St. Louis, MO 63167, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 174 for residues of the plant-incorporated protectants (PIPs) Cry1B.868 and Cry1DA_7 proteins derived from *Bacillus thuringienisis* in or on the food and feed commodities of corn, field; corn, sweet; and corn, pop. The petitioner believes no analytical method is needed because this petition is for a permanent exemption from the requirement of a tolerance without numerical limitation.

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

Dated: November 24, 2020.

Delores Barber,

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

[FR Doc. 2020–28123 Filed 12–22–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 13

[Docket No. DOT–OST–2020–0229]

RIN 2105–AE97

Procedures for Considering Environmental Impacts

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Notification of denial of request for extension of comment period.

SUMMARY: This document denies the request to extend the comment period on the U.S. Department of Transportation (DOT) notice of proposed rulemaking (NPRM) on Procedures for Considering Environmental Impacts. This NPRM contains the Department's procedures implementing the National Environmental Policy Act and outlines the Department's internal policies and procedures for environmental reviews of DOT's actions. The NPRM was published in the **Federal Register** on November 23, 2020.

DATES: The closing date for comments on the notice of proposed rulemaking published on November 23, 2020 (85 FR 74640), remains December 23, 2020.

ADDRESSES: You may review the petitions to extend the public comment period and other comments under Docket Number DOT–OST–2020–0229 through the Federal Regulations website at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: April Marchese, Director, Infrastructure Permitting Improvement Center, 202–366–2074, *april.marchese@dot.gov,* or Krystyna Bednarczyk, Office of the General Counsel, 202–366–5283, *krystyna.bednarczyk@dot.gov.*

SUPPLEMENTARY INFORMATION: On November 23, 2020, the U.S. Department of Transportation (DOT or Department) issued a notice of proposed rulemaking (NPRM) (85 FR 7460) to codify the Department's procedures implementing the National Environmental Policy Act (NEPA). This NPRM would codify internal policies applicable to the Department's performance of environmental reviews. The NPRM would direct the Department's Operating Administrations to update their procedures consistent with regulations issued by the Council on Environmental Quality (CEQ), 40 CFR parts 1500–1508, and the Department's own implementing procedures, when finalized. The Department's existing procedures, which are contained in an internal order, have not been updated since 1985 and are inconsistent with current practice, and thus, modifications and changes are needed to make DOT's regulations consistent with intervening statutory and policy changes. This NPRM would codify existing processes and policies and ensure consistency with CEQ regulations published in July 2020 and effective as of September 14, 2020 (85 FR 43304 (July 16, 2020)).

To date, DOT has received four petitions to extend the comment period, each asking for different lengths of an extension. Petitioners note that the comment period for the NPRM coincides with the holiday season. In addition, petitioners cite the coronavirus disease (COVID–19) public health emergency as an unprecedented circumstance necessitating the extension of the comment period.

While DOT appreciates the concerns raised by the petitioners, we decline to extend the comment period for this rulemaking. The changes proposed by the NPRM would incorporate best practices, codify internal processes, provide conforming updates based on CEQ regulations, and provide consistency across the Department. The NPRM does not propose major discretionary changes to the way the Department analyzes the effects of proposed actions or ranges of alternatives; nor would the NPRM modify any analyses done in the Section 4(f) analysis.

DOT believes there is a strong interest in the timely issuance of these procedures to allow for the DOT Operating Administrations to issue their own procedural updates in accordance with the CEQ regulations. CEQ regulations at 40 CFR 1507.3(b) require Federal agencies to develop or revise, as necessary, procedures to implement the CEQ regulations, including eliminating any inconsistencies with the CEQ regulations by September 14, 2021. Before that date, DOT must review comments received on this pending NPRM and, based on the comments received, develop a final rule that would set the minimum standard for all of the Department's procedures to follow. Once this NPRM is finalized, DOT Operating Administrations can begin to update their own procedures, many of which will also require notice and an opportunity for public comment before they can also be finalized. Individuals will have the opportunity to comment further on these implementing procedures, which will be more detailed than this NPRM and specifically tailored to the unique environmental programs overseen by each DOT Operating Administration.

The Department further acknowledges that DOT administrative policy provides that ''*Generally, absent special considerations,* the comment period for . . . significant DOT rules *should be* at least 45 days'' (emphasis added) (49 CFR 5.13(i)(3)). For the reasons cited above, DOT found special considerations exist that necessitate a comment period less than 45 days for this NPRM, which was designated significant by the Office of Management and Budget. DOT therefore denies the petitions to extend the comment period.

Issued in Washington, DC, on December 18, 2020, under authority delegated in 49 CFR 1.23.

Steven G. Bradbury,

General Counsel (and performing the functions and duties of Deputy Secretary).

[FR Doc. 2020–28467 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–9X–P

Notices

Federal Register
Vol. 85, No. 247
Wednesday, December 23, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Freedom of Information/Privacy Act Requests

AGENCY: U.S. Agency for International Development.

ACTION: Notice of information collection renewal.

SUMMARY: U.S. Agency for International Development (USAID), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information 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.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments regarding the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), 725 7th Street NW, Washington, DC 20543. Attention: Desk Officer for USAID.

FOR FURTHER INFORMATION CONTACT: Alecia Sillah, Supervisory FOIA Team Lead, Bureau for Management, Office of Management Services, Information and Records Division, U.S. Agency for International Development, Washington, DC 20523–2701; tel. 202–916–4660.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this collection is to enable the U.S. Agency for International Development to locate applicable records and to respond to requests made under the Freedom of Information Act and the Privacy Act of 1974. Information includes sufficient personally identifiable information and/or source documents as applicable. Failure to provide the required information may result in no action being taken on the request. Authority to collect this information is contained in 5 U.S.C. 552, 5 U.S.C. 552a, and 22 CFR 212-Subpart M.

II. Method of Collection

Paper.

III. Data

Title: Certification of Identity.
OMB Number: OMB 0412–0589.
Form Number: AID Form 507–1.
Title: Certification of Identity.
Type of Review: Renewal.
Affected Public: Individuals.
Estimated Number of Respondents: 600.
Estimated Total Annual Burden Hours: 9,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of USAID, including whether the information collected has practical utility; (2) the accuracy of USAID's estimate of the burden (including both hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. The comments will also become a matter of public record.

Dated: December 17, 2020.

Alecia S. Sillah,

Supervisory FOIA Team Lead, Bureau for Management, Office of Management Services, Information and Records Division, U.S. Agency for International Development.

[FR Doc. 2020–28359 Filed 12–22–20; 8:45 am]

BILLING CODE 6116–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–20–ELECTRIC–0048]

Financial Support for Transmission and Distribution Lines To Pump Stations 15, 16, 17, 18, and 19 in Connection With the TransCanada Keystone XL Pipeline

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of a Record of Decision.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Rural Utilities Service (RUS) has prepared a Record of Decision. This Record of Decision (ROD) is for the construction of transmission and distribution lines and associated facilities to service five pump stations for the TransCanada XL Keystone Pipeline in South Dakota. By this notice, the RUS is announcing the availability of the Record of Decision.

DATES: The Administrator of the Rural Utilities Service signed the Record of Decision on November 13, 2020.

ADDRESSES: For copies of the ROD or for further information, contact: Dennis Rankin, email *Dennis.Rankin@usda.gov.* The ROD is available for review online at *https: https://www.rd.usda.gov/resources/environmental-studies.*

SUPPLEMENTARY INFORMATION:

TransCanada Keystone XL Pipeline LP (Keystone) filed its original Presidential Permit application with the Department of State in 2008. An Environmental Impact Statement for the proposed pipeline project was finalized in August 2011 (2011 EIS). The U.S. Department of State served as the Lead Federal Agency. In April 2012, Keystone proposed a new pipeline route in Nebraska to avoid the Sand Hills region of Nebraska, and in May 2012 applied for a second Presidential Permit. The Department of State evaluated the new proposed pipeline route as well as two

alternative routes in its 2014 Supplemental Environmental Impact Statement (SEIS). The proposed alternative of the 2014 SEIS encompassed RUS's action area. The Secretary of State issued the Presidential Permit in March 2017.

In 2019, the Department of State supplemented the 2014 SEIS with the 2019 SEIS to evaluate impacts of the proposed Mainline Alternative Route in Nebraska, a route modification to the 2014 SEIS preferred alternative. The 2019 SEIS also updated greenhouse gas and climate change analysis, revised the methodology for the accidental release analysis, updated the market analysis, evaluated new information related to cultural resources, and included an impact analysis specifically related to electrical power infrastructure. RUS, along with The U.S. Department of the Interior's Bureau of Land Management, U.S. Army Corps of Engineers, and the Western Area Power Administration (WAPA), has served as a Cooperating Agency in the 2011 EIS and the 2014 and 2019 SEISs.

RUS has considered a proposal from Grand Electric Cooperative, Inc. to provide distribution and transmission lines to supply power to pump stations 15, 16, 17, and a proposal from West Central Electric Cooperative, Inc. to provide distribution and transmission lines to supply power to pump stations 18 and 19. Pump stations 15–19 are located entirely within the State of South Dakota. The substations will be built by the cooperatives and/or WAPA and financed by Keystone. WAPA will provide for the interconnections for the transmission facilities for Pump Stations7, 18 and 19.

RUS has adopted the 2014 and 2019 SEISs, and the Record of Decision to support its financing decisions for transmission and distribution lines to supply pump stations in South Dakota. RUS's actions related to providing financing for transmission and distribution for Pump Stations 15–19, were evaluated as connected actions related to TransCanada Keystone Pipeline, LP to proposal construct, operate, maintain, and (eventually) decommission the Keystone XL Pipeline in South Dakota. The Record of Decision was signed on November 13, 2020.

Chad Rupe,

Administrator, Rural Utilities Service.

[FR Doc. 2020–28334 Filed 12–22–20; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Arkansas Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a meeting on Monday January 4, 2021 at 12:00 p.m. Central time. The Committee will discuss civil rights concerns in in the state as topics for future study. This is the first meeting of the newly appointed Committee (October 20, 2020).

DATES: The meeting will take place on Monday January 4, 2021 at 12:00 p.m. Central.

PUBLIC ACCESS INFORMATION:

- *Register online (Audio/visual): https://bit.ly/3r4GZhE.*
- *Phone access (audio only):* 800–360–9505 USA Toll Free; Access code: 199 784 5475.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may observe Committee meetings through the above online access link or call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons who are deaf, deafblind, or hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 618–4158.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Roll Call
Civil Rights in Arkansas
Future Plans and Actions
Public Comment
Adjournment

Dated: December 18, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–28339 Filed 12–22–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Alabama Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Alabama Advisory Committee (Committee) will hold a meeting via the web platform Webex on Tuesday, January 19, 2021 at 2:00 p.m. Central Time. The purpose of the meeting is for the committee to discuss civil rights concerns in the state.

DATES: The meetings will be held on:

- Tuesday, January 19, 2021, at 2:00 p.m. Central Time, *https://civilrights.webex.com/civilrights/j.php?MTID=me50b9abf7d830283470ed9760702fa91* or Join by phone 800–360–9505 USA Toll Free, Access code: 1404 3971 590.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 499–4066.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their

wireless plan. The Commission will not refund any incurred charges. 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 Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Alabama Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Chair's Comments
III. Committee Discussion
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: December 17, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–28289 Filed 12–22–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Kansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kansas Advisory Committee (Committee) will hold a meeting via the web platform Webex on Wednesday, January 13, 2021 at 11:00 a.m. Central Time. The purpose of the meeting is for the committee to discuss civil rights concerns in the state.

DATES: The meetings will be held on:

- Wednesday, January 13, 2021, at 11:00 a.m. Central Time, *https://civilrights.webex.com/civilrights/j.php?MTID=ma811b69fc3d05c595f62b58090df1ce8* or Join by phone 800–360–9505 USA Toll Free, Access code: 1999 5501 10.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 499–4066.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. 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 Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Chair's Comments
III. Committee Discussion
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: December 17, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–28291 Filed 12–22–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[11/26/2020 through 12/10/2020]

Firm name	Firm address	Date accepted for investigation	Product(s)
Gasket Engineering Company, Inc.	4500 East 75th Terrace, Kansas City, MO 64132.	12/4/2020	The firm manufactures gaskets.
Custom Vinyl Products, LLC ..	260 Enterprise Drive, Newport News, VA 23603.	12/8/2020	The firm manufactures windows and patio doors.
Machined Products Company d/b/a MPCO.	82 Pitney Road, Lancaster, PA 17605	12/9/2020	The firm manufactures miscellaneous metal parts.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE—Continued

[11/26/2020 through 12/10/2020]

Firm name	Firm address	Date accepted for investigation	Product(s)
Midwest Precision, Inc	9725 East Admiral Place, Tulsa, OK 74113 ..	12/10/2020	The firm manufactures miscellaneous metal parts and assemblies.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Bryan Borlik,

Director.

[FR Doc. 2020–28401 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836]

Light-Walled Rectangular Pipe and Tube From Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on light-walled rectangular pipe and tube from Mexico, covering the period August 1, 2018 through July 31, 2019. We preliminarily find that Regiomontana de Perfiles y Tubos S. de R.L. de C.V. (Regiopytsa) (successor-in-interest to Regiomontana de Perfiles y Tubos S.A. de C.V.) made sales of subject merchandise at less than normal value (NV) during the period of review (POR), and that Maquilacero S.A. de C.V. (Maquilacero) did not have sales of subject merchandise at less than normal value during the period of review. We are also rescinding this review for 12 companies where timely requests for withdrawals were filed by all parties who requested the reviews. We invite interested parties to comment on these preliminary results.

DATES: Applicable December 23, 2020.

FOR FURTHER INFORMATION CONTACT: Samuel Brummitt or John Conniff, 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) 482–7851 or (202) 482–1009, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2019, Commerce published in the **Federal Register** a notice of the initiation of the administrative review of the antidumping duty order [1] on light-walled rectangular pipe and tube from Mexico for 19 companies.[2] On October 22, 2019, we selected Maquilacero and Regiopytsa [3] for individual examination as the mandatory respondents in this administrative review.[4]

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[5] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[6] On June 11, 2020, we extended the deadline for the preliminary results to November 18, 2020.[7] The deadline for the preliminary results of this review is now December 16, 2020.

For a complete description of the events that followed the initiation of the review, *see* the Preliminary Decision Memorandum. 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. A list of topics included in the Preliminary Decision Memorandum is included in the Appendix to this notice.

Scope of the Order

The products covered by the scope of the order are certain light-walled rectangular pipe and tube from Mexico. For a complete description of the scope, *see* the Preliminary Decision Memorandum.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review

[1] *See Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value,* 73 FR 45403 (August 5, 2008) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 53411 (October 7, 2019) (*Initiation Notice*). The *Initiation Notice* listed 19 companies and 20 company names since it included both the current and former versions of Regiopytsa's company name.

[3] Based on the record evidence in this review, we are preliminarily finding Regiomontana de Perfiles y Tubos S. de R.L. de C.V. to be successor-in-interest to Regiomontana de Perfiles y Tubos S.A. de C.V. For additional information on Commerce's analysis regarding the successor-in-interest finding, *see* Memorandum, ''Decision Memorandum for the Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Light-Walled Rectangular Pipe and Tube from Mexico; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum) at 6.

[4] *See* Memorandum, ''2018–2019 Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Mexico: Respondent Selection,'' dated October 22, 2019 (Respondent Selection Memorandum) at 2–3

[5] *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.

[6] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[7] *See* Memorandum, ''Light-Walled Rectangular Pipe and Tube from Mexico: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review; 2018–2019,'' dated April 17, 2020.

withdraws the request within 90 days of the

date of publication of notice of initiation of the requested review. On January 6, 2020, Independence Tube Corporation, a Nucor company, and Southland Tube, Incorporated, a Nucor company, timely withdrew their requests for an administrative review on the following 12 companies: Arco Metal S.A. de C.V.; Galvak, S.A. de C.V.; Hylsa S.A. de C.V.; Industrias Monterrey S.A. de C.V.; Internacional de Aceros, S.A. de C.V.; Nacional de Acero S.A. de C.V.; PEASA-Productos Especializados de Acero; Talleres Acero Rey S.A. de C.V.; Ternium Mexico S.A. de C.V.; Tuberias Aspe S.A de C.V.; Tuberia Laguna, S.A. de C.V.; and Tuberias y Derivados S.A. de C.V. No other party requested a review of these 12 companies.[8] Accordingly, we are rescinding this review, in part, with respect to these companies, pursuant to 19 CFR 351.213(d)(1).

Methodology

Commerce is conducting this review in accordance with sections 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price was calculated in accordance with section 772 of the Act. Normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Rate for Non-Selected Companies

For the rate for companies not selected for individual examination in an administrative review, generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' In this segment of the proceeding, we calculated a margin for Regiopytsa that was not zero, *de minimis,* or based on total facts available. Accordingly, we have preliminarily applied the weighted-average dumping margin calculated for the non-examined companies in this review based on the weighted-average dumping margin calculated for Regiopytsa.

[8] *See* Preliminary Decision Memorandum at 2–3.

Preliminary Results of Review

We preliminarily determine that, for the period August 1, 2018 through July 31, 2019, the following weighted-average dumping margins exist:

Producer or exporter	Weighted-average dumping margin (percent)
Maquilacero S.A. de C.V. and Tecnicas de Fluidos S.A. de C.V	0.00
Regiomontana de Perfiles y Tubos S. de R.L. de C.V.[9]	5.44
Aceros Cuatro Caminos S.A. de C.V	5.44
Fabricaciones y Servicios de Mexico	5.44
Grupo Estructuras y Perfiles	5.44
Perfiles LM, S.A. de C.V	5.44
Productos Laminados de Monterrey S.A. de C.V	5.44

Disclosure and Public Comment

We will disclose to parties to the proceeding the calculations performed in connection with these preliminary results of review within five days after the date of publication of this notice.[10] Interested parties may submit case briefs not later than 30 days after the date of publication of this notice in the **Federal Register**.[11] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[12] Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[13] Case and rebuttal briefs should be filed using ACCESS.[14] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[15]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice.[16] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. 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.

Unless extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case and rebuttal briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

For individually examined respondents whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[17] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis.* If a respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review where applicable.

Regarding entries of subject merchandise during the period of review that were produced by Maquilacero and Regiopytsa and for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate of 3.76 percent, as established in

[9] We preliminarily find that Regiomontana de Perfiles y Tubos S. de R.L. de C.V. is the successor-in-interest to Regiomontana de Perfiles y Tubos S.A. de C.V. For further discussion, *see* the Preliminary Decision Memorandum.

[10] *See* 19 CFR 351.224(b).

[11] *See* 19 CFR 351.309(c)(1)(ii).

[12] *See* 19 CFR 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[13] *See* 19 CFR 351.309(c)(2) and (d)(2).

[14] *See* 19 CFR 351.303.

[15] *See Temporary Rule.*

[16] *See* 19 CFR 351.310(c).

[17] In these preliminary results, Commerce applied the assessment rate calculation methodology adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

the less-than-fair-value investigation, if there is no rate for the intermediate company(ies) involved in the transaction.[18] For a full discussion of this matter, *see Assessment Policy Notice.*[19]

For those companies which were not individually examined, we will instruct CBP to assess antidumping duties at an *ad valorem* rate equal to that companies weighted-average dumping margin as determined in the final results of this review.

In accordance with 19 CFR 356.8, we intend to issue liquidation instructions to CBP on or after 41 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or in the investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 3.76 percent.[20] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: December 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Partial Rescission of Administrative Review
V. Companies Not Selected for Individual Examination
VI. Successor-in-Interest
VII. Single Entity Treatment
VIII. Discussion of the Methodology
IX. Currency Conversion
X. Recommendation

[FR Doc. 2020–28347 Filed 12–22–20; 8:45 am]

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[18] *See Order,* 73 FR at 45405.

[19] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

[20] *See Order,* 73 FR at 45405.

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Results of the Second Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 10, 2020, the United States Court of International Trade (the Court) entered final judgment sustaining the final results of the second remand redetermination pursuant to court order by the Department of Commerce (Commerce) pertaining to the antidumping duty administrative review of multilayered wood flooring (MLWF) from the People's Republic of China (China) covering the period of review (POR), December 1, 2012 through November 30, 2013. Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's final results in the 2012–2013 administrative review of MLWF from China.

DATES: Applicable December 20, 2020

FOR FURTHER INFORMATION CONTACT: Aleksandras Nakutis, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC, 20230; telephone: (202) 482–3147.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2015, Commerce published the *Final Results* in the 2012–2013 administrative review of multilayered wood flooring from China in which Commerce assigned a rate of 13.74 percent to Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. (Senmao) and all separate rate respondents in the *Final Results*.[1] Commerce applied the weighted-average dumping margin of Senmao (the only mandatory respondent to receive a rate that was not *de minimis* or based solely on adverse facts available) to all parties eligible for a separate rate, pursuant to section 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act).[2]

Senmao and certain separate rate respondents appealed the *Final Results*. In its first remand order, the Court directed Commerce to reconsider or further explain certain of its surrogate value selections, its downward adjustment for irrevocable VAT, as well as its decision to deny voluntary respondent status to Fine Furniture (Shanghai) Limited (Fine Furniture).[3] Upon reconsidering these issues in the First Remand Redetermination, Commerce made certain changes and calculated a revised weighted-average dumping margin for Senmao and the separate rate companies.[4]

In Senmao II, the Court affirmed the First Remand Redetermination as it pertained to the surrogate value selections.[5] However, the Court found that Commerce's downward adjustment for irrevocable VAT was contrary to law in relying upon an unlawful interpretation of the Act.[6] The Court,

[1] *See Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012–2013*, 80 FR 41476 (July 15, 2015) (*Final Results*).

[2] *Id.*

[3] *See Jiangsu Senmao Bamboo and Wood Industry Co., Ltd., et al.* , v. *United States*, 322 F. Supp 3d 1308 (CIT 2018) (Senmao I).

[4] *See* Final Results of Redetermination Pursuant to Court Order, *Jiangsu Senmao Bamboo and Wood Industry Co., Ltd., et al.* , v. *United States*, dated June 3, 2019 (First Remand Redetermination).

[5] *See Jiangsu Senmao Bamboo and Wood Industry Co., Ltd., et al.*, v. *United States*, Court No. 15–00225. Slip Op. 20–31 (March 11, 2020) (Senmao II).

[6] *Id.*

thus, remanded the case, so that Commerce could correct the error regarding the downward adjustment for irrevocable VAT.

In the Second Remand Redetermination,[7] Commerce removed the downward adjustment for irrevocable VAT as directed by the Court and revised the weighted-average dumping margin for Senmao to 3.92 percent.[8] Additionally, because the rate for separate rate respondents was based entirely on Senmao's weighted-average dumping margin, Senmao's margin of 3.92 percent was applied to those separate rate respondents which were party to the litigation.

On December 10, 2020, the Court entered final judgment in Senmao III.[9] The Court sustained the Second Remand Redetermination excluding any downward adjustment for irrevocable VAT and revising the weighted-average dumping margin for Senmao and the other separate rate entities that are party to the litigation.

Timken Notice

In its decision in Timken, as clarified by Diamond Sawblades, the CAFC held that, pursuant to section 516A(e) of the Act, Commerce must publish a notice of a court decision that is not ''in harmony'' with Commerce's determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's December 10, 2020 final judgment affirming the Second Remand Redetermination [10] constitutes a final decision of the Court that is not in harmony with the *Final Results*.[11] This notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Determination

There is now a final court decision with respect to the *Final Results* with respect to the irrevocable VAT adjustment. Accordingly, Commerce is amending the *Final Results* and assigning the revised weighted-average dumping margin for Senmao and the separate rate respondents which are parties to the litigation. Additionally, Commerce is amending the revised weighted-average dumping margins for these companies as follows:

Exporter [12]	Weighted-average dumping margin (percent)
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd	3.92
Baishan Huafeng Wooden Product Co., Ltd., (aka Baishan Huafeng Wood Product Co., Ltd.)	3.92
Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd	3.92
Chinafloors Timber (China) Co., Ltd	3.92
Dalian Kemian Wood Industry Co., Ltd	3.92
Dalian Penghong Floor Products Co., Ltd	3.92
Dalien Qianqiu Wooden Product Co., Ltd	3.92
Dasso Industrial Group Co., Ltd	3.92
Dongtai Fuan Universal Dynamics, LLC	3.92
Dunhua City Hongyuan Wood Industry Co., Ltd	3.92
Dun Hua Sen Tai Wood Co., Ltd	3.92
Dunhua City Wanrong Wood Industry Co., Ltd	3.92
Fusong Jinlong Wooden Group Co., Ltd	3.92
Fusong Jinqiu Wooden Product Co., Ltd	3.92
Fusong Qianqiu Wooden Product Co., Ltd	3.92
Guangdong Yihua Timber Industry Co., Ltd	3.92
Guangzhou Panyu Kangda Board Co., Ltd	3.92
HaiLin LinJing Wooden Products, Ltd	3.92
Hangzhou Hanje Tec Co., Ltd	3.92
Hangzhou Zhengtian Industrial Co., Ltd	3.92
Hunchun Forest Wolf Wooden Industry Co., Ltd	3.92
Huzhou Chenghang Wood Co., Ltd	3.92
Huzhou Fulinmen Imp. & Exp. Co., Ltd	3.92
Jiafeng Wood (Suzhou) Co., Ltd	3.92
Jiangsu Guyu International Trading Co., Ltd	3.92
Jiangsu Kentier Wood Co., Ltd	3.92
Jiangsu Mingle Flooring Co., Ltd.[13]	3.92
Jiangsu Simba Flooring Co., Ltd.[14]	3.92
Jiashan HuiJiale Decoration Material Co., Ltd	3.92
Jilin Forest Industry Jinqiao Flooring Group Co., Ltd	3.92
Kemian Wood Industry (Kunshan) Co., Ltd	3.92
Metropolitan Hardwood Floors, Inc	3.92
Mudanjiang Bosen Wood Industry Co., Ltd	3.92
Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd	3.92
Nanjing Minglin Wooden Industry Co., Ltd	3.92
Puli Trading Limited	3.92
Shanghai Eswell Timber Co., Ltd	3.92
Shanghai Shenlin Corp	3.92
Shanghai Lizhong Wood Products Co., Ltd./The Lizhong Wood Industry Limited Company of Shanghai/Linyi Youyou Wood Co., Ltd	3.92
Shenyang Haobainian Wooden Co., Ltd	3.92
Shenzhenshi Huanwei Woods Co., Ltd	3.92
Suzhou Dongda Wood Co., Ltd.[15]	3.92
Tongxiang Jisheng Import and Export Co., Ltd	3.92
Xuzhou Shenghe Wood Co., Ltd	3.92
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd	3.92
Zhejiang Dadongwu Greenhome Wood Co., Ltd	3.92
Zheijiang Fudeli Timber Industry Co., Ltd	3.92
Zhejiang Fuma Warm Technology Co., Ltd	3.92
Zhejiang Longsen Lumbering Co., Ltd	3.92
Zhejiang Shiyou Timber Co., Ltd	3.92
Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd	3.92

Cash Deposit Requirements

Because Senmao and the separate rate companies have superseding cash deposit rates, *i.e.* , there have been final results published in a subsequent

[7] *See Final Results of Redetermination Pursuant to Court Order, Jiangsu Senmao Bamboo and Wood Industry Co., Ltd., et al.*, v. *United States*, dated May 8, 2020 (Second Remand Redetermination).

[8] *Id.*

[9] *See Jiangsu Senmao Bamboo and Wood Industry Co., Ltd., et al.* v. *United States*, Consol. Court No. 19–00225 (*Senmao III*). In *Senmao III*, the Court did not address a previous issue concerning Fine Furniture. However, on September 9, 2020, the Court granted Fine Furniture's request to dissolve its injunction covering subject entries during the POR, ECF No. 174, because Fine Furniture and Double F Limited are excluded from the order and no party sought appeal of *Changzhou Hawd Flooring Co.* v. *United States*, 947 F.3d 781 (Fed Cir. 2020) (affirming Fine Furniture and Double F Limited's exclusion from the order). Accordingly, because Fine Furniture and Double F Limited are excluded from the order, the issue regarding Fine Furniture is moot.

[10] *Id.*

[11] *See Final Results.*

[12] Imports of subject merchandise from the following are excluded: Produced and exported by Fine Furniture (Shanghai) Limited (Fine Furniture) and Double F Limited; produced and exported by Armstrong Wood Products (Kunshan) Co., Ltd. (Armstrong); and produced and exported by Dunhua City Jisen Wood Industry Co., Ltd. (Dunhua City Jisen).

[13] Commerce inadvertently omitted this company from the Second Remand Redetermination; however, this company is entitled to the revised rate as it was subject to the administrative review and was a party to litigation.

[14] Commerce inadvertently omitted this company from the Second Remand Redetermination; however, this company is entitled to the revised rate as it was subject to the administrative review and was a party to litigation.

[15] Commerce inadvertently omitted this company from the Second Remand Redetermination; however, this company is entitled to the revised rate as it was subject to the administrative review and was a party to litigation.

administrative review, this notice will not affect the current cash deposit rates.

Liquidation of Suspended Entries

If the Court's final judgment is not appealed, or if appealed and upheld, Commerce will instruct CBP to terminate the suspension of liquidation, and to liquidate and to assess duties at a rate of 3.92 percent for entries during the POR that were exported by the companies listed above.

On April 10, 2019, for Armstrong, and on July 24, 2020 and September 9, 2020, respectively, for Dunhua City Jisen and Fine Furniture, pursuant to Court order lifting the injunctions Commerce issued liquidation instructions to CBP instructing CBP to liquidate entries for the 2012–2013 POR without regard to duties given these companies' exclusion from the order.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 17, 2020.

Joseph A. Laroski Jr.,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2020–28400 Filed 12–21–20; 4:15 pm]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–996, A–428–843, A–588–872, A–580–872, A–401–809, A–583–851, C–570–997, C–583–852]

Non-Oriented Electrical Steel From People's Republic of China, Germany, Japan, Republic of Korea, Sweden, and Taiwan: Continuation of Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on non-oriented electrical steel (NOES) from People's Republic of China (China), Germany, Japan, Republic of Korea (Korea), Sweden, and Taiwan and revocation of the countervailing duty (CVD) orders on NOES from China and Taiwan would likely lead to a 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 these AD and CVD orders.

DATES: Applicable December 23, 2020.

FOR FURTHER INFORMATION CONTACT: Abdul Alnoor, Eva Kim, or Paola Aleman Ordaz, 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) 482–4554, (202) 482–8283, or (202) 482–4031, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2014, Commerce published in the **Federal Register** the notice of the AD orders on NOES from China, Germany, Japan, Korea, Sweden, and Taiwan [1] and the notice of the CVD orders on NOES from China and Taiwan.[2] On November 1, 2019, Commerce published the initiation of the first sunset reviews of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[3] Commerce conducted these sunset reviews on an expedited basis, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), because we received a complete, timely, and adequate response from a domestic interested party but no substantive responses from respondent interested parties.[4] As a result of Commerce's review, Commerce determined pursuant to sections 751(c)(1) and 752(c) of the Act, that revocation of the *AD Orders* would likely lead to a continuation or recurrence of dumping. Commerce also notified the ITC of the magnitude of the dumping margins likely to prevail should the *AD Orders* be revoked.[5] Commerce also determined, pursuant to sections 751(c)(1) and 752(b) of the Act, that revocation of the *CVD Orders* on NOES from China and Taiwan would be likely to lead to the continuation or recurrence of countervailable subsidies and notified the ITC of the magnitude of the subsidy rates likely to prevail should the *CVD Orders* be revoked.[6] On December 16, 2020, the ITC published notice of its determination, pursuant to section 751(c) of the Act, that revocation of the *Orders* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[7]

Scope of the Orders

The merchandise subject to the *Orders* consists of non-oriented electrical steel (NOES), which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term ''substantially equal'' means that the cross-grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.

[1] *See Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71741 (December 3, 2014) (*AD Orders*).

[2] *See Non-Oriented Electrical Steel From the People's Republic of China and Taiwan: Countervailing Duty Orders,* 79 FR 71749 (December 3, 2014) (*CVD Orders*) (collectively, *Orders*).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 58687 (November 1, 2019).

[4] *See* Domestic Interested Party's Substantive Responses, ''Five Year ('Sunset') Review of Antidumping Duty Order on Non-Oriented Electrical Steel From the People's Republic of China: Domestic Interested Party Substantive Response,'' dated November 27, 2019; ''Five Year ('Sunset') Review Of Antidumping Duty Order On Non-Oriented Electrical Steel From Germany: Domestic Interested Party Substantive Response,'' dated November 27, 2019; ''Five-Year ('Sunset') Review Of Antidumping Duty Order On Non-Oriented Electrical Steel From The Republic of Korea: Domestic Interested Party Substantive Response,'' dated November 27, 2019; ''Five-Year ('Sunset') Review Of Antidumping Duty Order On Non-Oriented Electrical Steel From Japan: Domestic Interested Party Substantive Response,'' dated November 27, 2019; ''Five Year ('Sunset') Review Of Antidumping Duty Order On Non-Oriented Electrical Steel From Sweden: Domestic Interested Party Substantive Response,'' dated November 27, 2019; ''Five Year ('Sunset') Review of Antidumping Duty Order on Non-Oriented Electrical Steel From Taiwan: Domestic Interested Party Substantive Response,'' dated November 27, 2019.

[5] *See* Non-Oriented Electrical Steel From People's Republic of China, Germany, Japan, Republic of Korea, Sweden, and Taiwan: Final Results of Expedited First Sunset Reviews of Antidumping Duty Orders, 85 FR 11337 (February 27, 2020) (Final Results).

[6] *See Non-Oriented Electrical Steel From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 85 FR 11339 (February 27, 2020); *Non-Oriented Electrical Steel From Taiwan: Final Results of the Expedited Five-Year Sunset Review of the Countervailing Duty Order,* 85 FR 13135 (March 6, 2020).

[7] *See Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden, and Taiwan,* (Investigation Nos. 701–TA–506 and 508 and 731–TA–1238–1243), 85 FR 81486, (December 16, 2020).

NOES is subject to the *Orders* whether it is fully processed (*i.e.,* fully annealed to develop final magnetic properties) or semi-processed (*i.e.,* finished to final thickness and physical form but not fully annealed to develop final magnetic properties). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS) specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404–8–4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of the *Orders* is not limited to merchandise meeting the ASTM, JIS, and IEC specifications noted immediately above.

NOES is sometimes referred to as cold-rolled non-oriented (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO) electrical steel. These terms are interchangeable.

Excluded from the scope of the *Orders* are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the Harmonized Tariff Schedule of the United States (HTSUS) as a part (*i.e.,* lamination) for use in a device such as a motor, generator, or transformer.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the HTSUS. Subject merchandise may also be entered under subheadings 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Order*s would likely lead to a continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next sunset review 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) and of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: December 17, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–28403 Filed 12–22–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that Shantou Red Garden Food Processing Co., Ltd. (Shantou RGFP) is not the successor in interest to Red Garden Food Processing Co., Ltd. Additionally, we find that that Shantou RGFP and Shantou Red Garden Foodstuff Co., Ltd. (collectively, Shantou Red Garden Foods) made sales of certain frozen warmwater shrimp (shrimp) from the People's Republic of China (China) at less than normal value during the period of review (POR) February 1, 2018 through January 31, 2019.

DATES: Applicable December 23, 2020.

FOR FURTHER INFORMATION CONTACT: Jasun Moy, 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.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of the administrative review of the antidumping duty order on shrimp from China on March 5, 2020.[1] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[2] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[3] Commerce extended the deadline for the final results further by 60 days on October 2, 2020.[4] The deadline for the final results of this review is now December 21, 2020. For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[5]

Scope of the Order [6]

The scope of the *Order* includes certain frozen warmwater shrimp and prawns, whether wild caught (ocean harvested) or farm raised (produced by aquaculture), head on or head off, shell on or peeled, tail on or tail off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form. For a full description of the scope, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and Decision Memorandum. A list of the issues raised by interested parties and to which we responded in the Issues and Decision Memorandum is provided in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete

[1] *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019,* 85 FR 12894 (March 5, 2020) (*Preliminary Results*).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated July 22, 2020.

[4] *See* Memorandum, ''Frozen Warmwater Shrimp from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, 2018–2019,'' dated October 2, 2020.

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People's Republic of China,* 70 FR 5149 (February 1, 2005) (*Order*).

version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Issues and Decision Memorandum are identical in content.

Affiliation and Single Entity Determination

On April 29, 2020, Commerce preliminarily found that Shantou RGFP and Shantou Red Garden Foodstuff Co., Ltd. are affiliated pursuant to section 771(33) of the Tariff Act of 1930, as amended (the Act) and should be treated as a single entity for purposes of this antidumping duty proceeding pursuant to 19 CFR 351.401(f).[7] No interested party commented on this treatment of Shantou Red Garden Foods, and this finding remains unchanged for these final results.

Final Determination of No Shipments

In the *Preliminary Results,* we found no evidence calling into question the no-shipment claims of the following companies: (1) Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd.; (2) Allied Pacific Food (Dalian) Co., Ltd.; and (3) Allied Pacific (HK) Co., Ltd. No parties commented on this preliminary decision. For the final results of this review, we continue to find that these companies had no shipments of subject merchandise to the United States during the POR.

Changes Since the *Preliminary Results*

After evaluating the comments received from interested parties and record information, we have made two changes to the *Preliminary Results.* First, we have elected to use Shantou Red Garden Foods' most recently-submitted factors of production (FOP) database in calculating its final weighted-average dumping margin. Second, we have determined that the use of partial adverse facts available (AFA), pursuant to sections 776(a)–(b) of the Act, is appropriate when determining the weighted-average distance of shrimp suppliers to Shantou Red Garden Foods' factory. For a more detailed discussion of these changes, *see* the Final Analysis Memorandum.[8]

Separate Rate

In the *Preliminary Results,* we found that information placed on the record by Shantou Red Garden Foods demonstrated that this entity is entitled to separate rate status, which we preliminarily granted.[9] The American Shrimp Processors Association (ASPA) argued that Shantou Red Garden Foods failed to fully cooperate in responding to Commerce's questions regarding its ownership, control, and history, and that, as a result, Commerce should find that Shantou Red Garden Foods' information is unreliable, rendering it ineligible for a separate rate.[10] For the final results, we continue to find that Shantou Red Garden Foods is eligible for a separate rate. For a more detailed discussion of this issue, *see* Issues and Decision Memorandum.

Final Results of the Review

Commerce determines that the following weighted-average dumping margin exists for the period February 1, 2018 through January 31, 2019:

Exporter	Weighted-average dumping margin (percent)
Shantou Red Garden Food Processing Co., Ltd./Shantou Red Garden Foodstuff Co., Ltd	58.96

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[11] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review and the entity's rate (*i.e.,* 112.81 percent) is not subject to change.[12]

Aside from the no-shipment and separate rate companies discussed above, Commerce considers all other companies for which a review was requested (none of which filed a separate rate application) to be part of the China-wide entity.[13] This includes Shantou Yuexing Enterprise Company, a company that is under review that had previously been granted a separate rate[14] but that failed to submit either a no shipment certification or a separate rate certification in this review. No parties commented on this preliminary decision. For the final results of this review, we continue to find that these companies (identified in Appendix II) should be treated as part of the China-wide entity.

Assessment Rates

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates for merchandise subject to this review. We calculated importer (or customer)-specific assessment rates for merchandise subject to this review on a per-unit (*i.e.,* per-kilogram) basis. Specifically, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to that importer (or customer) and divided this amount by the total quantity sold to that importer (or customer) during the POR. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculate importer- (or customer-) specific *ad valorem* ratios based on the estimated entered value. If an importer (or customer)-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), Commerce will instruct CBP to liquidate that importer's (or customer's) entries of subject merchandise without regard to antidumping duties.

For entries that were not reported in the U.S. sales data submitted by Shantou Red Garden Foods during this review, Commerce will instruct CBP to

[7] *See* Memorandum, ''Affiliation and Collapsing of Shantou Red Garden Food Processing Co., Ltd. with Shantou Red Garden Foodstuff Co., Ltd.,'' dated April 29, 2020.

[8] *See* Memorandum, ''Final Analysis Memorandum for Shantou Red Garden Food Processing Co., Ltd. and Shantou Red Garden Foodstuff Co., Ltd.,'' dated concurrently with, and hereby adopted by, this notice (Final Analysis Memorandum).

[9] *See Preliminary Results,* 85 FR at 12895.

[10] *See* ASPA's Case Brief, ''Certain Frozen Warmwater Shrimp from China: ASPA's Case Brief,'' dated May 13, 2020 at 3–19.

[11] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[12] *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 57872 (September 26, 2014).

[13] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 18777, 18777–78, (May 2, 2019) (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving {non-market economy} countries must complete, as appropriate, either a separate rate application or certification, as described below''). Companies that are subject to this administrative review that are considered to be part of the China-wide entity are identified in Appendix II.

[14] *See, e.g., Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014,* 79 FR 75787 (December 19, 2014).

liquidate such entries at the rate for the China-wide entity.[15]

Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review in the **Federal Register**.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For Shantou Red Garden Foods, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate published for the completed segment of the most recent period; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (this includes Shantou Yuexing Enterprise Company); and (4) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a final 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.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: December 17, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

Appendix II

Companies Receiving the China-Wide Rate [16]

Asian Seafoods (Zhanjiang) Co., Ltd.
Beihai Anbang Seafood Co., Ltd.
Beihai Boston Frozen Food Co., Ltd.
Beihai Tianwei Aquatic Food Co. Ltd.
Changli Luquan Aquatic Products Co., Ltd.
Dalian Beauty Seafood Company Ltd.
Dalian Haiqing Food Co., Ltd.
Dalian Home Sea International Trading Co., Ltd.
Dalian Rich Enterprise Group Co., Ltd.
Dalian Shanhai Seafood Co., Ltd.
Dalian Taiyang Aquatic Products Co., Ltd.
Dandong Taihong Foodstuff Co., Ltd.
Food Processing Co., Ltd.
Fujian Chaohui Aquatic Food Co., Ltd.
Fujian Chaohui Group
Fujian Chaohui International Trading Co., Ltd.
Fujian Dongshan County Shunfa Aquatic Product Co., Ltd.
Fujian Dongya Aquatic Products Co., Ltd.
Fujian Fuding Seagull Fishing Food Co., Ltd.
Fujian Hainason Trading Co., Ltd.
Fujian Haohui Import & Export Co., Ltd.
Fujian Rongjiang Import and Export Co., Ltd.
Fujian Zhaoan Haili Aquatic Co., Ltd.
Fuqing Chaohui Aquatic Food Co., Ltd.
Fuqing Dongwei Aquatic Products Ind.
Fuqing Dongwei Aquatic Products Industry Co., Ltd.
Fuqing Longhua Aquatic Food Co., Ltd.
Fuqing Minhua Trade Co., Ltd.
Fuqing Yihua Aquatic Food Co., Ltd.
Guangdong Foodstuffs Import & Export (Group) Corporation.
Guangdong Gourmet Aquatic Products Co., Ltd.
Guangdong Jinhang Food Co., Ltd.
Guangdong Universal Aquatic Food Co. Ltd.
Guangdong Wanshida Holding Corp.
Guangdong Wanya Foods Fty. Co., Ltd.
HaiLi Aquatic Product Co., Ltd. Zhaoan Fujian.
Hainan Brich Aquatic Products Co., Ltd.
Hainan Golden Spring Foods Co., Ltd.
Huazhou Xinhai Aquatic Products Co. Ltd.
Leizhou Bei Bu Wan Sea Products Co., Ltd.
Longhai Gelin Foods Co., Ltd.
Maoming Xinzhou Seafood Co., Ltd.
New Continent Foods Co., Ltd.
North Seafood Group Co.
Penglai Huiyang Foodstuff Co., Ltd.
Qingdao Fusheng Foodstuffs Co., Ltd.
Qingdao Yihexing Foods Co., Ltd.
Qinhuangdao Gangwan Aquatic Products Co., Ltd.
Rizhao Rongxing Co. Ltd.
Rizhao Smart Foods Company Limited.
Rongcheng Yinhai Aquatic Product Co., Ltd.
Rushan Chunjiangyuan Foodstuffs Co.
Rushan Chunjiangyuan Foodstuffs Co., Ltd.
Savvy Seafood Inc.
Shanghai Zhoulian Foods Co., Ltd.
Shantou Freezing Aquatic Product Foodstuffs Co.
Shantou Jiazhou Food Industrial Co., Ltd.
Shantou Jintai Aquatic Product Industrial Co., Ltd.
Shantou Longsheng Aquatic Product Foodstuff Co., Ltd.
Shantou Ocean Best Seafood Corporation.
Shantou Ruiyuan Industry Co., Ltd.
Shantou Wanya Foods Fty. Co., Ltd.
Shantou Yuexing Enterprise Company.
Thai Royal Frozen Food Zhanjiang Co., Ltd.
Xiamen Granda Import and Export Co., Ltd.
Yangjiang Dawu Aquatic Products Co., Ltd.
Yangjiang Haina Datong Trading Co.
Yantai Wei Cheng Food Co., Ltd.
Yantai Wei-Cheng Food Co., Ltd.
Zhangzhou Donghao Seafoods Co., Ltd.
Zhangzhou Xinwanya Aquatic Product Co., Ltd.
Zhangzhou Yanfeng Aquatic Product & Foodstuff Co., Ltd.
Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.
Zhanjiang Fuchang Aquatic Products Freezing Plant.

[15] *See* 19 CFR 351.212(b)(1).

[16] We removed all companies that are excluded from the order even though entries that are not exporter-producer specific to the exclusion language would fall under the rate assigned to the China-wide entity.

Zhanjiang Longwei Aquatic Products Industry Co., Ltd.
Zhanjiang Newpro Foods Co., Ltd.
Zhanjiang Universal Seafood Corp.
Zhaoan Yangli Aquatic Co., Ltd.
Zhejiang Xinwang Foodstuffs Co., Ltd.
Zhoushan Genho Food Co., Ltd.
Zhoushan Green Food Co., Ltd.

[FR Doc. 2020–28402 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–889]

Dioctyl Terephthalate From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Hanwha Chemical Corporation (Hanwha Chemical) made sales of subject merchandise at less than normal value (NV) during the August 1, 2018 through July 31, 2019 period of review (POR). Commerce preliminarily determines that sales of subject merchandise have not been made below NV by Aekyung Petrochemical Co., Ltd. (AKP) and LG Chem Ltd. (LG Chem) during the POR. Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable December 23, 2020.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Patrick Barton, 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) 482–0012, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2019, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the antidumping duty (AD) order on dioctyl terephthalate (DOTP) from the Republic of Korea (Korea), covering three companies: AKP, Hanwha Chemical, and LG Chem.[1] Hanwha Chemical informed Commerce that it would not be participating in the review on January 3, 2020.[2]

On April 21, 2020, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), Commerce extended the preliminary results deadline by 118 days.[3] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[4] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[5] The deadline for these preliminary results is now December 16, 2020.

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6]

Scope of the Order

The merchandise covered by this order is DOTP, regardless of form. DOTP that has been blended with other products is included within this scope when such blends include constituent parts that have not been chemically reacted with each other to produce a different product. For such blends, only the DOTP component of the mixture is covered by the scope of this order. Subject merchandise is currently classified under subheading 2917.39.2000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheadings 2917.39.7000 or 3812.20.1000 of the HTSUS. While the Chemical Abstract Service (CAS) registry number and HTSUS classification are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. *See* the Preliminary Decision Memorandum for a full description of the scope of the order.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Act. We calculated export price and constructed export price in accordance with section 772 of the Act. We calculated NV in accordance with section 773 of the Act. For a full description of the methodology underlying our calculations, *see* the Preliminary Decision Memorandum.

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 electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as the Appendix to this notice.

Application of Facts Available with Adverse Inferences

Pursuant to section 776(a) of the Act, Commerce is preliminarily relying upon facts otherwise available to determine a weighted-average dumping margin for Hanwha Chemical in this review. Commerce preliminarily finds that necessary information is not available on the record, and that Hanwha Chemical withheld information requested by Commerce, failed to provide the requested information in the form and manner requested, and significantly impeded the proceeding, warranting a determination on the basis of the facts available under section 776(a) of the Act. Further, Commerce preliminarily determines that Hanwha Chemical failed to cooperate to the best of its ability, and thus, Commerce is applying facts available with adverse inferences (AFA) to Hanwha Chemical, in accordance with section 776(b) of the Act. For a full description of the methodology underlying our conclusions regarding the application of AFA, *see* the Preliminary Decision Memorandum.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the following weighted-average dumping margins for the period August 1, 2018 through July 31, 2019:

Exporter or producer	Weighted-average dumping margin (percent)
Aekyung Petrochemical Co., Ltd	0.00

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 53411 (October 7, 2019) (*Initiation Notice*).

[2] *See* Memorandum, ''Notification from Hanwha Chemical Corp. Regarding Decision to Not Participate in the 2018–2019 Administrative Review of Dioctyl Terephthalate from the Republic of Korea,'' dated January 6, 2020.

[3] *See* Memorandum, ''Dioctyl Terephthalate from the Republic of Korea: Extension of Deadline for Preliminary Results of the 2018–2019 Antidumping Duty Administrative Review,'' dated April 21, 2020.

[4] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[5] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2018–2019 Antidumping Duty Administrative Review: Dioctyl Terephthalate from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Exporter or producer	Weighted-average dumping margin (percent)
Hanwha Chemical Corporation ..	22.97
LG Chem, Ltd	0.00

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.

For any individually examined respondents whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) or not based entirely on AFA, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[7] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis.* If a respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. In accordance with our practice, for entries of subject merchandise during the POR for which a respondent did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[8] Further, because Hanwha Chemical withdrew its participation from this review, we will instruct CBP to apply an assessment rate equal to the dumping margin of 22.97 percent, as indicated above, to all entries produced and/or exported by Hanwha Chemical. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[9]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this or a previously completed review, or in the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recent segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.69 percent, the all-others rate established in the LTFV investigation.[10]

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[11] Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[12] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[13] Parties who submit case briefs or rebuttal briefs in this proceeding 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.[14] Case and rebuttal briefs should be filed using ACCESS.[15]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[16] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[17]

Commerce intends to issue the final results of this administrative review, including the results of its analysis raised in any written briefs, not later than 120 days after the publication of these preliminary results in the **Federal Register**, unless otherwise extended.[18]

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[7] In these preliminary results, Commerce applied the assessment rate calculation methodology adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[8] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[9] *See* section 751(a)(2)(C) of the Act.

[10] *See Dioctyl Terephthalate from the Republic of Korea: Antidumping Duty Order,* 82 FR 39410 (August 18, 2017).

[11] *See* 19 CFR 351.224(b).

[12] *See* 19 CFR 351.309(c)(1)(ii).

[13] *See* 19 CFR 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] *See* 19 CFR 351.303.

[16] *See* 19 CFR 351.310(c).

[17] *Id.*

[18] *See* section 751(a)(3)(A) of the Act.

[FR Doc. 2020–28335 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA732]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Ecosystem Subcommittee of the Pacific Fishery Management Council's (Pacific Council's) Scientific and Statistical Committee (SSC) will hold an online meeting to consult with the NMFS California Current Integrated Ecosystem Assessment (CCIEA) team on how COVID–19 impacts may affect its annual Ecosystem Status Report to the Pacific Council. The meeting is open to the public.

DATES: The SSC Ecosystem Subcommittee's online meeting will be held Tuesday, January 12, 2021, beginning at 9 a.m. Pacific Standard Time and continuing until 1 p.m. or until business for the day has been completed.

ADDRESSES: The SSC Ecosystem Subcommittee meeting will be an online meeting. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2413.

SUPPLEMENTARY INFORMATION: The purpose of the SSC Ecosystem Subcommittee meeting is to discuss impacts of the COVID–19 pandemic with the CCIEA team and how such impacts might affect its annual Ecosystem Status Report to the Pacific Council. The topics to be discussed are:

- Adjustments to forage time series analyses to ensure consistency with previous years' data;
- Environmental driver: Biological response thresholds analysis; and
- Groundfish distribution, port availability shifts, and impacts to catch portfolios.

The SSC Ecosystem Subcommittee members' role will be development of recommendations and reports for consideration by the SSC and the Pacific Council at the March 2021 Pacific Council meeting.

Although nonemergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the SSC Ecosystem Subcommittee to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, (503) 820–2412, at least 10 days prior to the meeting date.

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

Dated: December 17, 2020.

Rey Israel Marquez,

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

[FR Doc. 2020–28293 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA734]

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of availability of reports; public meetings, and hearings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) has begun its annual preseason management process for the 2021 ocean salmon fisheries. This document announces the availability of Pacific Council documents, as well as the anticipated dates and locations of upcoming Pacific Council meetings and public hearings hosted by the Pacific Council. These documents and events comprise the Pacific Council's complete schedule for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April 2021 Pacific Council meetings will be published in subsequent **Federal Register** documents prior to the actual meetings.

DATES: Written comments on the salmon management alternatives must be submitted through the Pacific Council's e-portal (*https://pfmc.psmfc.org.*) and received by the public comment deadline prior to the April 2021 Council meeting. Information will be available on the Pacific Council's website (*http://www.pcouncil.org.*) as the date for the April Council meeting approaches.

ADDRESSES: Documents will be available upon request from the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280 (voice) or (503) 820–2299 (fax).

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Ehlke, telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION:

Tentative Schedule for Document Completion and Availability

February 16, 2021: ''Review of 2020 Ocean Salmon Fisheries, Stock Assessment and Fishery Evaluation Document for the Pacific Coast Salmon Fishery Management Plan'' is scheduled to be posted on the Pacific Council website at *http://www.pcouncil.org.*

March 1, 2021: ''Preseason Report I—Stock Abundance Analysis and Environmental Assessment Part 1 for 2021 Ocean Salmon Fishery Regulations'' is scheduled to be posted on the Pacific Council website at *http://www.pcouncil.org.*

March 22, 2021: ''Preseason Report II—Proposed Alternatives and Environmental Assessment Part 2 for 2021 Ocean Salmon Fishery Regulations.'' The report will include a description of the adopted salmon management alternatives and a summary of their biological and economic impacts. The public hearings schedule will also be included on the inside cover of the report and will be

posted on the Pacific Council website at *http://www.pcouncil.org.*

April 22, 2021: ''Preseason Report III—Council-Adopted Management Measures and Environmental Assessment Part 3 for 2021 Ocean Salmon Fishery Regulations'' is scheduled to be posted on the Pacific Council website at *http://www.pcouncil.org.*

May 16, 2021: Federal regulations for 2021 ocean salmon regulations are published in the **Federal Register** and implemented.

Meetings and Hearings

January 19–22, 2021: The Salmon Technical Team (STT) will meet online in a public work session to draft ''Review of 2020 Ocean Salmon Fisheries, Stock Assessment and Fishery Evaluation Document for the Pacific Coast Salmon Fishery Management Plan'' and to consider any other estimation or methodology issues pertinent to the 2021 ocean salmon fisheries. The STT may also discuss additional topics and work as time allows, including but not limited to the Fishery Management Plan (FMP) Amendment 20, inclusion of Pacific Council-adopted southern resident killer whale management measures to the salmon FMP, potential impacts to fishery management due to COVID–19 in 2020, and ecosystem or administrative matters on the Pacific Council's March and April 2021 meetings.

February 16–19, 2021: The STT will meet online in a public work session to draft ''Preseason Report I—Stock Abundance Analysis and Environmental Assessment Part 1 for 2021 Ocean Salmon Fishery Regulations'' and to consider any other estimation or methodology issues pertinent to the 2021 ocean salmon fisheries. The STT may also discuss additional topics as time allows, including but not limited to the FMP Amendment 20, inclusion of Council-adopted southern resident killer whale management measures to the salmon FMP, potential impacts to fishery management due to COVID–19 in 2020, and ecosystem or administrative matters on the Pacific Council's March and April 2021 meetings.

March 23–24, 2021: Three public hearings will be held online to receive comments on the proposed 2021 ocean salmon fishery management alternatives adopted by the Pacific Council. Each public hearing will be state-specific and begin at 7 p.m. Public hearings focusing on Washington and California salmon fisheries will occur simultaneously on March 23, and the public hearing for Oregon salmon fisheries will occur on March 24. A summary of oral comments heard at the hearings will be provided to the Pacific Council at its April meeting. Written comments on the salmon management alternatives must be submitted through the Pacific Council's e-portal (*https://pfmc.psmfc.org.*).

Specific meeting information, including instructions on how to join the meeting and system requirements will be provided in meeting announcements on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Although non-emergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt *(kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: December 17, 2020.

Rey Israel Marquez,

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

[FR Doc. 2020–28292 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA729]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Northeast Trawl Advisory Panel (NTAP) will hold a public meeting.

DATES: The meeting will be held on Thursday, January 14, 2021, from 10 a.m. to 3 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar, which can be accessed at: *http://mafmc.adobeconnect.com/ntap_jan_2021/.* Meeting audio can also be accessed via telephone by dialing 1–800–832–0736 and entering room number 5068609.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Advisory Panel to (1) review the NTAP charter, (2) recap use of chainsweep efficiency work, (3) recap use of swept area in assessments, (4) recap the NTAP research priorities vote, (5) document and discuss concerns with NEFSC Bottom Trawl Survey, (6) discuss ways to address concerns with NEFCS Bottom Trawl Survey, (7) develop a list of NTAP research priorities to vote on, and (8) discuss other business.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: December 17, 2020.

Rey Israel Marquez,

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

[FR Doc. 2020–28294 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA666]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 71 South Atlantic Gag Grouper Assessment Webinar III.

SUMMARY: The SEDAR 71 assessment of the South Atlantic stock of gag grouper will consist of a data webinar and a series assessment webinars.

DATES: The SEDAR 71 Gag Grouper Assessment Webinar III has been scheduled for Thursday, January 14, 2021, from 9 a.m. to 12 p.m., EDT.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/3102956364955419152.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 71 Gag Grouper Assessment Webinar III are as follows:

- Discuss data issues as needed
- Discuss modeling issues as needed

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 17, 2020.

Rey Israel Marquez,

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

[FR Doc. 2020–28297 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA633]

Fishing Capacity Reduction Program for the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands Non Pollock Groundfish Fishery

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

ACTION: Notice of fee rate adjustment.

SUMMARY: NMFS issues this notice to inform the public that there will be an increase of the fee rate required to repay the $35,000,000 reduction loan financing the non-pollock groundfish fishing capacity reduction program. Effective January 1, 2021, NMFS is increasing the Loan A fee rate to $0.024 per pound to ensure timely repayment of the loan. The fee rate for Loan B will remain unchanged at $0.001 per pound. The increased Loan A fee rate is due to the 20 percent decrease in non-pollock groundfish Total Allowable Catch (TAC) for 2021.

DATES: The non-pollock groundfish program fee rate increase will begin with landings on January 1, 2021. The first due date for fee payments with the increased rate will be February 15, 2021.

ADDRESSES: Send questions about this notice to Elaine Saiz, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Elaine Saiz, (301) 427–8752.

SUPPLEMENTARY INFORMATION:

Background

Sections 312(b)–(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861 *et seq.*) generally authorizes fishing capacity reduction programs. In particular, section 312(d) authorizes industry fee systems for repaying reduction loans which finance reduction program costs. Subpart L of 50 CFR part 600 is the framework rule generally implementing section 312(b)–(e). Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) generally authorize reduction loans.

Enacted on December 8, 2004, section 219, Title II, of FY 2005 Appropriations Act, Public Law 104–447 (Act) authorizes a fishing capacity reduction program implementing capacity reduction plans submitted to NMFS by catcher processor subsectors of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery (reduction fishery) as set forth in the Act.

The longline catcher processor subsector (Longline Subsector) is among the catcher processor subsectors eligible to submit to NMFS a capacity reduction plan under the terms of the Act. The longline subsector non-pollock groundfish reduction program's objective was to reduce the number of vessels and permits endorsed for longline subsector of the non-pollock groundfish fishery. All post-reduction fish landings from the reduction fishery are subject to the longline subsector non-pollock groundfish program's fee.

NMFS proposed the implementing notice on August 11, 2006 (71 FR 46364), and published the final notice on September 29, 2006 (71 FR 57696). NMFS allocated the $35,000,000 reduction loan (A Loan) to the reduction fishery and this loan is repayable by fees from the fishery.

On September 24, 2007, NMFS published in the **Federal Register** (72 FR 54219), the final rule to implement the industry fee system for repaying the non-pollock groundfish program's reduction loan and established October 24, 2007, as the effective date when fee collection and loan repayment began. The regulations implementing the program are located at § 600.1012.

NMFS published a final rule to implement a second $2,700,000 reduction loan (B Loan) for this fishery in the **Federal Register** on September 24, 2012 (77 FR 58775). The loan was disbursed December 18, 2012 with fee collection of $0.001 per pound to begin January 1, 2013. This fee is in addition to the A Loan fee.

Purpose

The purpose of this notice is to adjust the fee rate for the reduction fishery in accordance with the framework rule's § 600.1013(b). Section 600.1013(b) directs NMFS to recalculate the fee rate that will be reasonably necessary to ensure reduction loan repayment within the specified 30 year term.

NMFS has determined for the reduction fishery that the current fee rate of $0.021 per pound is less than that needed to service the A Loan. Therefore, NMFS is increasing the Loan A fee rate to $0.024 per pound which NMFS has determined is sufficient to ensure timely loan repayment. The fee rate for Loan B will remain $0.001 per pound.

Subsector members may continue to use *Pay.gov* to disburse collected fee deposits at: *http://www.pay.gov/paygov/*.

Please visit the NMFS website for additional information at: *https://www.fisheries.noaa.gov/national/funding-and-financial-services/longline-catcher-processor-subsector-bering-sea-and-aleutian-islands-non-pollock.*

Notice

The new fee rate for the non-pollock groundfish fishery will begin on January 1, 2021.

From and after this date, all subsector members paying fees on the non-pollock groundfish fishery shall begin paying non-pollock groundfish fishery program fees at the revised rate.

Fee collection and submission shall follow previously established methods in § 600.1013 of the framework rule and in the final fee rule published in the **Federal Register** on September 24, 2007 (72 FR 54219).

Authority: 16 U.S.C. 1861 *et seq.;* Pub. L. 108–447.

Dated: December 17, 2020.

Brian T. Pawlak,

Chief Financial Officer/Chief Administrative Officer, Director, Office of Management and Budget, National Marine Fisheries Service.

[FR Doc. 2020–28361 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 200918–0249]

RIN 0648–BJ52

Endangered and Threatened Species; Critical Habitat for the Threatened Indo-Pacific Corals, Public Hearings and Extension of Public Comment Period

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

ACTION: Notice of public hearings, extension of comment period.

SUMMARY: We, NMFS, will hold two public hearings related to our proposed rule to designate critical habitat for seven threatened corals in U.S. waters in the Indo-Pacific (*Acropora globiceps, Acropora jacquelineae, Acropora retusa, Acropora speciosa, Euphyllia paradivisa, Isopora crateriformis,* and *Seriatopora aculeata*) under the Endangered Species Act (ESA). We are also extending the public comment period for this proposed rule by 30 days to February 25, 2021.

DATES: Public hearings on the proposed rule to designate critical habitat for the seven threatened Indo-Pacific corals will be held online on the following dates, during the early evening hours of the affected jurisdictions (Guam, the Commonwealth of the Northern Mariana Islands, American Samoa). Times are given in Chamorro Standard Time (GMT+10:00), Samoa Standard Time (GMT–11:00), and Hawaii Standard Time (GMT–10:00).

- The first hearing is scheduled for the early evening in Guam and the Commonwealth of the Northern Mariana Islands, from 4 to 7 p.m. Chamorro Standard Time on Wednesday, January 20, 2021 (7 to 10 p.m. Samoa Standard Time on Tuesday, January 19, 2021, and 8 to 11 p.m. Hawaii Standard Time on Tuesday, January 19, 2021).
- The second hearing is scheduled for the early evening in American Samoa, from 4 to 7 p.m. Samoa Standard Time on Thursday, January 21, 2021 (1 to 4 p.m. Chamorro Standard Time on Friday, January 22, 2021, and 5 to 8 p.m. Hawaii Standard Time on Thursday, January 21, 2021).

Since the hearings will be held online, any member of the public can join by internet or phone regardless of location. Instructions for joining the hearings are provided under **ADDRESSES** below.

The proposed rule to designate critical habitat for the seven ESA-listed corals was issued on November 27, 2020 (85 FR 76262), and provided for a public comment period to end on January 26, 2021. The comment period is now extended 30 days and will close on February 25, 2021. Comments must be received by February 25, 2021, as specified under **ADDRESSES**. Comments received after this date may not be accepted.

ADDRESSES: Both public hearings will be conducted as Webex meetings. You may join the Webex meetings using a web browser, the Webex desktop app (app installation required), a mobile app on a phone (app installation required), or audio-only using just a phone call, as specified below.

- To join the first hearing, click on the link *https://noaanmfs-meets.webex.com/noaanmfs-meets/onstage/g.php?MTID=ecfe01efe62d246f452d3bf93c907008a* Password: ''coral''. If you do not have internet access, you may join by phone: US Toll +1–415–527–5035 Access code: 199 477 7805
- To join the second hearing, click on link *https://noaanmfs-meets.webex.com/noaanmfs-meets/onstage/g.php?MTID=e616fdb7791fad92917495cd0002b23bd* Password: ''coral''. If you do not have internet access, you may join by phone: US Toll +1–415–527–5035 Access code: 199 394 4864

More information about the public hearings is provided under **SUPPLEMENTARY INFORMATION**. You may submit comments verbally or in writing at the public hearings, or in writing by any of the following methods. Comments must be received by February 25, 2021:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0131* click the ''Comment Now'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Lance Smith, Protected Resources Division, NMFS, Pacific Islands Regional Office, NOAA Inouye Regional Center, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: You must submit comments by one of the previously described methods to ensure that we receive, document, and consider them. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Lance Smith at *lance.smith@noaa.gov* or 808–725–5131, or Layne Bolen at *layne.bolen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On November 27, 2020, NMFS proposed to designate critical habitat for seven Indo-Pacific corals listed as threatened under the ESA within U.S. waters in Guam, the Commonwealth of the Northern Mariana Islands (CNMI), American Samoa, and the Pacific Remote Island Area (PRIA). The seven species are *Acropora globiceps, A. jacquelineae, A. retusa, A. speciosa, Euphyllia paradivisa, Isopora crateriformis,* and *Seriatopora aculeata.* Proposed coral critical habitat consists of substrate and water column habitat characteristics essential for the reproduction, recruitment, growth, and maturation of the listed corals.

Proposed critical habitat consists of 17 separate units, each of which contains all ESA-listed corals that occur there: There are four units in American Samoa (Tutuila, Ofu-Olosega, Ta'u, Rose Atoll); seven in CNMI (Rota, Aguijan, Tinian, Saipan, Anatahan, Pagan, and Maug Islands); five in PRIA (Howland, Palmyra, Kingman, Johnston, and Jarvis Islands); and one unit encompassing all proposed designations in Guam. Between one and six listed corals occur in each unit. The following areas are either ineligible for proposed critical habitat, or excluded because of national security impacts: A complex of overlapping Navy Surface Danger Zones off of Ritidian Point in Guam, other parts of Guam, parts of Tinian, a group of six Navy anchorage berths on Garapan Bank in Saipan, all of Farallon de Medinilla, and all of Wake Atoll.

Critical habitat protections apply only to Federal actions under Section 7 of the ESA; activities that are not funded, authorized, or carried out by a Federal agency are not subject to these protections. The proposed rule and other materials prepared in support of this action, including maps showing the proposed critical habitat, are available at: *https://www.fisheries.noaa.gov/action/proposed-rule-designate-critical-habitat-threatened-indo-pacific-corals.* We are accepting public comments for the proposed rule through February 25, 2021. Public comments can be submitted as described under **ADDRESSES**.

Public Hearings

The two public hearings will be conducted online as Webex meetings, as specified in **ADDRESSES** above. More detailed instructions for joining the Webex meetings are provided on our web page *https://www.fisheries.noaa.gov/action/proposed-rule-designate-critical-habitat-threatened-indo-pacific-corals.* If you do not have internet access, you may join by phone at the numbers listed in **ADDRESSES** above.

Each hearing will follow the same format and cover the same material. The hearings will begin with a brief presentation by NMFS that gives an overview of critical habitat under the ESA and a summary of proposed coral critical habitat in Guam, CNMI, American Samoa, and PRIA. After the presentation but before public comments, there will be a question and answer session during which members of the public may ask NMFS staff questions about proposed coral critical habitat. Following the question and answer session, members of the public will have the opportunity to provide oral comments on the record regarding proposed coral critical habitat. Members of the public will also have the opportunity to submit written comments at the hearings. Written comments may also be submitted at any time during the relevant public comment period as described under **ADDRESSES**. All oral comments will be recorded, transcribed, and added to the public comment record for this proposed rule.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 18, 2020.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–28434 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA728]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Advisory Subpanel (HMSAS) and HMS Management Team (HMSMT) will conduct online meetings, which are open to the public.

DATES: The HMSMT will hold an online meeting on Friday, January 15, 2021, from 9 a.m. to 12 p.m., Pacific Time. The HMSMT and HMSAS will meet jointly from 1:30 p.m. to 4:30 p.m., or until business is completed, on the same day.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2280, extension 412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service (NMFS) is seeking clarifications on the Pacific Council's September 2019 proposal to authorize deep-set buoy gear and specifically criteria the Pacific Council identified for individuals to receive a permit under the proposed limited entry permit program to use the gear in the Southern California Bight. The HMSMT will first meet to discuss

options for Pacific Council consideration in drafting its clarifications for NMFS. The HMSMT will then discuss these options to the HMSAS. Based on that discussion, the HMSMT will report to the Pacific Council at its March 2021 meeting on its recommendations. The HMSAS may also comment to the Pacific Council on the HMSMT recommendations at that time. The HMSMT and HMSAS may also discuss other relevant items scheduled on the Pacific Council's March 2021 meeting agenda, time permitting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*; (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: December 17, 2020.

Rey Israel Marquez,

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

[FR Doc. 2020–28295 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA712]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Groundfish Electronic Monitoring Policy Advisory Committee and Technical Advisory Committee (Committees) will hold three online meetings, which are open to the public.

DATES: The meetings will be held Wednesday, January 20, 2021, from 9 a.m. to 4 p.m.; Thursday, January 21, 2021, from 9 a.m. to 12 p.m.; and Thursday, February 25, 2021, from 9 a.m. to 4 p.m., Pacific Standard Time, or until business for each day is completed.

ADDRESSES: These meetings will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, Staff Officer, Pacific Council; *Brett.L.Wiedoff@noaa.gov;* telephone: (503) 820–2424.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to discuss materials and develop recommendations that are scheduled to be considered during the March 2021 Pacific Council meeting. Specifically, the Committees will discuss recommendations for further development of the draft electronic monitoring (EM) guidance documents and EM provider manual for West Coast groundfish fisheries. The Committees may also discuss other items on the Pacific Council's March agenda, particularly administrative matters.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2412 at least 10 business days prior to the meeting date.

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

Dated: December 17, 2020.

Rey Israel Marquez,

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

[FR Doc. 2020–28296 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA717]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Northeast Fisheries Science Center Fisheries and Ecosystem Research, Atlantic Ocean

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

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Northeast Fisheries Science Center (NEFSC) for regulations and associated Letter of Authorization (LOA) to take small numbers of marine mammals incidental to fishery and ecosystem research in the Atlantic Ocean over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the NEFSC's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the NEFSC's application and request.

DATES: Comments and information must be received no later than January 22, 2021.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Electronic comments should be sent to *ITP.Daly@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments

received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401. An electronic copy of the NEFSC's application may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On September 2, 2020, NMFS received application from the NEFSC requesting authorization to take marine mammals incidental to fisheries and ecosystem research in the Atlantic Ocean. The NEFSC submitted revised applications on November 19, 2020, and December 3, 2020. We determined the application was adequate and complete on December 9, 2020. The requested regulations and LOA would be valid for five years, from September 10, 2021 through September 9, 2026.

The NEFSC plans to conduct fisheries and ecosystem research surveys in the Atlantic Ocean from Greenland to Florida with the majority of research occurring in the Northern Living Marine Ecosystem (NLME). It is possible that marine mammals may interact with fishing gear (*e.g.,* trawl nets, longlines) used in NEFSC's research, resulting in serious injury or mortality. In addition, the NEFSC operates active acoustic devices that have the potential to disturb marine mammals (Level B harassment). Because the specified activities have the potential to take marine mammals present within the Atlantic Ocean, NEFSC requests regulations and a LOA authorizing take by mortality, serious injury, and Level B harassment.

The requested incidental take regulations and LOA would be the second issued to NEFSC, following regulations and a LOA valid from 2016–2021. To date, NEFSC has complied with all requirements of the previously issued LOA (effective September 10, 2016 through September 9, 2021) and has not exceeded the authorized take numbers. Monitoring reports submitted by NEFSC are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-noaa-fisheries-nefsc-fisheries-and-ecosystem-research.*

Specified Activities

The Federal Government has a responsibility to conserve and protect living marine resources in U.S. Federal waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine fin and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed management decisions, Congress created six Regional Fisheries Science Centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based Federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The NEFSC is the research arm of NMFS in the Northeast Region. The NEFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in the Atlantic Ocean, primarily from Maine through North Carolina. However, some limited fisheries research is conducted in more southern estuaries and Atlantic Ocean. The NEFSC provides scientific information to support the North Atlantic and Mid-Atlantic Fishery Management Council and numerous other domestic and international fisheries management organizations.

The NEFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. NEFSC scientists and their partners conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels. The gear types used fall into several categories: trawl gear used at various levels in the water column, longlines with multiple hooks, gillnets, and other gear. Of research gear used by NEFSC, only trawl, hook and line gear (including longline gears), fyke nets, and gillnets are likely to interact with marine mammals resulting in serious injury or mortality. Fisheries and ecosystem surveys conducted by the NEFSC also use active acoustic devices which may result in Level B harassment of marine mammals.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the NEFSC's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the NEFSC, if appropriate.

Dated: December 18, 2020.

Donna Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–28417 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Admission to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), in accordance with the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651–0012 (Admission to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the United States Patent and Trademark Office). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before February 22, 2021.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email: InformationCollection@uspto.gov.* Include ''0651–0012 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Dahlia George, Office of Enrollment and Discipline, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–4097; or by email to *Dahlia.George@uspto.gov* with ''0651–0012 comment'' in the subject line. Additional information about this information collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required by 35 U.S.C. 2(b)(2)(D), which permits the United States Patent and Trademark Office (USPTO) to establish regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the USPTO. This statute also permits the USPTO to require information from applicants that shows that they are of good moral character and reputation and have the necessary qualifications to assist applicants with the patent process and to represent them before the USPTO.

This information collection addresses submissions required by the regulations at 37 CFR 1.21, 10.14, and 11.5–11.11, which set forth the requirements to apply for the examination for registration and to demonstrate eligibility to be a registered attorney or agent before the USPTO, including the fee requirements. The Office of Enrollment and Discipline (OED) collects this information to determine the qualifications of individuals entitled to represent applicants before the USPTO in the preparation and prosecution of applications for a patent. The OED also collects this information to administer and maintain the public roster of attorneys and agents registered to practice before the USPTO, which is accessible through the USPTO website. The information in this information collection is used by the USPTO to review applications for the examination for registration and to determine whether an applicant may be added to, or an existing practitioner may remain on, the Register of Patent Attorneys and Agents.

II. Method of Collection

Items in this information collection may be submitted via online electronic submissions. Applicants may also submit the information in paper form by mail, fax, or hand delivery.

III. Data

OMB Control Number: 0651–0012.

Form Numbers:

- PTO–107A: (Data Sheet—Register of Patent Attorneys and Agents)
- PTO–107R: (Reinstatement to the Register)
- PTO–107S: (Registration Statement of Patent Attorneys and Agents)
- PTO–158: (Application for Registration to Practice Before the United States Patent and Trademark Office)
- PTO–158A: (Application for Registration to Practice Before the United States Patent and Trademark Office Under 37 CFR 11.6(c) by a Foreign Resident)
- PTO 158RA: (Reasonable Accommodation)
- PTO–158T: (Application for Reciprocal Recognition to Practice in Trademark Matters Before the United States Patent and Trademark Office Under 37 CFR 11.14(c) by a Foreign Attorney or Agent)
- PTO–1209: (Oath or Affirmation)

Type of Review: Revision of a currently approved information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 21,251 per year.

Estimated Number of Responses: 30,727 per year.

Estimated Time per Response: The USPTO estimates that it takes the public approximately 5 minutes (0.08 hours) to 7 hours to complete this information, depending upon the application. This includes the time to gather the necessary information, prepare and maintain the documents, and submit the items to the USPTO.

Estimated Total Annual Respondent Burden Hours: 18,188 hours.

Estimated Total Annual Respondent (Hourly) Cost Burden: $7,275,200.

TABLE 1—TOTAL HOURLY REPORTING BURDEN FOR INDIVIDUALS OR HOUSEHOLDS RESPONDENTS

Item No.	Item	Estimated annual respondents	Estimated annual responses (year) (a)	Estimated time for response (hours) (b)	Estimated annual burden (hour/year) (a) × (b) = (c)	Rate [1] ($/hour) (d)	Estimated annual respondent cost burden (c) × (d) = (e)
1	Application for Registration to Practice Before the United States Patent and Trademark Office (includes both the computerized exam and the USPTO-administered exam). PTO–158	2,474	2,474	0.50	1,237	$400	$494,800
1	Application for Registration to Practice Before the United States Patent and Trademark Office (former examiners; examination waived). PTO–158	34	34	0.50	17	400	6,800
1	Application for Registration to Practice Before the United States Patent and Trademark Office Under 37 CFR 11.6(c) by a Foreign Resident (examination waived). PTO–158A	6	6	0.50	3	400	1,200
1	Application for Reciprocal Recognition to Practice in Trademark Matters Before the United States Patent and Trademark Office Under 37 CFR 11.14(c) by a Foreign Attorney or Agent (examination waived). PTO–158T	11	11	0.50	6	400	2,400
2	Registration Examination to Become a Registered Practitioner.	Same as line 1	1,616	7	11,312	400	4,524,800
3	Reasonable Accommodation PTO 158RA	Same as line 1	63	4	252	400	100,800
4	Data Sheet—Register of Patent Attorneys and Agents. PTO–107A	Same as line 1	840	0.5	420	400	168,000
5	Registration Statement of Patent Attorneys and Agents. PTO–107S	16,333	16,333	0.25	4,083	400	1,633,200
6	Oath or Affirmation PTO–1209	Same as line 1	840	0.08	67	400	26,800
7	Reinstatement to the Register PTO–107R	76	76	0.08	6	400	2,400
8	Change of Registration from Agent to Attorney. PTO–158	252	252	0.50	126	400	50,400
9	Written Requests (Certificate of Good Standing, Disciplinary History).	2,057	3,578	0.08	286	400	114,400
10	Petition to the Director of the Office of Enrollment and Discipline under 37 CFR 11.2(c).	7	7	0.75	5	400	2,000
11	Petition to USPTO Director under 37 CFR 11.2(d).	1	1	0.75	1	400	400
Total		21,251	26,131		17,821		7,128,400

The USPTO Office of Enrollment and Discipline General Requirements Bulletin [2] recommends that ''an applicant should make and keep a copy of every document submitted to the Office in connection with an application for registration.'' The USPTO estimates that it will take an applicant approximately 5 minutes (0.08 hours) to print and retain a copy of the submissions and that approximately 4,596 responses requiring record keeping (based on the response numbers from Table 1) will be made per year, for a total of 367 hours.

[1] 2019 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); *https://www.aipla.org/detail/journal-issue/2019-report-of-the-economic-survey.* The USPTO uses the mean rate for attorneys in private firms which is $400 per hour.

[2] General Requirements Bulletin for Admission to the Examination for Registration to Practice in Patent Cases before the United States Patent and Trademark Office; *https://www.uspto.gov/sites/default/files/documents/OED_GRB.pdf*

TABLE 2—TOTAL HOURLY RECORDKEEPING BURDEN FOR INDIVIDUALS OR HOUSEHOLDS RESPONDENTS

Item No.	Item	Estimated annual responses (year) (a)	Estimated time for response (hours) (b)	Estimated annual burden (hour/year) (a) × (b) = (c)	Rate [3] ($/hour) (d)	Estimated annual respondent cost burden (c) × (d) = (e)
1	Application for Registration to Practice Before the United States Patent and Trademark Office.	2,525	0.08	202	$400	$80,800
3	Reasonable Accommodation	63	0.08	5	400	2,000
4	Data Sheet—Register of Patent Attorneys and Agents.	840	0.08	67	400	26,800
6	Oath or Affirmation	840	0.08	67	400	26,800
7	Reinstatement to the Register	76	0.08	6	400	2,400
8	Change of Registration from Agent to Attorney.	252	0.08	20	400	8,000
Totals		4,596		367		146,800

Estimated Total Annual (Non-hour) Respondent Cost Burden: $875,706. There are no capital start-up or maintenance costs associated with this information collection. There are, however, non-hour costs due to filing fees, postage costs, and notary fees.

There are filing fees associated with this information collection. The application fees for registration to practice before the USPTO vary depending on whether the applicant is a current applicant, a former examiner, a foreign resident, or seeking reinstatement to the Register. The fee for administration of the computerized examination to become a registered patent practitioner also varies depending on how the examination is administered. The total annual non-hour cost burden associated with filing fees is $865,958.

TABLE 3—FILING FEES

Item No.	Item	Responses (year) (a)	Filing fee ($) (b)	Total non-hour respondent cost burden ($/hour) (a) × (b) = (c)
1	Non-Refundable Application Fee for Registration to Practice Before the United States Patent and Trademark Office (includes both the computerized exam and the USPTO-administered exam).	2,474	$110	$272,140
1	Application Fee for Registration to Practice Before the United States Patent and Trademark Office, as applicable when used for registration fees only (former examiners; examination waived).	34	110	3,740
1	Application for Registration to Practice Before the United States Patent and Trademark Office Under 37 CFR 11.6(c) by a Foreign Resident (examination waived).	6	110	660
1	Application Fee for Reciprocal Recognition to Practice in Trademark Matters Before the United States Patent and Trademark Office Under 37 CFR 11.14(c) by a Foreign Attorney/Agent (examination waived).	11	110	1,210
1	Non-Refundable Application Fee for Enrollment and/or Reinstatement to Practice Before the United States Patent and Trademark Office under 37 CFR 1.21(a)(10) (those who must prove fitness to practice).	7	1,680	11,760
2	Registration examination fee for administration of computerized examination to become a registered patent practitioner administered by a commercial entity (computer exam).	1,616	173	279,568
2	For administered review of Registration Examination by a commercial entity (computer exam).	300	205	61,500
2	Registration examination fee for administration of computerized examination to become a registered patent practitioner administered by the USPTO (USPTO-administered exam).	1	470	470
2	For USPTO-Administered Review of Registration Examination	1	470	470
4	On Registration to Practice Under 37 CFR 11.6. On Grant of Limited Recognition Under 37 CFR 11.9(b).	840	210	176,400
7	Reinstatement to the Register	76	210	15,960
8	On Change of Registration from Agent to Attorney	252	110	27,720
14	Certificate of Good Standing as an Attorney or Agent, Standard	275	40	11,000

[3] 2019 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); *https://www.aipla.org/detail/journal-issue/2019-report-of-the-economic-survey.* The USPTO uses the mean rate for attorneys in private firms which is $400 per hour.

TABLE 3—FILING FEES—Continued

Item No.	Item	Responses (year) (a)	Filing fee ($) (b)	Total non-hour respondent cost burden ($/hour) (a) × (b) = (c)
10	Petition to the Director of the Office of Enrollment and Discipline under 37 CFR 11.2(c).	7	420	2,940
11	Review of Decision of the Director of Enrollment and Discipline Under 37 CFR 11.2(d).	1	420	420
Totals	.....	5,901	.....	865,958

Postage costs are also associated with this information collection. The USPTO estimates that the average postage cost for a mailed submission, depending upon the item sent, will be $0.55. The USPTO estimates that with 2,450 mailed submissions, the postage costs in this information collection will be $1,348.

Additional costs are incurred for new Patent Bar members who are required to obtain and submit an Oath or Affirmation. These items usually require the services of a public notary. The cost of a notarized document is dependent upon local rules, but is estimated by USPTO to average $10. The cost of 840 Oaths is estimated to be $8,400.

Therefore, the USPTO estimates that the total annual (non-hour) cost burden for this information collection, in the form of filing fees, postage, and notary fees is $875,706.

Respondent's Obligation: Required to obtain or retain benefits.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personal identifying information in a comment, be aware that the entire comment—including personal identifying information—may be made publicly available at any time. While you may ask in your comment to withhold personal identifying information from public view, USPTO cannot guarantee that it will be able to do so.

Kimberly Hardy,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2020–28412 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2020–0057]

Request for Comments on the National Strategy for Expanding American Innovation

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Request for comments.

SUMMARY: On September 14, 2020, the United States Patent and Trademark Office (USPTO) hosted the inaugural meeting of the National Council for Expanding American Innovation (NCEAI). The NCEAI consists of distinguished leaders from industry, academia, government, and nonprofit organizations. It was organized as an outgrowth of the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018, which charged the USPTO with preparing a report concerning patenting and entrepreneurship activities among women, minorities, and veterans. The goal of the NCEAI is to help the USPTO develop a national strategy to build a more demographically, geographically, and economically inclusive innovation ecosystem. To assist in the development of this strategy, the USPTO is seeking input from the public.

DATES: *Comment Deadline:* To be ensured of consideration, written comments must be received by February 8, 2021.

ADDRESSES: Comments must be submitted through the Federal eRulemaking Portal at *www.regulations.gov.* To submit comments via the portal, enter docket number PTO–P–2020–0057 on the homepage and click ''search.'' The site will provide a search results page listing all documents associated with this docket. Find a reference to this notice and click on the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Attachments to electronic comments will be accepted in ADOBE® portable document format or MICROSOFT WORD® format.

Because written comments and testimony will be made available for public inspection, information that a respondent does not desire to be made public, such as a phone number, should not be included in the testimony or written comments.

FOR FURTHER INFORMATION CONTACT: For questions or comments regarding this notice, please send your inquiries to *innovationcomment@uspto.gov,* or telephone Janine Scianna, Office of Governmental Affairs, at 571–272–0502.

SUPPLEMENTARY INFORMATION: To maintain the United States' economic competitiveness on the world stage, it is imperative for our nation to encourage individuals from all backgrounds and areas of the country to participate in the innovation ecosystem, particularly in obtaining intellectual property rights. However, research reveals patterns of disparity in innovation participation rates for women, people of color, veterans, economically disadvantaged

people, and geographically underrepresented people. This disparity negatively affects the development of local communities as well as the social and economic well-being of the country at large. To increase participation in innovation by individuals from traditionally underrepresented groups, it is critically important to equip all inventors and prospective inventors, regardless of their demographic, geographic, or economic backgrounds, with information, resources, supportive communities, and opportunities. Our economy will benefit from a wealth of previously untapped talent when we, as a nation, successfully build an innovation community that more closely reflects the underlying diversity of our citizens.

In its SUCCESS Act report to Congress, the USPTO announced its plan to create a national strategy to promote and increase participation by underrepresented groups in inventing and innovation. The NCEAI consists of leaders from every corner of the innovation ecosystem—industry, academia, government, and nonprofit organizations. NCEAI representatives will provide input to help the USPTO develop its national strategy to expand innovation demographically, geographically, and economically. This strategy will be organized by a broad conceptual framework that considers the entire pathway along which interest and expertise in innovation is cultivated in an individual. One element of this framework will focus on ''Creating Innovators,'' which will address expanding access to foundational exposure and educational opportunities for students and individuals of all ages and backgrounds. Another element will focus on ''Practicing Innovation,'' which will address the empowerment of all innovative individuals by providing adequate resources and supportive work environments to turn their ideas into protectable inventions. A third element will focus on ''Realizing Innovation,'' which will address the assurance that all innovators can successfully commercialize their products and services.

Issues for Comment: The USPTO seeks comments from the public that will be used to help draft a national strategy to create opportunities that will expand our innovation ecosystem to include all individuals, including those from underrepresented socioeconomic, geographic, and demographic groups. The questions below are grouped according to the categories within the broad conceptual framework outlined above for the national strategy. The USPTO welcomes answers to these questions, as well as any additional comments, from the public:

I. General

1. Inventors and entrepreneurs come from all walks of life and are not always employed by a large corporate or educational institution. How can people and organizations in the innovation ecosystem better support them?

2. Women and some minorities have not participated proportionally in the patenting of inventions. What barriers to innovation inclusion are specific to underrepresented groups? What supporting role should government organizations play in helping underrepresented groups overcome these barriers?

3. Mentoring and networking have been shown to be effective tools in supporting and encouraging underrepresented inventors and entrepreneurs. How can organizations and intellectual property practitioners in the innovation ecosystem better connect underrepresented innovators to each other and to mentors, both internally and across organizations?

4. Developing organizational metrics to document the effectiveness of diversity and inclusion initiatives is necessary to track outcomes of action plans and initiatives. What are best practices that organizations can internally employ to measure their own progress, particularly in the area of intellectual property protection?

5. Measuring national progress in realizing greater inclusion and diversity in invention, entrepreneurship, and intellectual property may take years, and it will be critical to identify complementary short- and long-term metrics that are precursors to and indicators of expanding innovation. What are some specific, meaningful, and relevant measures that can be used to:

a. Support year-over-year performance of action plans and initiatives in the short-term?

b. Demonstrate the long-term creation of diversity and inclusion in the innovation ecosystem while complementing short-term performance metrics?

6. Invention, entrepreneurship, and intellectual property protection have been shown to be concentrated in certain areas of the country and among individuals from higher socioeconomic groups. What new or existing channels could be created or utilized to more effectively deliver information and resources to prospective innovators from all demographic, geographic, and economic backgrounds?

II. Creating Innovators—Helping To Prepare People To Obtain the Skills and Develop the Interests Necessary To Become Innovators, Problem Solvers, and Entrepreneurs

7. Research has shown that ''invention education''—the infusion of transdisciplinary education in problem identification and problem solving—is critical to developing innovation skills in learners. How can educational institutions at all levels (pre-kindergarten through post-graduate) successfully infuse concepts of invention, entrepreneurship, and intellectual property education into curricula?

8. To supplement formal education, how can community institutions, particularly in rural and economically disadvantaged areas, build awareness of, and skills and interests in, invention, entrepreneurship, and intellectual property among students of all ages?

9. More can be done to help teachers, even those with a formal science, technology, engineering, or mathematics (STEM) background, incorporate concepts of innovation into their teaching methods. What new or existing professional development opportunities, resources, and programs could train teachers to incorporate invention education concepts into their instruction? How could these efforts be leveraged and scaled so that similar resources and opportunities are accessible to all teachers?

III. Practicing Innovation—Harnessing Skills and Interests to the Act of Innovation

10. Recent progress in developing STEM graduates from underrepresented groups has been documented. How can similar rates of invention and entrepreneurship be attained? How can organizations best recruit and retain innovators from diverse backgrounds?

11. Inventors thrive when cultural and institutional barriers within workplaces are minimized or removed. What are examples of these barriers, and how can organizations remove them to create an inclusive, innovative workplace culture?

12. Access to information and resources is pivotal for the development of individual inventors and small businesses. How can the nation better support individual inventors and small businesses with resources so they can successfully translate their skills and creativity into the acts of invention, intellectual property protection, and entrepreneurship?

13. Another important objective is increasing diversity in the entire

intellectual property field. What are ways of promoting diversity in the corps of intellectual property attorneys and agents who represent innovators?

IV. Realizing Innovation—Reaping the Personal and Societal Benefits of Innovation

14. Financial support is a critical element in translating an innovation into commercial success. What organizations, programs, or other efforts help promote access to capital to an expanded group of inventors and entrepreneurs—demographically, geographically, and economically?

15. Successfully commercializing an inventive product or concept requires in-depth knowledge about production processes, market forces, and other pertinent information. What types of mentoring initiatives could be implemented or expanded to help experienced entrepreneurs impart this specialized knowledge to diverse and novice inventors?

16. Formalized partnerships like tech transfer offices/conferences, accelerators, and incubators can help streamline commercialization objectives such as product development, licensing, and distribution. What can be done to make these partnerships more accessible and effective at supporting all inventors and entrepreneurs?

V. Other

17. Please provide any other comments that you feel should be considered as part of, and that are directly related to, the development of a national strategy to expand the innovation ecosystem demographically, geographically, and economically.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2020–28298 Filed 12–22–20; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement Addressing Heat and Electrical Upgrades at Fort Wainwright, Alaska

AGENCY: Department of the Army, DOD.

ACTION: Amended Notice of Availability.

SUMMARY: The Department of the Army (Army) is issuing this Amended Notice of Availability, updating the original notice published on October 9, 2020 (**Federal Register**, Vol. 85, No. 197, 64133) of the continuing availability of the Draft Environmental Impact Statement (EIS) as part of the environmental planning process to address heat and electrical upgrades at Fort Wainwright, Alaska. The comment period for the Draft EIS, originally scheduled to conclude on December 8, 2020, is being reopened for an additional 60 days to conclude on February 22, 2021.

The Army invites public comments on the Draft EIS during the comment period that began with the publication of the NOA in the **Federal Register** on October 9, 2020.

DATES: Comments must be received by February 22, 2021 to be considered in the preparation of the Final EIS.

ADDRESSES: Please submit written comments to Laura Sample, NEPA Program Manager at: Directorate of Public Works, ATTN: IMFW–PWE (L. Sample), 1046 Marks Road #4500, Fort Wainwright, AK 99703–4500, email: *usarmy.wainwright.id-pacific.mbx.heu-eis@mail.mil,* or through the project website: *https://home.army.mil/alaska/index.php/fort-wainwright/NEPA/HEU-EIS*.

FOR FURTHER INFORMATION CONTACT: Please contact Grant Sattler, Public Affairs Office, IMPC–FWA–PAO (Sattler), 1060 Gaffney Road #5900, Fort Wainwright, AK 99703–5900; telephone (907) 353–6701; email: *alan.g.sattler.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: The current condition of Fort Wainwright's heat and power plant requires an upgrade to provide reliable heat and electrical infrastructure for the installation that resolves safety, resiliency, fiscal, and regulatory concerns. The Draft EIS evaluates reasonable alternatives, potential environmental impacts, and key issues of concern. A preferred alternative is not identified at this time. The comment period is being reopened in response to requests from commenters. Additional information can be found within the original notice published on October 9, 2020 (**Federal Register**, Vol. 85, No. 197, 64133). Federal, state, and local agencies; Alaska Natives; Native Americans; Native American organizations and tribes; private organizations; and the public are invited to continue being involved in this EIS process by providing written comments. An electronic copy of the Draft EIS is available online at: *https://home.army.mil/alaska/index.php/fort-wainwright/NEPA/HEU-EIS*. Copies of the Draft EIS will be available for review at the Noel Wien Library, 1215 Cowles Street, Fairbanks, AK 99701; the Post Library, Building 3700, Santiago Avenue, Fort Wainwright, AK 99703; and the Tri-Valley Community Library, 400 Suntrana Road, Healy, AK 99743, if these facilities are open. Copies of the Draft EIS are also available by submitting a request to: see **ADDRESSES**. Written comments must be sent by February 22, 2021. The Army will consider all comments received on the Draft EIS when preparing the Final EIS. As with the Draft EIS, the Army will announce the availability of the Final EIS.

James W. Satterwhite Jr.,

Alternate, Army Federal Register Liaison Officer.

[FR Doc. 2020–28322 Filed 12–22–20; 8:45 am]

BILLING CODE 5061–AP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–0A]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21–0A with attached Policy Justification.

Dated: December 17, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

NOV 09 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 21-0A. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 17-20 of March 7, 2018.

Sincerely,

Heidi H. Grant
Director

Enclosures:
1. Transmittal
2. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 21–0A

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C), AECA)

(i) *Purchaser:* Government of the United Arab Emirates

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 17–20

Date: March 7, 2018

Military Department: Navy

(iii) *Description*: On March 7, 2018, Congress was notified by Congressional certification transmittal number 17–20 of the possible sale under Section 36(b)(1) of the Arms Export Control Act of three hundred (300) AIM–9X–2 Sidewinder Block II All-Up-Round Missiles; forty (40) AIM–9x–2 Sidewinder Captive Air Training Missiles (CATMs); thirty (30) AIM–9x–2 Block II Tactical Guidance Units; fifteen (15) AIM–9x–2 CATM Units; containers; spares; support equipment and missile support; U.S. Government and contractor technical assistance and other related logistics support; and other associated support equipment and services. The estimated cost was $270.4 million. Major Defense Equipment (MDE) constituted $240 million of this total.

This transmittal reports the addition of five hundred (500) Sidewinder AIM 9X Block II+ (Plus) Tactical Missiles; forty (40) Sidewinder AIM 9X Block II Captive Air Training Missiles (CATMs); three (3) Sidewinder AIM 9X Block II Special Air Training Missiles (NATMS); fifty (50) Sidewinder AIM 9X Block II+ (Plus) Tactical Guidance Units; twenty-five (25) Sidewinder AIM 9X Block II CATM Guidance Units; containers; spares; support equipment and missile support; U.S. Government and contractor technical assistance and other related logistics support; and other associated support equipment and services with a value of $490 million.

The total notified cost of MDE will increase to $730 million, and the total notified case value will increase to $840.5 million.

(iv) *Significance:* This notification is being provided to report the inclusion of MDE items not previously notified. This potential sale will improve the UAE's capability to meet current and future threats and provide greater security for its critical infrastructure. The addition of the Sidewinder AIM 9X Block II+ (Plus) Tactical Missiles represents an increase in capability over what was previously notified. The UAE will use the enhanced capability to strengthen its homeland defense.

(v) *Justification:* This proposed sale of the Sidewinder AIM 9X Block II+ (Plus) Tactical Missile will support the foreign policy and national security of the United States by helping to improve the security of an important regional partner. The UAE has been, and continues to be, a vital U.S. partner for political stability and economic progress in the Middle East.

(vi) *Sensitivity of Technology:* The Sidewinder AIM 9X Block II+ (Plus) Tactical Missile represents a substantial increase in missile acquisition and kinematics performance over the AIM–9M and replaces the AIM 9X Block I Missile configuration. The missile includes a high off-boresight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Helmet Mounted Cueing System. The software algorithms are the most sensitive portions of the Sidewinder AIM 9X Block II+ (Plus) Tactical Missile. The software continues to be modified via a Pre-Planned Product Improvement (P3I) program in order to improve its counter-countermeasure capabilities. No software source code or algorithms will be released. The highest level of classification of information included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress:* November 09, 2020

[FR Doc. 2020–28320 Filed 12–22–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–05]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21–05 with attached Policy Justification and Sensitivity of Technology.

Dated: December 17, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

NOV 0 9 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-05 concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of the United Arab Emirates for defense articles and services estimated to cost $2.97 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Heidi H. Grant
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 21–05

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Government of the United Arab Emirates

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$ .90 billion
Other	2.07 billion
Total	2.97 billion

(iii) *Description and Quantity or Quantities of Articles or Services under consideration for Purchase:*

Major Defense Equipment (MDE):

Up to Eighteen (18) Weapons-Ready MQ-9B Remotely Piloted Aircraft
Twelve (12) Fixed Certifiable Ground Control Stations (CGCSs)
Twenty-five (25) Raytheon Multi-Spectral Targeting Systems-D (MTS-D) EO/IR Sensors
Nineteen (19) Lynx AN/APY-8 Synthetic Aperture Radars (SAR) with Ground Moving Target Indicator (GTMI)
Eighteen (18) RIO™ Communication Intelligence Systems
Sixty-six (66) Embedded Global Positioning System/Inertial

Navigations Systems (EGI) with Selective Availability Anti-Spoofing Modules (SAASMs)
Five hundred fifteen (515) AGM-114R Hellfire Missiles
Twelve (12) KMU-572 Joint Direct Attack Munitions (JDAM) Tail Kits for 500LB Bombs
Four (4) MXU-650 Airfoil Groups for 500LB Paveway II GBU-12
Seven (7) MXU-1006 Airfoil Groups for 250LB Paveway II GBU-58
Eleven (11) MAU-169 or MAU-209 Computer Control Groups (CCGs) for 250LB/500LB Paveway II GBU-58/GBU-12
Six (6) FMU-139 Fuse Systems
Twelve (12) MK-82 General Purpose 500LB Inert Bombs
Four (4) GBU-39 Small Diameter Bomb (SDB) Guided Test Vehicle (GTV) Inert Practice Munitions (T-1) with Fuse
Non-MDE:

Also included are Honeywell TPE-331 turboprop engines; Certifiable Ground Control Stations (CGCS); mobile Satellite Communication Ground Data Terminals (SGDTs); Link-16 KOR-24A Small Tactical Terminals; Automatic Information System (AIS); Rohde & Schwartz UHF/VHF radios; AN/DPX-7 IFF Transponders; Satellite Communication (SATCOM) antennas and modems with USG encryption; Secure SATCOM systems; SeaSpray 7500 maritime radars; SAGE 750 Electronic Surveillance Measures System; KY-100M security voice terminals; KIV-77 Mode 5 IFF cryptographic appliques; U.S. Government Certified Encryption Solution; Rover 6i compatible systems; MQ-9B training simulator; Due Regard Radars (DRR); Electronic Warfare (EW) in-country threat library programming capability; BRU-71A bomb racks; BRU-78/A bomb racks; Hellfire missile rail kits; AN/AWM-103/B Station Stores Test Sets; Common Munitions Built-in-Test Reprogramming Equipment (CMBRE) Plus Block II; Anti-Submarine Warfare (ASW) mission kits, receivers, and acoustic processors; AN/SSQ-36B thermometric sonobouys; AN/SSQ-53G passive sonobouys; AN-SSQ-62F active sonobouys; ASW acoustic operator workstations; weapons loading equipment; initial spare and repair parts; hard points, power, and data connections for weapons integration; DSU-38 Laser Illuminated Target Detector for GBU-54; AN/PYQ-10C Simple Key Loaders; Electronic Intelligence System; weapons integration; support and test equipment; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistical and program support.

(iv) *Military Department*: Air Force (AE-D-SAC)

(v) *Prior Related Cases, if any*: None

(vi) *Sales Commission, Fee, etc. Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: November 09, 2020

* As defined in Section 47(6) of the Arms Export Control Act.

Policy Justification

United Arab Emirates—MQ-9B Remotely Piloted Aircraft

The Government of the United Arab Emirates (UAE) has requested to buy up to eighteen (18) Weapons-Ready MQ-9B, Remotely Piloted Aircraft; twenty-five (25) Raytheon Multi-Spectral Targeting Systems-D (MTS-D) EO/IR Sensors; nineteen (19) Lynx AN/APY-8 Synthetic Aperture Radars (SAR) with Ground Moving Target Indicator (GTMI); eighteen (18) RIO™ Communication Intelligence Systems; sixty-six (66) Embedded Global Positioning System/Inertial Navigations Systems (EGI) with Selective Availability Anti-Spoofing Modules (SAASMs); five hundred fifteen (515) AGM-114R Hellfire Missiles; twelve (12) KMU-572 Joint Direct Attack Munitions (JDAM) Tail Kits for 500LB Bombs; four (4) MXU-650 Airfoil Groups for 500LB Paveway II GBU-12; seven (7) MXU-1006 Airfoil Groups for 250LB Paveway II GBU-58; eleven (11) MAU-169 or MAU-209 Computer Control Groups (CCGs) for 250LB/500LB Paveway II GBU-58/GBU-12; six (6) FMU-139 Fuse Systems; twelve (12) MK-82 General Purpose 500LB Inert Bombs; and four (4) GBU-39 Small Diameter Bomb (SDB) Guided Test Vehicle (GTV) Inert Practice Munitions (T-1) with Fuse. Also included are Honeywell TPE-331 turboprop engines; Certifiable Ground Control Stations (CGCS); mobile Satellite Communication Ground Data Terminals (SGDTs); Link-16 KOR-24A Small Tactical Terminals; Automatic Information System (AIS); Rohde & Schwartz UHF/VHF radios; AN/DPX-7 IFF Transponders; Satellite Communication (SATCOM) antennas and modems with USG encryption; Secure SATCOM systems; SeaSpray 7500 maritime radars; SAGE 750 Electronic Surveillance Measures System; KY-100M security voice terminals; KIV-77 Mode 5 IFF cryptographic appliques; U.S. Government Certified Encryption Solution; Rover 6i compatible systems; MQ-9B training simulator; Due Regard Radars (DRR); Electronic Warfare (EW) in-country threat library programming capability; BRU-71A bomb racks; BRU-78/A bomb racks; Hellfire missile rail kits; AN/AWM-103/B Station Stores Test Sets; Common Munitions Built-in-Test Reprogramming Equipment (CMBRE) Plus Block II; Anti-Submarine Warfare (ASW) mission kits, receivers, and acoustic processors; AN/SSQ-36B thermometric sonobouys; AN/SSQ-53G passive sonobouys; AN-SSQ-62F active sonobouys; ASW acoustic operator workstations; weapons loading equipment; initial spare and repair parts; hard points, power, and data connections for weapons integration; DSU-38 Laser Illuminated Target Detector for GBU-54; AN/PYQ-10C Simple Key Loaders; Electronic Intelligence System; weapons integration; support and test equipment; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistical and program support. The overall total estimated value is $2.97 billion.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of an important regional partner. The UAE has been, and continues to be, a vital U.S. partner for political stability and economic progress in the Middle East.

The proposed sale will improve the UAE's capability to meet current and future threats by providing timely Intelligence, Surveillance, and Reconnaissance (ISR), target acquisition, locate submarines and counter-land and counter-surface sea capabilities for its security and defense. The capability is a deterrent to regional threats and strengthens its self-defense. The UAE has demonstrated a commitment to modernizing its military and will have no difficulty absorbing these articles into its armed forces.

The proposed sale of this equipment and support will alter the basic military balance in the Arabian Gulf region by expanding the release of a weapons ready Remotely Piloted Aircraft to the region.

The principal contractors will be General Atomic Aeronautical Systems, San Diego, CA; Lockheed Martin, Bethesda, MD; Raytheon, Waltham, MA; L3Harris, Inc., Melbourne, FL; and Leonardo SpA, Rome, Italy. There are no known offset agreements proposed in

connection with this potential sale. However, the purchaser typically requests offsets. Any offset agreements will be defined in negotiations between the purchaser and the contractor(s).

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives outside the United States.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21–05

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The MQ-9B Remotely Piloted Aircraft (RPA) is a weapons-ready aircraft designed for Medium-Altitude Long-Endurance (MALE) Intelligence, Surveillance and Reconnaissance (ISR), Target Acquisition, and Strike Missions. The MQ-9B RPA is not a U.S. Air Force program of record but has close ties to, and builds upon, the proven success of the MQ-9A Reaper. The MQ-9B is a highly modular, easily configurable aircraft that contains the necessary hard points, power, and data connections to accommodate a variety of payloads and munitions to meet multiple missions, including counter-land, counter-sea, and anti-submarine strike operations. The system is designed to be controlled by two operators within a Certifiable Ground Control Station (CGCS). The CGCS is designed to emulate a reconnaissance aircraft cockpit, giving users extensive means to operate both the aircraft and sensors. The MQ-9B is able to operate using a direct Line-of-Sight (LOS) datalink or Beyond Line-of-Sight (BLOS) through satellite communications (SATCOM). The MQ-9B system can be deployed from a single site that supports launch/recovery, mission control, and maintenance. The system also supports remote-split operations where launch/recovery and maintenance occur at a Forward Operating Base (FOB) and mission control is conducted from another location or Main Operating Base (MOB).

2. The Ground Control Station (GCS) can be either fixed or mobile. The fixed GCS is enclosed in a customer-specified shelter. It incorporates workstations that allow operators to control and monitor the aircraft, as well as record and exploit downlinked payload data. The mobile GCS allows operators to perform the same functions and is contained on a mobile trailer. Workstations in either GCS can be tailored to meet customer requirements.

3. The SAGE 750 Electronic Surveillance Measures (ESM) System is a United Kingdom-produced digital electronic intelligence (ELINT) sensor that analyzes the electromagnetic spectrum to map the source of active emissions. Using highly accurate Direction Finding (DF) antennas, SAGE builds target locations and provides situational awareness, advance warning of threats, and the ability to cue other sensors.

4. The Raytheon Multi-Spectral Targeting Systems-D (MTS-D) EO/IR sensors is a multi-spectral Targeting System with Laser Target Designator (LTD). A multi-use Electro Optical (EO)/ lnfrared (IR) sensor provides long-range surveillance, high-altitude target acquisition, tracking, range-finding, and laser designation for all tri-service and NATO laser-guided munitions, with capabilities up to and including high definition color TV, high definition short-wave IR, medium-wave IR, and long-wave IR sensors. The AN/DAS-4 is an evolutionary upgrade to the current AN/DAS-1 system.

5. The Lynx AN/APY-8 Synthetic Aperture Radars (SAR) with Ground Moving Target Indicator (GTMI) System provides all-weather surveillance, tracking, and targeting for military and commercial customers from manned and unmanned vehicles.

6. The KOR-24A Small Tactical Terminal Link-16 is a command, control communications, and intelligence (C3I) system incorporating high-capacity, jam-resistant, digital communication links for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements.

7. The L3 Harris RIO™ Communications Intelligence System incorporates radio receivers and flexible digital processing to create the ability to intercept, location, and copy adversary communications. The system is flexible enough that it can detect a wide variety of types of communications. The open design allows the system to be upgraded with new software features as adversary communications change.

8. The Embedded GPS-INS (EGI) with Selective Availability Anti-Spoofing Module (SAASM) is a self-contained navigation system that provides the following: Acceleration, velocity, position, attitude, platform azimuth, magnetic and true heading, altitude, body angular rates, time tags, and coordinated universal time (UTC) synchronized time. SAASM enables the GPS receiver access to the encrypted P(Y) signal providing protection against active spoofing attacks.

9. The AN/DPX-7 is an Identification Friend or Foe (IFF) Transponder used to identify and track aircraft, ships, and some ground forces to reduce friendly fire incidents.

10. Leonardo SeaSpray Maritime Multi-Role Patrol Radar is a synthetic aperture X-band radar that provides small-target maritime detection in high seas, maritime search (including submarine periscopes and semi-submersibles), radar imaging of ocean targets, and weather detection and avoidance.

11. The C-Band Line-of-Sight (LOS) Ground Data Terminals and Ku-Band SATCOM GA-ASI Transportable Earth Stations (GATES) provide command, control, and data acquisition for the MQ-9B.

12. The KY-100M is a lightweight terminal for secure voice and data communications. The KY-100M provides wideband/narrowband half-duplex communication. Operating in tactical ground, marine and airborne applications, the KY-100M enables secure communication with a broad range of radio and satellite equipment.

13. The Honeywell TPE-331–10-GD Turboprop Engine is used in a variety of airborne platforms, including the MQ-9B.

14. The Rohde & Schwartz UHF/VHF Radio is a multi-band, portable, two-way communication radio.

15. The KIV-77 Mode 5 crypto applique computer for IFF is Type 1 certified by the National Security Agency and provides information assurance for both legacy Mode 4 and new Mode 5 IFF equipment. The KIV-77 is used to store the classified keys.

16. The AN/APQ-10C Simple Key Loader is a handheld fill device for securely receiving, storing, and transferring data between cryptographic and communications equipment.

17. The Joint Direct Attack Munitions (JDAM) is a guidance set that converts existing unguided bombs (MK-82, MK-83, MK-84, BLU-109, BLU-110, BLU-111, BLU-117, BLU-126 (Navy) or BLU-129 warhead) into an accurate, adverse weather ''smart'' munition. The Guidance Set consists of a Tail Kit, which contains the Inertial Navigation System (INS) and a Global Positioning System (GPS), and a set of Aerosurfaces and an umbilical Cover, which allows the JDAM to improve the accuracy of unguided, general purpose bombs. The Guidance Set, when combined with a warhead and appropriate fuze, forms a JDAM Guided Bomb Unit (GBU). The JDAM Guidance Set gives these bombs adverse weather capability with

improved accuracy. The JDAM weapon can be delivered from modest standoff ranges at high or low altitudes against a variety of land and surface targets during the day or night. After release, JDAM autonomously guides to a target, using the resident GPS-aided INS guidance system. The JDAM is capable of receiving target coordinates via preplanned mission data from the delivery aircraft, by onboard aircraft sensors (i.e., FLIR, Radar, etc.) during captive carry, or from a third-party source via manual or automated aircrew cockpit entry.

(a) The KMU-572 is the guidance set for a GBU-38 (500-pound) JDAM.

18. The Laser JDAM (GBU-54) converts existing unguided free-fall bombs into precision guided ''smart'' munitions by adding a new tail section containing Inertial Navigation System (INS) guidance/Global Positioning System (GPS) guidance, as well as adds a semi-active laser seeker. This allows the weapon to strike targets moving at up to 70 mph. The LJDAM weapon consists of a DSU-38 sensor, a warhead-specific JDAM guidance set installed on the bomb body, and a fuze.

19. MK-82 Inert General Purpose (GP) bomb is a 500-pound, free-fall, unguided, low-drag inert weapon used for integration testing. There is no explosive fill.

20. GBU-12/58 Paveway II (PW-II) 500-pound (GBU-12) and 250-pound (GBU-58) are maneuverable, free-fall, laser-guided bombs (LGBs) that guides to reflected laser energy from the desired target. Employment of the LGB is the same as a normal general purpose (GP) warhead, except the semi-active guidance corrects for employment errors inherent in any delivery system. Laser designation for the weapon can be provided by a variety of laser target markers or designators from the air or ground. The Paveway system consists of a laser guidance kit, a computer control group (CCG), a warhead-specific Air Foil Group (AFG) that attach to the nose and tail of MK-81 and MK-82 General Purpose (GP) bombs, and a fuze. The weapon is primarily used for precsion bombing aganst non-hardened targets.

(a) The MAU-169 or the MAU-209 are the CCG for the GBU-12 and GBU-58.

(b) The MXU-650 is the AFG for the 500-pound GBU-12.

(c) MXU-1006/B is the AFG for the 250-pound GBU-58.

21. AGM-114-R2 Hellfire II Semi-Active Laser (SAL) Missiles are rail-launched guided missiles developed and produced by Lockheed Martin. The guidance system employs a SAL seeker. The SAL missile homes in on the laser energy reflected off a target that has been illuminated by a laser designator. The laser can be on either the launch platform or another platform that can be separated from it by several kilometers. The target sets are armor, bunkers, caves, enclosures, boats, and enemy personnel. The AGM-114-R2 Hellfire II missiles use pulse-coded laser illumination. The R2 variant includes a Height-of-Burst (HOB)/proximity sensor. The AGM-114 R2 missiles each have a multi-purpose selectable warhead and inertial measurement unit (IMU)-Aided Trajectories.

22. The GBU-39 Small Diameter Bomb Increment 1 (SDB-1) is a 250-pound, GPS-aided inertial navigation system, small autonomous, day or night, adverse weather, conventional, air-to-ground precision glide weapon able to strike fixed and stationary re-locatable non-hardened targets from standoff ranges. It is intended to provide aircraft with an ability to carry a high number of bombs. Aircraft are able to carry four SDBs in place of one 2,000-pound bomb.

(a) SDB I Guided Test Vehicle (GTV) is an SDB II configuration used for land or sea range-based testing of the SDB I weapon system. The GTV has common flight characteristics of an SDB I All Up Round (AUR), but in place of the multi-effects warhead is a Flight Termination, Tracking, and Telemetry (FTTT) subassembly that mirrors the AUR multi-effects warhead's size and mass properties, yet provides safe flight termination, free flight tracking, and telemetry of encrypted data from the GTV to the data receivers. The SDB I GTV can have either inert or live fuses. All other flight control, guidance, data-link, and seeker functions are representative of the SDB I AUR.

23. The Joint Programmable Fuze (JPF) FMU-139 is a multi-delay, multi-arm and proximity sensor compatible with general purpose blast, frag, and hardened-target penetrator weapons. The JPF settings are cockpit selectable in flight when used numerous precision-guided weapons. It can interface with numerous weapons including GBU-12, GBU-58, GBU-54, and GBU-38.

24. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

25. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

26. A determination has been made that the United Arab Emirates can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

27. All defense articles and services listed in this transmittal are authorized for release and export to the Government of the United Arab Emirates.

[FR Doc. 2020–28323 Filed 12–22–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–01]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 21–01 with attached Policy Justification and Sensitivity of Technology.

Dated: December 17, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

NOV 0 9 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-01 concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of the United Arab Emirates for defense articles and services estimated to cost $10.4 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Heidi H. Grant
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 21–01

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the United Arab Emirates (UAE)

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$5.8 billion
Other	$4.6 billion
Total	$10.4 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Fifty (50) F-35A Joint Strike Fighter Conventional Take-Off and Landing (CTOL) Aircraft

Fifty-four (54) Pratt & Whitney F-135 Engines (up to 50 installed and 4 spares)

Non-MDE: Also included are Electronic Warfare Systems; Command, Control, Communications, Computer and Intelligence/Communications, Navigational, and Identification (C4I/CNI); Autonomic Logistics Global Support System (ALGS); Operational Data Integrated Network (ODIN); Air

System Training Devices; Weapons Employment Capability and other Subsystems, Features, and Capabilities; F-35 unique chaff and infrared flares; reprogramming center access; F-35 Performance Based Logistics; software development/integration; aircraft ferry and tanker support; aircraft and munitions support and test equipment; communications equipment; provisioning, spares and repair parts; weapons repair and return support; personnel training and training equipment; weapon systems software, publications and technical documents; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (AE–D–SAC)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* November 09, 2020

* As defined in Section 47(6) of the Arms Export Control Act.

Policy Justification

United Arab Emirates—F-35 Joint Strike Fighter

The Government of the United Arab Emirates (UAE) has requested to buy up to fifty (50) F-35A Joint Strike Fighter Conventional Take-Off and Landing (CTOL) aircraft and fifty-four (54) Pratt & Whitney F-135 Engines (up to 50 installed and 4 spares). Also included are Electronic Warfare Systems; Command, Control, Communications, Computer and Intelligence/Communications, Navigational, and Identification (C4I/CNI); Autonomic Logistics Global Support System (ALGS); Operational Data Integrated Network (ODIN); Air System Training Devices; Weapons Employment Capability and other Subsystems, Features, and Capabilities; F-35 unique chaff and infrared flares; reprogramming center access; F-35 Performance Based Logistics; software development/integration; aircraft ferry and tanker support; aircraft and munitions support and test equipment; communications equipment; provisioning, spares and repair parts; weapons repair and return support; personnel training and training equipment; weapon systems software, publications and technical documents; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistical and program support. The total estimated cost is $10.4 billion.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of an important regional partner. The UAE has been, and continues to be, a vital U.S. partner for political stability and economic progress in the Middle East.

The proposed sale of F-35s will provide the Government of the UAE with a credible defense capability to deter aggression in the region and ensure interoperability with U.S. forces. The UAE has demonstrated a commitment to modernizing its military and will have no difficulty absorbing these aircraft into their armed forces.

The proposed sale of this equipment and support represents a significant increase in capability and will alter the regional military balance.

The prime contractors will be Lockheed Martin Aeronautics Company, Fort Worth, TX; and Pratt & Whitney Military Engines, East Hartford, CT. There are no known offset agreements proposed in connection with this potential sale. However, the purchaser typically requests offsets. Any offset agreements will be defined in negotiations between the purchaser and the contractor(s).

Implementation of this proposed sale may require the assignment of U.S. Government or contractor representatives to the UAE. Implementation of this proposed sale will require multiple trips to the UAE involving U.S. Government and contractor representatives for technical reviews/support, program management, and training over the life of the program. U.S. contractor representatives will be required in the UAE to conduct Contractor Engineering Technical Services (CETS) and Autonomic Logistics and Global Support (ALGS) for after-aircraft delivery.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21–01

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The F-35A Conventional Take Off and Landing (CTOL) aircraft is a single-seat, single engine, all-weather, stealth, fifth-generation, multirole aircraft. The F-35A contain sensitive technology, including the low observable airframe/outer mold line, the Pratt & Whitney F135 engine, AN/APG–81 radar, an integrated core processor central computer, a mission systems/electronic warfare suite, a multiple sensor suite, technical data/documentation, and associated software. Sensitive elements of the F-35A are also included in operational flight and maintenance trainers. Sensitive elements of the F-35A CTOL aircraft include hardware, accessories, components, and associated software for the following major subsystems:

a. The Pratt and Whitney F135 engine is a single 40,000-pound thrust class engine designed for the F-35 and assures highly reliable, affordable performance. The engine is designed to be utilized in all F-35 variants, providing unmatched commonality and supportability throughout the worldwide base of F-35 users.

b. The AN/APG–81 Active Electronically Scanned Array (AESA) is a high processing power/high transmission power electronic array capable of detecting air and ground targets from a greater distance than mechanically scanned array radars. It also contains a synthetic aperture radar (SAR), which creates high-resolution ground maps and provides weather data to the pilot, and provides air and ground tracks to the mission system, which uses it as a component to fuse sensor data.

c. The Electro-Optical Targeting System (EOTS) provides long-range detection and tracking, as well as an infrared search and track (IRST) and forward-looking infrared (FLIR) capability for precision tracking, weapons delivery, and bomb damage assessment (BDA). The EOTS replaces multiple separate internal or podded systems typically found on legacy aircraft.

d. The Electro-Optical Distributed Aperture System (EODAS) provides the pilot with full spherical coverage for air-to-air and air-to-ground threat awareness, day/night vision enhancements, a fire control capability, and precision tracking of wingmen/friendly aircraft. The EODAS provides data directly to the pilot's helmet as well as the mission system.

e. The Electronic Warfare (EW) system is a reprogrammable, integrated system that provides radar warning and electronic support measures (ESM), along with a fully integrated countermeasures (CM) system. The EW system is the primary subsystem used to enhance situational awareness, targeting support and self-defense through the search, intercept, location and identification of in-band emitters and to

automatically counter infrared (IR) and radio frequency (RF) threats.

f. The Command, Control, Communications, Computers and Intelligence/Communications, Navigation, and Identification (C4I/CNI) system provides the pilot with unmatched connectivity to flight members, coalition forces, and the battlefield. It is an integrated subsystem designed to provide a broad spectrum of secure, anti-jam voice and data communications, precision radio navigation and landing capability, self-identification, beyond visual range target identification, and connectivity to off-board sources of information. It also includes an inertial navigation and global positioning system (GPS) for precise location information. The functionality is tightly integrated within the mission system to enhance efficiency.

g. The aircraft C4I/CNI system includes two data links, the Multi-Function Advanced Data Link (MADL) and Link 16. The MADL is designed specifically for the F-35 and allows for stealthy communications between F-35s. Link 16 data link equipment allows the F-35 to communicate with legacy aircraft using widely-distributed J-series message protocols.

h. The F-35 Autonomic Logistics Global Sustainment (ALGS) provides a fully integrated logistics management solution. ALGS integrates a number of functional areas, including supply chain management, repair, support equipment, engine support, and training. The ALGS infrastructure employs a state-of-the-art information system that provides real-time, decision-worthy information for sustainment decisions by flight line personnel. Prognostic health monitoring technology is integrated with the air system and is crucial to predictive maintenance of vital components.

i. The F-35 Operational Data Integrated Network (ODIN) provides an intelligent information infrastructure that binds all the key concepts of ALGS into an effective support system. ODIN establishes the appropriate interfaces among the F-35 Air Vehicle, the warfighter, the training system, government information technology (IT) systems, and supporting commercial enterprise systems. Additionally, ODIN provides a comprehensive tool for data collection and analysis, decision support and action tracking.

j. The F-35 Training System includes several training devices to provide integrated training for pilots and maintainers. The pilot training devices include a Full Mission Simulator (FMS) and Mission Rehearsal Trainer (MRT). The maintainer training devices include an Aircraft Systems Maintenance Trainer (ASMT), Ejection System Maintenance Trainer (ESMT), Outer Mold Line (OML) Lab, Flexible Linear Shaped Charge (FLSC) Trainer, F135 Engine Module Trainer, Weapons Loading Trainer (WLT), and other training devices. The F-35 Training System can be integrated, where both pilots and maintainers learn in the same Integrated Training Center (ITC).

k. Other subsystems, features, and capabilities include the F-35's low observable air frame, Integrated Core Processor (ICP) Central Computer, Helmet Mounted Display System (HMDS), Pilot Life Support System (PLSS), Mission Planning System Environment (MPSE), and publications/maintenance manuals. The HMDS provides a fully sunlight readable, bi-ocular display presentation of aircraft information projected onto the pilot's helmet visor. The use of a night vision camera integrated into the helmet eliminates the need for separate Night Vision Goggles. The PLSS provides a measure of Pilot Chemical, Biological, and Radiological Protection through use of an OnBoard Oxygen Generating System (OBOGS) and an escape system that provides additional protection to the pilot. OBOGS takes the Power and Thermal Management System (PTMS) air and enriches it by removing gases (mainly nitrogen) by adsorption, thereby increasing the concentration of oxygen in the product gas and supplying breathable air to the pilot. The MPSE provides a mission planning, mission briefing, and a maintenance/intelligence/tactical debriefing platform for the F-35.

2. The Reprogramming Center is located in the United States and provides F-35 customers a means to update F-35 electronic warfare databases.

3. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that the United Arab Emirates can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

6. All defense articles and services listed in this transmittal are authorized for release and export to the Government of the United Arab Emirates.

[FR Doc. 2020–28321 Filed 12–22–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice Reopening the Application Period for Certain Applicants Under the Higher Education Emergency Relief Fund (HEERF), Sections 18004(a)(1), 18004(a)(2), and 18004(a)(3); Coronavirus Aid, Relief, and Economic Security (CARES) Act

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary is reopening the application period for certain institutions of higher education (IHEs) that previously applied for HEERF, CARES Act funds. The Secretary takes this action to specifically allow those eligible applicants that previously submitted timely applications but were denied funding due to technical errors with their submission, additional time to submit their Certifications and Agreements (applications), and associated data submissions for approved information collections under OMB control numbers 1801–0005, 1840–0842, and 1840–0843. This reopening also permits prior applicants that did not apply for the full amount of their allocation within a particular funding stream to resubmit their applications, in order to receive the full allocation amount they were eligible to receive. This reopening does not apply to any IHE that did not apply for HEERF, CARES Act funds during a previous open period, or allow an IHE to apply to a new CARES Act funding stream.

DATES: *Deadline for Transmittal of Applications:* January 11, 2021.

FOR FURTHER INFORMATION CONTACT: Karen Epps, U.S. Department of Education, 400 Maryland Avenue SW, Room 250–64, Washington, DC 20202. Telephone: The Department of Education HEERF Call Center at (202) 377–3711. Email: *HEERF@ed.gov.* Please also visit our HEERF website at: *https://www2.ed.gov/about/offices/list/ope/caresact.html.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay

Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On June 24, 2020, we published in the **Federal Register** a notice establishing an August 1, 2020 deadline date for IHEs that did not initially apply to receive allocations to transmit their Certification and Agreements (applications) for funds from the HEERF under sections 18004(a)(1), 18004(a)(2), and 18004(a)(3) of the CARES Act (85 FR 37923) (June 24, 2020 notice). On September 4, 2020, we published a notice in the **Federal Register** reopening the application period until September 30, 2020 (85 FR 55266).

The June 24, 2020 notice applied to applications under the following Catalog of Federal Domestic Assistance (CFDA) numbers:

- 84.425E—Student Aid Portion of section 18004(a)(1).
- 84.425F—Institutional Portion of section 18004(a)(1).
- 84.425J—Historically Black Colleges and Universities under section 18004(a)(2).
- 84.425K—Tribally Controlled Colleges and Universities under section 18004(a)(2).
- 84.425L—Minority Serving Institutions under section 18004(a)(2).
- 84.425M—Strengthening Institutions Program under section 18004(a)(2).
- 84.425N—Fund for the Improvement of Postsecondary Education (FIPSE) under section 18004(a)(3).

This notice reopens the period for transmittal of applications via *grants.gov* for the following eligible applicants until January 11, 2021.

1. IHEs that previously applied for funding, but submitted their application under the incorrect funding opportunity.

2. IHEs that previously applied for funding under a particular funding opportunity, but failed to submit all necessary documentation for that funding opportunity, such as the required data from section 4 of the CARES Act Section 18004(a)(1) Reserve Fund Application (OMB Control Number 1840–0847) (*https://www2.ed.gov/about/offices/list/ope/reserveappfinal932020.pdf*).

3. IHEs that previously applied for funding under the FIPSE Formula Grant program (CFDA 84.425N), but failed to submit the required budget form to complete their application

4. IHEs that previously applied for funding under the FIPSE Formula Grant program (CFDA 84.425N), but did not have an award on the section 18004(a)(1) allocation table and did not submit an application as a reserve school under the Student Aid Portion or the Institutional Portion under section 18004(a)(1). These IHEs must submit the required data from section 4 of CARES Act Section 18004(a)(1) Reserve Fund Application (OMB Control Number 1840–0847) (*https://www2.ed.gov/about/offices/list/ope/reserveappfinal932020.pdf*) for the Department to calculate the amount of funding they are eligible to receive under the FIPSE Formula Grant program.

5. IHEs that originally applied for less funding than they were eligible to receive under a particular funding opportunity. These IHEs may submit revised applications to that funding opportunity to receive up to the full amount of the original allocation they were eligible to receive.

Note: This notice reopens the period for transmittal of applications only for applicants that meet one of the conditions described above. The Department will not accept applications from IHEs that we cannot verify have previously attempted to apply through *grants.gov* for a specific HEERF funding opportunity and meet one of the conditions described above.

Note: All information in the Certification and Agreements and in the June 24, 2020 notice remains the same, except for the deadline for the transmittal of applications from eligible applicants that meet one of the conditions identified above.

Note: Projects must be awarded and operated in a manner consistent with the nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Robert L. King,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2020–28501 Filed 12–22–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; American Indian Vocational Rehabilitation Services

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2021 for American Indian Vocational Rehabilitation Services (AIVRS)—Assistance Listing Number 84.250N—to partner with Indian Tribes in providing eligible American Indians with disabilities with vocational rehabilitation (VR) services. This notice relates to the approved information collection under OMB control number 1820–0018.

DATES: Applications Available: December 23, 2020.

Deadline for Transmittal of Applications: April 22, 2021.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR–2019–02–13/pdf/2019–02206.pdf.*

FOR FURTHER INFORMATION CONTACT: August Martin, U.S. Department of Education, 400 Maryland Avenue SW, room 5064A, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7410. Email: *August.Martin@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide VR services, including culturally appropriate services, to American Indians with disabilities who reside on or near Federal or State reservations, consistent with such eligible individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individual may prepare for, and engage in, high-quality employment that will increase opportunities for economic self-sufficiency.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 121(b)(4) of the Rehabilitation Act of 1973, as amended (Rehabilitation Act) (29 U.S.C. 741(b)(4)).

Competitive Preference Priority: For FY 2021, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award an additional five points to an application that meets this priority.

This priority is:

Continuation of Previously Funded Tribal Programs.

In making new awards under this program, we give priority to applications for the continuation of programs that have been funded under the AIVRS program.

Program Authority: 29 U.S.C. 741.

Note: Projects must be awarded and operated in a manner consistent with the nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 81, 82, and 84. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 371.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration intends to use approximately $27,086,128 for new awards for this program for FY 2021. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $300,000–$630,000.

Estimated Average Size of Awards: $531,100.

Estimated Number of Awards: 51.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Applications may be made only by Indian Tribes (and consortia of those Indian Tribes) located on Federal and State reservations. The definition of ''Indian Tribe'' in section 7(19)(B) of the Rehabilitation Act is ''any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act) and a tribal organization (as defined in section 4(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(1)).''

''Reservation'' is defined in 34 CFR 371.6 as ''a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act; or a defined area of land recognized by a State or the Federal Government where there is a concentration of tribal members and on which the tribal government is providing structured activities and services.''

The applicant for an AIVRS grant must be—

(1) The governing body of an Indian Tribe, either on behalf of the Indian Tribe or on behalf of a consortium of Indian Tribes; or

(2) A Tribal organization that is a separate legal organization from an Indian Tribe.

To receive an AIVRS grant, a Tribal organization that is not a governing body of an Indian Tribe must—

(1) Have as one of its functions the vocational rehabilitation of American Indians with disabilities; and

(2) Have the approval of the Tribe to be served by such organization.

If a grant is made to the governing body of an Indian Tribe, either on its own behalf or on behalf of a consortium, or to a Tribal organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the making of such a grant.

2. a. *Cost Sharing or Matching:* Cost sharing is required by section 121(a) of the Rehabilitation Act and 34 CFR 371.40 at 10 percent of the total cost of the project.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. Applicants for this program are the governing bodies of Indian Tribes (or consortia of governing bodies) and have negotiated indirect cost rate agreements with a cognizant agency if indirect costs will be charged to the grant. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200, subpart E, of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. While subgrants are not permitted, under 34 CFR 371.42(a), grantees are permitted to provide the VR services by contract or otherwise enter into an agreement with a designated State unit (DSU), a community rehabilitation program, or another agency to assist in the implementation of the Tribal VR program, as long as such contract or agreement is identified in the application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR–2019–02–13/pdf/2019–02206.pdf,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This competition is not subject to Executive

Order 12372 and the regulations in 34 CFR part 79.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210, have a maximum score of 100 points, and are as follows:

(a) *Need for Project and Significance* (10 Points): The Secretary considers the need for and significance of the proposed project. In determining the need for and significance of the proposed project, the Secretary considers the following factors:

(1) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(2) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(3) The potential contribution of the proposed project to increased knowledge or understanding of rehabilitation problems, issues, or effective strategies.

(4) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(b) *Quality of the Project Design* (20 Points):

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(3) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(c) *Quality of Project Services* (20 Points):

The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, the Secretary considers the following factors:

(1) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(2) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(3) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(d) *Quality of Project Personnel* (15 Points):

In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel.

(e) *Adequacy of Resources* (10 Points):

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(3) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(f) *Quality of the Management Plan* (15 Points):

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(3) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(g) *Quality of the Project Evaluation* (10 Points):

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(3) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Applicants for the AIVRS program must provide evidence regarding the following special application requirements in 34 CFR 371.21(a)–(k). The application package includes a Special Application Requirements form in Section D that must be completed. An application is not complete without the Special Application Requirements form and will not be considered for review

without that completed form submitted by the applicant. These requirements are:

(a) Effort will be made to provide a broad scope of vocational rehabilitation services in a manner and at a level of quality at least comparable to those services provided by the designated State unit.

(b) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available vocational rehabilitation services and the provision of such services will be made by a representative of the Tribal vocational rehabilitation program funded through this grant and such decisions will not be delegated to another agency or individual.

(c) Priority in the delivery of vocational rehabilitation services will be given to those American Indians with disabilities who are the most significantly disabled.

(d) An order of selection of individuals with disabilities to be served under the program will be specified if services cannot be provided to all eligible American Indians with disabilities who apply.

(e) All vocational rehabilitation services will be provided according to an individualized plan for employment which has been developed jointly by the representative of the Tribal vocational rehabilitation program and each American Indian with disabilities being served.

(f) American Indians with disabilities living on or near Federal or State reservations where Tribal vocational rehabilitation service programs are being carried out under this part will have an opportunity to participate in matters of general policy development and implementation affecting vocational rehabilitation service delivery by the Tribal vocational rehabilitation program.

(g) Cooperative working arrangements will be developed with the DSU, or DSUs, as appropriate, which are providing vocational rehabilitation services to other individuals with disabilities who reside in the State or States being served.

(h) Any comparable services and benefits available to American Indians with disabilities under any other program, which might meet in whole or in part the cost of any vocational rehabilitation service, will be fully considered in the provision of vocational rehabilitation services.

(i) Any American Indian with disabilities who is an applicant or recipient of services, and who is dissatisfied with a determination made by a representative of the Tribal vocational rehabilitation program and files a request for a review, will be afforded a review under procedures developed by the grantee comparable to those under the provisions of section 102(c)(1)-(5) and (7) of the Rehabilitation Act.

(j) The Tribal vocational rehabilitation program funded under this part must assure that any facility used in connection with the delivery of vocational rehabilitation services meets facility and program accessibility requirements consistent with the requirements, as applicable, of the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, section 504 of the Rehabilitation Act, and the regulations implementing these laws.

(k) The Tribal vocational rehabilitation program funded under this part must ensure that providers of vocational rehabilitation services are able to communicate in the native language of, or by using an appropriate mode of communication with, applicants and eligible individuals who have limited English proficiency, unless it is clearly not feasible to do so.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the

necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For the purposes of the Government Performance and Results Act of 1993 (GPRA), and reporting under 34 CFR 75.110, the Department has established four performance measures for the AIVRS program. The measures are:

(a) Of all those exiting the program, the percentage of individuals who leave the program with an employment outcome after receiving services under an individualized plan for employment (IPE).

(b)(1) The percentage of individuals who leave the program with an employment outcome after receiving services under an IPE.

(2) The percentage of individuals who leave the program without an employment outcome after receiving services under an IPE.

(3) The percentage of individuals who have not left the program and are continuing to receive services under an IPE.

(c) The percentage of projects that demonstrate an average annual cost per employment outcome of no more than $35,000.

(d) The percentage of projects that demonstrate an average annual cost of services per participant of no more than $10,000.

Each grantee must annually report the data needed to measure its performance on the GPRA measures through the Annual Performance Reporting Form (APR Form) for the AIVRS program.

Note: For purposes of this section, the term ''employment outcome'' means, with respect to an individual, (a) entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market; (b) satisfying the vocational outcome of supported employment; or (c) satisfying any other vocational outcome the Secretary of Education may determine to be appropriate (including satisfying the vocational outcome of customized employment, self-employment, telecommuting, or business ownership). (Section 7(11) of the Rehabilitation Act (29 U.S.C. 705(11)).

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format.

The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schultz,

Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2020–28541 Filed 12–21–20; 4:15 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0197]

Agency Information Collection Activities; Comment Request; Annual Report on Appeals Process (RSA–722)

AGENCY: Office of Special Education and Rehabilitation Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change to a currently approved collection.

DATES: Interested persons are invited to submit comments on or before February 22, 2021.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0197. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Caneshia McAlister, 202–245–6059.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork

Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records..

Title of Collection: Annual Report on Appeals Process (RSA–722).

OMB Control Number: 1820–0563.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 78.

Total Estimated Number of Annual Burden Hours: 156.

Abstract: Pursuant to Subsection 102(c)(8)(A) and (B) of the Rehabilitation Act of 1973, as amended by Title IV of the Workforce Innovation and Opportunity Act, the RSA–722 is needed to meet specific data collection requirements on the number of requests for mediations, hearings, administrative reviews, and other methods of dispute resolution requested and the manner in which they were resolved. The information collected is used to evaluate the types of complaints made by applicants and eligible individuals of the vocational rehabilitation program and the final resolution of appeals filed. Respondents are State agencies that administer the Federal/State Program for Vocational Rehabilitation.

Dated: December 18, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–28348 Filed 12–22–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Posting of the Presidential Policy Directive 6 (Space Policy), ''National Strategy for Space Nuclear Power and Propulsion''

AGENCY: Office of the Secretary, Department of Energy.

ACTION: Notice.

SUMMARY: Presidential Policy Directive 6 (Space Policy) directs implementation of the National Strategy for Space Nuclear Power and Propulsion. The Secretary is authorized and directed to publish the Memorandum in the **Federal Register**.

DATES: Presidential Policy Directive 6 was signed on December 16, 2020.

FOR FURTHER INFORMATION CONTACT: For further information about this Notice, please contact Ms. Tracey Bishop, Deputy Assistant Secretary for Nuclear Infrastructure Programs, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874; phone: 301–903–5543; email to: *Tracey.Bishop@nuclear.energy.gov.*

SUPPLEMENTARY INFORMATION:

Presidential Policy Directive

Memorandum: National Strategy for Space Nuclear Power and Propulsion.

Memorandum for: The Vice President; The Secretary of State; The Secretary of Defense; The Secretary of Commerce; The Secretary of Transportation; The Secretary of Energy; The Director of the Office of Management and Budget; The Assistant to the President for National Security Affairs; The Administrator of the National Aeronautics and Space Administration; The Chairman of the Nuclear Regulatory Commission; The Director of the Office of Science and Technology Policy.

Section 1. Policy. The ability to use space nuclear power and propulsion (SNPP) systems safely, securely, and sustainably is vital to maintaining and advancing United States dominance and strategic leadership in space. SNPP systems include radioisotope power systems (RPSs) and fission reactors used for power or propulsion in spacecraft, rovers, and other surface elements. SNPP systems can allow operation of such elements in environments in which solar and chemical power are inadequate. They can produce more power at lower mass and volume compared to other energy sources, thereby enabling persistent presence and operations. SNPP systems also can shorten transit times for crewed and robotic spacecraft, thereby reducing radiation exposure in harsh space environments.

National Security Presidential Memorandum-20 (NSPM–20) of August 20, 2019 (Launch of Spacecraft Containing Space Nuclear Systems), updated the process for launches of spacecraft containing space nuclear systems. It established it as the policy of the United States to ''develop and use space nuclear systems when such systems safely enable or enhance space exploration or operational capabilities.''

Cooperation with commercial and international partners is critical to achieving America's objectives for space exploration. Presidential Policy Directive 4 of June 28, 2010 (National Space Policy), as amended by the Presidential Memorandum of December 11, 2017 (Reinvigorating America's Human Space Exploration Program), established it as the policy of the United States to ''[l]ead an innovative and sustainable program of exploration with commercial and international partners to enable human expansion across the solar system and to bring back to Earth new knowledge and opportunities.''

This memorandum establishes a national strategy to ensure the development and use of SNPP systems when appropriate to enable and achieve the scientific, exploration, national security, and commercial objectives of the United States. In the context of this strategy only, the term ''development'' includes the full development process from design through testing and production, and the term ''use'' includes launch, operation, and disposition. This memorandum outlines high-level policy goals and a supporting roadmap that will advance the ability of the United States to use SNPP systems safely, securely, and sustainably. The execution of this strategy will be subject to relevant budgetary and regulatory processes and to the availability of appropriations.

Section 2. Goals. The United States will pursue goals for SNPP development and use that are both mission-enabling and ambitious in their substance and their timeline. These goals will enable a range of existing and future space missions, with the aim of accelerating achievement of key milestones, including in-space demonstration and use of new SNPP capabilities. This

memorandum establishes the following such goals for the Nation:

(a) Develop uranium fuel processing capabilities that enable production of fuel that is suitable to lunar and planetary surface and in-space power, nuclear electric propulsion (NEP), and nuclear thermal propulsion (NTP) applications, as needed. These capabilities should support the ability to produce different uranium fuel forms to meet the nearest-term mission needs and, to the extent feasible, should maximize commonality—meaning use of the same or similar materials, processes, designs, or infrastructure—across these fuel forms. To maximize private-sector engagement and cost savings, these capabilities should be developed to enable a range of terrestrial as well as space applications, including future commercial applications;

(b) Demonstrate a fission power system on the surface of the Moon that is scalable to a power range of 40 kilowatt-electric (kWe) and higher to support a sustained lunar presence and exploration of Mars. To the extent feasible, this power system should align with mission needs for, and potential future government and commercial applications of, in-space power, NEP, and terrestrial nuclear power;

(c) Establish the technical foundations and capabilities—including through identification and resolution of the key technical challenges—that will enable options for NTP to meet future Department of Defense (DoD) and National Aeronautics and Space Administration (NASA) mission requirements; and

(d) Develop advanced RPS capabilities that provide higher fuel efficiency, higher specific energy, and longer operational lifetime than existing RPS capabilities, thus enabling survivable surface elements to support robotic and human exploration of the Moon and Mars and extending robotic exploration of the solar system.

Section. 3. Principles. The United States will adhere to principles of safety, security, and sustainability in its development and use of SNPP systems, in accordance with all applicable Federal laws and consistent with international obligations and commitments.

(a) Safety. All executive departments and agencies (agencies) involved in the development and use of SNPP systems shall take appropriate measures to ensure, within their respective roles and responsibilities, the safe development, testing, launch, operation, and disposition of SNPP systems. For United States Government SNPP programs, the sponsoring agency holds primary responsibility for safety. For programs involving multiple agencies, the terms of cooperation shall designate a lead agency with primary responsibility for safety in each stage of development and use.

(i) Ground development. Activities associated with ground development, including ground testing, of SNPP systems shall be conducted in accordance with applicable Federal, State, and local laws and existing authorities of regulatory agencies.

(ii) Launch. NSPM–20 established safety guidelines and safety analysis and review processes for Federal Government launches of spacecraft containing space nuclear systems, including SNPP systems, and for launches for which the Department of Transportation has statutory authority to license as commercial space launch activities (commercial launches). These guidelines and processes address launch and any subsequent stages during which accidents may result in radiological effects on the public or the environment—for instance, in an unplanned reentry from Earth orbit or during an Earth flyby. Launch activities shall be conducted in accordance with these guidelines and processes.

(iii) Operation and disposition. The operation and disposition of SNPP systems shall be planned and conducted in a manner that protect human and environmental safety and national security assets. Fission reactor SNPP systems may be operated on interplanetary missions, in sufficiently high orbits, and in low-Earth orbits if they are stored in sufficiently high orbits after the operational part of their mission. In this context, a sufficiently high orbit is one in which the orbital lifetime of the spacecraft is long enough for the fission products to decay to a level of radioactivity comparable to that of uranium-235 by the time it reenters the Earth's atmosphere, and the risks to existing and future space missions and of collision with objects in space are minimized. Spacecraft operating fission reactors in low-Earth orbits shall incorporate a highly reliable operational system to ensure effective and controlled disposition of the reactor.

(b) Security. All agencies involved in the development and use of SNPP systems shall take appropriate measures to protect nuclear and radiological materials and sensitive information, consistent with sound nuclear nonproliferation principles. For United States Government SNPP programs, the sponsoring agency holds primary responsibility for security. For programs involving multiple agencies, the terms of cooperation shall designate a lead agency with primary responsibility for security in each stage of development and use. The use of highly enriched uranium (HEU) in SNPP systems should be limited to applications for which the mission would not be viable with other nuclear fuels or non-nuclear power sources. Before selecting HEU or, for fission reactor systems, any nuclear fuel other than low-enriched uranium (LEU), for any given SNPP design or mission, the sponsoring agency shall conduct a thorough technical review to assess the viability of alternative nuclear fuels. The sponsoring agency shall provide to the respective staffs of the National Security Council, the National Space Council, the Office of Science and Technology Policy, and the Office of Management and Budget a briefing that provides justification for why the use of HEU or other non-LEU fuel is required, and any steps the agency has taken to address nuclear safety, security, and proliferation-related risks. The Director of the Office of Science and Technology Policy shall ensure, through the National Science and Technology Council, that other relevant agencies are invited to participate in these briefings.

(c) Sustainability. All agencies involved in the development and use of SNPP systems shall take appropriate measures to conduct these activities in a manner that is suitable for the long-term sustainment of United States space capabilities and leadership in SNPP.

(i) Coordination and Collaboration. To maximize efficiency and return on taxpayer investment, the heads of relevant agencies shall seek and pursue opportunities to coordinate among existing and future SNPP development and use programs. Connecting current efforts with likely future applications will help ensure that such programs can contribute to long-term United States SNPP capabilities and leadership. Agencies also shall seek opportunities to partner with the private sector, including academic institutions, in order to facilitate contributions to United States SNPP capabilities and leadership. To help identify opportunities for collaboration, the heads of relevant agencies should conduct regular technical exchanges among SNPP programs, to the extent that such exchanges are consistent with the principle of security and comply with applicable Federal, State, and local laws. Agencies shall coordinate with the Department of State when seeking opportunities for international partnerships.

(ii) Commonality. The heads of relevant agencies shall seek to identify and use opportunities for commonality among SNPP systems, and between

SNPP and terrestrial nuclear systems, whenever doing so could advance program and policy objectives without unduly inhibiting innovation or market development, or hampering system suitability to specific mission applications. For example, opportunities for commonality may exist in goals (*e.g.,* demonstration timeline), reactor design, nuclear fuels (*e.g.,* fuel type and form, and enrichment level), supplementary systems (*e.g.,* power conversion, moderator, reflector, shielding, and system vessel), methods (*e.g.,* additive manufacturing of fuel or reactor elements), and infrastructure (*e.g.,* fuel supply, testing facilities, launch facilities, and workforce).

(iii) Cost-effectiveness. The heads of relevant agencies should pursue SNPP development and use solutions that are cost-effective while also consistent with the principles of safety and security. For any program or system, the heads of such agencies should seek to identify the combination of in-space and ground-based testing and certification that will best qualify the system for a given mission while ensuring public safety.

Section. 4. Roles and Responsibilities. (a) The Vice President, on behalf of the President and acting through the National Space Council, shall coordinate United States policy related to use of SNPP systems.

(b) The Secretary of State shall, under the direction of the President, coordinate United States activities related to international obligations and commitments and international cooperation involving SNPP.

(c) The Secretary of Defense shall conduct and support activities associated with development and use of SNPP systems to enable and achieve United States national security objectives. When appropriate, the Secretary of Defense shall facilitate private-sector engagement in DoD SNPP activities.

(d) The Secretary of Commerce shall promote responsible United States commercial SNPP investment, innovation, and use, and shall, when consistent with the authorities of the Secretary, ensure the publication of clear, flexible, performance-based rules that are applicable to use of SNPP and are easily navigated. Under the direction of the Secretary of Commerce, the Department of Commerce (DOC) shall ascertain and communicate the views of private-sector partners and potential private-sector partners to relevant agency partners in order to facilitate public-private collaboration in SNPP development and use.

(e) The Secretary of Transportation's statutory authority includes licensing commercial launches and reentries, including vehicles containing SNPP systems. Within this capacity, the Secretary of Transportation shall, when appropriate, facilitate private-sector engagement in the launch or reentry aspect of SNPP development and use activities, in support of United States science, exploration, national security, and commercial objectives. To help ensure the launch safety of an SNPP payload, and consistent with 51 U.S.C. 50904, a payload review may be conducted as part of a license application review or may be requested by a payload owner or operator in advance of or apart from a license application.

(f) The Secretary of Energy shall, in coordination with sponsoring agencies and other agencies, as appropriate, support development and use of SNPP systems to enable and achieve United States scientific, exploration, and national security objectives. When appropriate, the Secretary of Energy shall work with sponsoring agencies and DOC to facilitate United States private-sector engagement in Department of Energy (DOE) SNPP activities. Under the direction of the Secretary of Energy and consistent with the authorities granted to DOE, including authorities under the Atomic Energy Act of 1954 (AEA), as amended, 42 U.S.C. 2011, *et seq.,* DOE may authorize ground-based SNPP development activities, including DOE activities conducted in coordination with sponsoring agencies and private-sector entities. As directed in NSPM–20, the Secretary of Energy shall maintain, on a full-cost recovery basis, the capability and infrastructure to develop, furnish, and conduct safety analyses for space nuclear systems for use in United States Government space systems.

(g) The Administrator of NASA shall conduct and support activities associated with development and use of SNPP systems to enable and achieve United States space science and exploration objectives. The Administrator of NASA shall establish the performance requirements for SNPP capabilities necessary to achieve those objectives. When appropriate, the Administrator of NASA shall facilitate private-sector engagement in NASA SNPP activities, and shall coordinate with the Secretary of Commerce and, as appropriate, the Secretary of State and the Secretary of Energy, to help facilitate private-sector SNPP activities.

(h) The Nuclear Regulatory Commission (NRC) has statutory authority under the AEA for licensing and regulatory safety and security oversight of commercial nuclear activities taking place within the United States. The NRC should, as appropriate and particularly in circumstances within NRC authority where DOE regulatory authorities cannot be applied, enable private-sector engagement in SNPP development and use activities in support of United States science, exploration, national security, and commercial objectives.

(i) The Director of the Office and Science and Technology Policy shall coordinate United States policy related to research and development of SNPP systems.

Section. 5. Roadmap. The United States will pursue a coordinated roadmap for federally-supported SNPP activities to achieve the goals and uphold the principles established in this memorandum. This roadmap comprises the following elements, which the relevant agencies should pursue consistent with the following objective timeline, subject to relevant budgetary and regulatory processes and to the availability of appropriations:

(a) By the mid-2020s, develop uranium fuel processing capabilities that enable production of fuel that is suitable for lunar and planetary surface and in-space power, NEP, and NTP applications, as needed.

(i) Identify relevant mission needs. DoD and NASA should provide to DOE any mission needs (*e.g.,* power density, environment, and timelines) relevant to the identification of fuels suitable for planetary surface and in-space power, NEP, and NTP applications.

(ii) Identify candidate fuel or fuels. DoD and NASA, in cooperation with DOE and private-sector partners, as appropriate, should identify candidate fuel or fuels to meet the identified mission requirements. This review and assessment should account for current and expected United States capabilities to produce and qualify for use candidate fuels, and for potential commonality of fuels or fuel variants across multiple planetary surface and in-space power, in-space propulsion, and terrestrial applications.

(iii) Qualify at least one candidate fuel. DoD and NASA, in cooperation with DOE and private-sector partners, as appropriate, should qualify a fuel or fuels for demonstrations of a planetary surface power reactor and an in-space propulsion system. While seeking opportunities to use private-sector-partner capabilities, agencies should ensure that the Federal Government retains an ability for screening and qualification of candidate fuels.

(iv) Supply fuel for demonstrations. DOE, in cooperation with NASA and DoD, and with private-sector partners, as appropriate, should identify feedstock and uranium that can be made available for planetary surface power and in-space propulsion demonstrations. DOE shall ensure that any provision of nuclear material for SNPP will not disrupt enriched uranium supplies for the United States nuclear weapons program and the naval propulsion program, and that SNPP needs are included among broader considerations of nuclear fuel supply provisioning and management.

(b) By the mid- to late-2020s, demonstrate a fission power system on the surface of the Moon that is scalable to a power range of 40 kWe and higher to support sustained lunar presence and exploration of Mars.

(i) Initiate a surface power project. NASA should initiate a fission surface power project for lunar surface demonstration by 2027, with scalability to Mars exploration. NASA should consult with DoD and other agencies, and with the private sector, as appropriate, when developing project requirements.

(ii) Conduct technology and requirements assessment. NASA, in coordination with DoD and other agencies, and with private-sector partners, as appropriate, should evaluate technology options for a surface power system including reactor designs, power conversion, shielding, and thermal management. NASA should work with other agencies, and private-sector partners, as appropriate, to evaluate opportunities for commonality among other SNPP needs, including in-space power and terrestrial power needs, possible NEP technology needs, and reactor demonstrations planned by NASA, other agencies, or the private sector.

(iii) Engage the private sector. DOE and NASA should determine a mechanism or mechanisms for engaging with the private sector to meet NASA's SNPP surface power needs in an effective manner consistent with the guiding principles set forth in this memorandum. In evaluating mechanisms, DOE and NASA should consider the possibility of NASA issuing a request for proposal for the development and construction of the surface power reactor system or demonstration.

(iv) System development. NASA should work with DOE, and with other agencies and private-sector partners, as appropriate, to develop the lunar surface power demonstration project.

(v) Conduct demonstration mission. NASA, in coordination with other agencies and with private-sector partners, as appropriate, should launch and conduct the lunar surface power demonstration project.

(c) By the late-2020s, establish the technical foundations and capabilities—including through identification and resolution of the key technical challenges—that will enable NTP options to meet future DoD and NASA mission needs.

(i) Conduct requirements assessment. DoD and NASA, in cooperation with DOE, and with other agencies and private-sector partners, as appropriate, should assess the ability of NTP capabilities to enable and advance existing and potential future DoD and NASA mission requirements.

(ii) Conduct technology assessment. DoD and NASA, in cooperation with DOE, and with other agencies and private-sector partners, as appropriate, should evaluate technology options and associated key technical challenges for an NTP system, including reactor designs, power conversion, and thermal management. DoD and NASA should work with their partners to evaluate and use opportunities for commonality with other SNPP needs, terrestrial power needs, and reactor demonstration projects planned by agencies and the private sector.

(iii) Technology development. DoD, in coordination with DOE and other agencies, and with private-sector partners, as appropriate, should develop reactor and propulsion system technologies that will resolve the key technical challenges in areas such as reactor design and production, propulsion system and spacecraft design, and SNPP system integration.

(d) By 2030, develop advanced RPS capabilities that provide higher fuel efficiency, higher specific energy, and longer operational lifetime than existing RPS capabilities, thus enabling survivable surface elements to support robotic and human exploration of the Moon and Mars and extending robotic exploration of the solar system.

(i) Maintain RPS capability. Mission sponsoring agencies should assess their needs for radioisotope heat source material to meet emerging mission requirements, and should work with DOE to jointly identify the means to produce or acquire the necessary material on a timeline that meets mission requirements.

(ii) Engage the private sector. NASA, in coordination with DOE and DOC, should conduct an assessment of opportunities for engaging the private sector to meet RPS needs in an effective manner consistent with the guiding principles established in this memorandum.

(iii) Conduct technology and requirements assessment. NASA, in coordination with DOE and DoD, and with other agencies and private-sector partners, as appropriate, should assess requirements for next-generation RPS systems and evaluate technology options for meeting those requirements.

(iv) System development. DOE, in coordination with NASA and DoD, and with other agencies and private-sector partners, as appropriate, should develop one or more next-generation RPS system or systems to meet the goals of higher fuel efficiency, higher specific energy, and longer operational lifetime for the required range of power.

Section. 6. Implementation. The Vice President, through the National Space Council, shall coordinate implementation of this memorandum.

Section. 7. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Energy is authorized and directed to publish this memorandum in the **Federal Register**.

Dated: December 16, 2020.

Signing Authority

This document of the Department of Energy was signed on December 18, 2020, by Dr. Rita Baranwal, Assistant Secretary for Nuclear Energy, Department of Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This

administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 18, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–28457 Filed 12–22–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case Number 2020–009; EERE–2020–BT–WAV–0025]

Energy Conservation Program: Notice of Petition for Waiver of Heat Transfer Products Group From the Department of Energy Walk-In Coolers and Walk-In Freezers Test Procedure and Notice of Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of petition for waiver and grant of an interim waiver; request for comments.

SUMMARY: This document announces receipt of and publishes a petition for waiver and interim waiver from Heat Transfer Products Group (''HTPG''), which seeks a waiver for specified carbon dioxide (''CO2'') direct expansion unit cooler basic models from the U.S. Department of Energy (''DOE'') test procedure used to determine the efficiency of walk-in cooler and walk-in freezer refrigeration systems. DOE also gives notice of an Interim Waiver Order that requires HTPG to test and rate the specified CO2 direct expansion unit cooler basic models in accordance with the alternate test procedure set forth in the Interim Waiver Order. DOE solicits comments, data, and information concerning HTPG's petition and its suggested alternate test procedure so as to inform DOE's final decision on HTPG's waiver request.

DATES: The Interim Waiver Order is effective on December 23, 2020. Written comments and information will be accepted on or before January 22, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, interested persons may submit comments, identified by case number ''2020–009'', and Docket number ''EERE–2020–BT–WAV–0025,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: HTPG2020WAV0025@ee.doe.gov.* Include Case No. 2020–009 in the subject line of the message.
- *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mail Stop EE–5B, Petition for Waiver Case No. 2020–009, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *http://www.regulations.gov/docket?D=EERE-2020-BT-WAV-0025.* The docket web page contains instruction on how to access all documents, including public comments, in the docket. See the **SUPPLEMENTARY INFORMATION** section for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mail Stop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *AS_Waiver_Request@ee.doe.gov.*

Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE is publishing HTPG's petition for waiver in its entirety, pursuant to 10 CFR 431.401(b)(1)(iv).[1] DOE invites all interested parties to submit in writing by January 22, 2021, comments and information on all aspects of the petition, including the alternate test procedure. Pursuant to 10 CFR 431.401(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is Michael Straub, *mike.straub@htpg.com,* 201 Thomas French Dr., Scottsboro, AL 35769–7405.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

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[1] The petition did not identify any of the information contained therein as confidential business information.

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It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Signing Authority

This document of the Department of Energy was signed on November 24, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 24, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

Case Number 2020–009

Interim Waiver Order

I. Background and Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and certain industrial equipment (42 U.S.C. 6291–6317). Title III, Part C [2] of EPCA (42 U.S.C. 6311–6316, as codified), added by the National Energy Conservation Policy Act, Public Law 95–619, sec. 441 (Nov. 9, 1978), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve the energy efficiency for certain types of industrial equipment. Through amendments brought about by the Energy Independence and Security Act of 2007, Public Law 110–140, sec. 312 (Dec. 19, 2007), this equipment includes walk-in cooler and walk-in freezer (collectively, ''walk-in'') refrigeration systems, the focus of this document (42 U.S.C. 6311(1)(G)).

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the covered equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct (42 U.S.C. 6314(a)(2)). The test procedure for walk-in refrigeration systems is contained in the Code of Federal Regulations (''CFR'') at 10 CFR part 431, subpart R, appendix C, *Uniform Test Method for the Measurement of Net Capacity and AWEF of Walk-In Cooler and Walk-In Freezer Refrigeration Systems* (''Appendix C'').

Under 10 CFR 431.401, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated as Part A–1.

test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(f)(2). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the performance of the equipment type in a manner representative of the energy consumption characteristics of the basic model. 10 CFR 431.401(b)(1)(iii). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures specified by DOE. 10 CFR 431.401(f)(2).

As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 431.401(l). As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule to that effect. *Id.*

The waiver process also provides that DOE may grant an interim waiver if it appears likely that the underlying petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the underlying petition for waiver. 10 CFR 431.401(e)(2). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 431.401(h)(1).

When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 431.401(h)(2).

II. HTPG's Petition for Waiver and Interim Waiver

On July 6, 2020, HTPG filed a petition for waiver and interim waiver from the test procedure for walk-in refrigeration systems set forth at 10 CFR part 431, subpart R, appendix C (HTPG, No. 1 at p. 1 [3]). HTPG claims that the test conditions described in Table 15 and Table 16 of the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') Standard 1250–2009, *Standard for Performance Rating of Walk-In Coolers and Freezers* (''AHRI 1250–2009'') (for walk-in refrigerator unit coolers and freezer unit coolers tested alone, respectively), as incorporated by Appendix C with modification, cannot be achieved by the specified basic models and are not consistent with operation of HTPG's CO_2 direct expansion unit coolers . HTPG stated that CO_2 has a critical temperature of 87.8 °F,[4] and thus the required liquid inlet saturation temperature of 105 °F and the required liquid inlet subcooling temperature of 9 °F are not achievable, and that the test conditions should be more consistent with typical operating conditions for a transcritical CO_2 booster system (HTPG, No. 1).

The statements made by HTPG reference the difference in thermodynamic properties between CO_2 and other refrigerants. At modest pressures (*i.e.* below the critical point), many substances transition from a solid to a liquid to a gas as temperature increases. For example, a pure substance like water transitions from liquid to steam at a specific temperature, *e.g.* 212 °F, at atmospheric pressure. As heat is added during a liquid to gas transition, the temperature remains constant and the substance coexists as both liquid and vapor. Continuing to add heat converts more of the liquid to vapor at a constant temperature. The reverse occurs when heat is removed. However, the transition temperature depends on the pressure—the higher the pressure, the higher the transition temperature. This is a key principle in refrigeration systems, which operate at two pressure levels associated with two temperatures. A refrigerant absorbs heat when it is at a low temperature and pressure, converting to gas and cooling the surrounding space. At high temperature and pressure, the refrigerant transitions to a liquid while releasing heat to the environment. A compressor is used to raise the low-pressure gas to a high pressure, and a throttle (pressure reduction device) is used to reduce the pressure once the refrigerant has been fully liquefied (condensed) at high pressure.

All refrigerants have a ''critical pressure'' and an associated ''critical temperature'' above which liquid and vapor phases cannot coexist. Above this critical point, the refrigerant will be a gas and its temperature will increase or decrease as heat is added or removed. For all conventional refrigerants, the critical pressure is so high that it is never exceeded in typical refrigeration cycles. For example, R404A is a common refrigerant used in refrigeration systems that has a critical pressure of 540.8 psia [5] with an associated critical temperature of 161.7 °F. However, CO_2 behaves differently, with a critical pressure of 1,072 psia associated with a much lower critical temperature of 87.8 °F. The refrigerant temperature must be somewhat higher than the ambient temperature in order to reject refrigeration cycle heat to the ambient environment. Ambient temperatures greater than 87.8 °F are common and the performance of many refrigeration and air conditioning systems are tested using a 95 °F ambient temperature, as indicated by the A test condition in AHRI 1250–2009 Section 5. At temperatures greater than the critical temperature, the CO_2 refrigerant is in a supercritical state (*i.e.* a condition with pressure above the critical temperature) and heat is transferred to the environment. Since useful cooling is provided below the critical temperature, CO_2 cycles are said to be transcritical.

The transcritical nature of CO_2 generally requires more complex refrigeration cycle design to approach the efficiency of traditional refrigerants (*i.e.,* R404A, R407A, R448A, etc.) during operation in high temperature conditions. To increase efficiency and prevent overheating, transcritical booster systems introduce (or use) multiple stages of compression and intercooling. CO_2 is cooled in the gas cooler of a transcritical booster system, then expands through a high-pressure control valve and is delivered to a subcritical-pressure flash tank. In the flash tank, the refrigerant is in the subcritical phase and the liquid and vapor phases can be separated. A unit cooler in a CO_2 booster system would be supplied with liquid refrigerant from the flash tank via expansion valves where the refrigerant is evaporated. The evaporated refrigerant is subsequently compressed up to gas cooler pressure to complete the cycle (HTPG, No. 2).

[3] A notation in the form ''HTPG, No.1'' identifies a written submission: (1) Made by HTPG; and (2) recorded in document number 1 that is filed in the docket of this petition for waiver (Docket No. EERE–2020–BT–WAV–0025) and available at *http://www.regulations.gov/docket?D=EERE-2020-BT-WAV-0025*.

[4] The test procedure specifies the unit cooler refrigerant inlet condition in terms of a saturation temperature (the temperature at which it completes the condensation process in a condenser) and the subcooling temperature (additional reduction in temperature lower than the specified saturation temperature). For CO_2, the critical temperature above which there cannot exist separate liquid and gas phases is below the saturation condition specified in the test procedure, hence the specified condition cannot be achieved.

[5] Absolute pressure is the pressure measured relative to a complete vacuum; ''psia'' represents the absolute pressure in pounds per square inch.

HTPG also requests an interim waiver from the existing DOE test procedure. DOE will grant an interim waiver if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. *See* 10 CFR 431.401(e)(2).

Based on the assertions in the petition, absent an interim waiver, the prescribed test procedure is not appropriate for HTPG's CO_2 direct expansion unit coolers and the test conditions are not achievable, since CO_2 refrigerant has a critical temperature of 87.8 °F and the current DOE test procedure calls for a liquid inlet saturation temperature of 105 °F. The inability to achieve test conditions for the stated basic models would result in economic hardship from loss of sales stemming from the inability of the DOE test procedure to address the operating conditions of HTPG's equipment.

III. Requested Alternate Test Procedure

EPCA requires that manufacturers use the applicable DOE test procedures when making representations about the energy consumption and energy consumption costs of covered equipment (42 U.S.C. 6314(d)). Consistency is important when making representations about the energy efficiency of equipment, including when demonstrating compliance with applicable DOE energy conservation standards. Pursuant to 10 CFR 431.401, and after consideration of public comments on the petition, DOE may establish in a subsequent Decision and Order an alternate test procedure for the basic models addressed by the Interim Waiver Order.

HTPG seeks to test and rate specific CO_2 direct expansion unit cooler basic models with modifications to the DOE test procedure. HTPG's suggested approach specifies using modified liquid inlet saturation and liquid inlet subcooling temperatures—38°F and 5°F, respectively, for both walk-in refrigerator unit coolers and walk-in freezer unit coolers. Additionally, HTPG recommends that because the subject units are used in transcritical CO_2 booster systems the calculations in AHRI 1250–2009 section 7.9 should be used to determine AWEF and net capacity for unit coolers matched to parallel rack systems as required under the DOE test procedure. This section of AHRI 1250–2009 is prescribed by the DOE test procedure for determining AWEF for all unit coolers tested alone (see 10 CFR part 431, subpart R, appendix C, section 3.3.1). Finally, HTPG also recommends that AHRI 1250–2009 Table 17, EER for Remote Commercial Refrigerated Display Merchandisers and Storage Cabinets, should be used to determine power consumption of CO_2 direct expansion unit cooler systems as required under the DOE test procedure.

IV. Interim Waiver Order

DOE has reviewed HTPG's application, its suggested testing approach, industry materials regarding CO_2 transcritical booster systems, and HTPG's consumer-facing materials, including websites and product specification sheets for the basic models listed in HTPG's petition. Based on this review, the suggested testing approach appears to allow for the accurate measurement of energy efficiency of the specified basic models, while alleviating the testing issues associated with HTPG's implementation of walk-in cooler and walk-in freezer testing for these basic models. Review of the CO_2 refrigeration market confirms that the test conditions of the testing approach suggested by HTPG would be representative for operation of a unit cooler used in a transcritical CO_2 booster system (HTPG, No. 4). CO_2 that is cooled in the gas cooler of a transcritical booster system expands through a high-pressure control valve that delivers CO_2 to a subcritical-pressure flash tank, where liquid and vapor phases of the refrigerant are separated. The liquid is then split and the unit coolers receive the refrigerant at the same condition, consistent with the use of the same liquid inlet saturation temperature for both the medium- and low-temperature systems in HTPG's suggested test approach. Calculations on other external CO_2 refrigeration system designs in the market indicate that the 38 °F liquid unit cooler inlet saturation temperature suggested by HTPG is representative of CO_2 booster systems (HTPG, No. 2). Regarding use of the EER values in AHRI 1250–2009 Table 17 to determine the representative compressor power consumption for CO_2 unit cooler systems, research into the performance of different configurations of CO_2 booster systems shows that enhanced CO_2 cycles (like those used in transcritical booster systems) can match conventional refrigerants in average annual efficiency (HTPG, No. 3). These data and studies help to justify the use of the EER values in AHRI 1250–2009 Table 17 for determining the power consumption of CO_2 booster system evaporators, even though these EER values were initially established for conventional refrigerants. Consequently, DOE has determined that HTPG's petition for waiver likely will be granted. Furthermore, DOE has determined that it is desirable for public policy reasons to grant HTPG immediate relief pending a determination of the petition for waiver.

For the reasons stated, it is *ordered* that:

(1) HTPG must test and rate the following CO_2 direct expansion unit cooler basic models with the alternate test procedure set forth in paragraph (2).

Russell branded Basic Model Numbers:

RL6A041ADAF	RL6A041DDAF	RL6A052ADAF	RL6A052DDAF	RL6A066ADAF	RL6A066DDAF
RL6A073ADAF	RL6A073DDAF	RL6A094ADAF	RL6A094DDAF	RL6A117ADAF	PL6A117DDAF
RL6A130ADAF	RL6A130DDAF	RL6A141ADAF	RL6A141DDAF	RL6A161ADAF	RL6A161DDAF
RL6A181ADAF	RL6A181DDAF	RL6A195ADAF	RL6A195DDAF	RL6A235ADAF	RL6A235DDAF
RL6A260ADAF	RL6A260DDAF	RL6A295ADAF	RL6A295DDAF	RL6A330ADAF	RL6A330DDAF
RL6A390ADAF	RL6A390DDAF	RL6E035DDAF	RL6E042DDAF	RL6E049DDAF	RL6E066DDAF
RL6E077DDAF	RL6E090DDAF	RL6E105DDAF	RL6E121DDAF	RL6E142DDAF	RL6E162DDAF
RL6E182DDAF	RL6E200DDAF	RL6E200EDAF	RL6E244DDAF	RL6E244EDAF	RL6E281DDAF
RL6E281EDAF	RL4E027DDAF	RL4E032DDAF	RL4E038DDAF	RL4E051DDAF	RL4E064DDAF
RL4E080DDAF	RL4E094DDAF	RL4E110DDAF	RL4E125DDAF	RL4E141DDAF	RL4E155DDAF
RL4E155EDAF	RL4E195DDAF	RL4E195EDAF	RL4E230DDAF	RL4E230EDAF	
RM6A182ADAF	RM6A182DDAF	RM6A182FDAF	RM6A220ADAF	RM6A220DDAF	RM6A220FDAF
RM6A276ADAF	RM6A276DDAF	RM6A276FDAF	RM6A370ADAF	RM6A370DDAF	RM6A370FDAF
RM6A442ADAF	RM6A442DDAF	RM6A442FDAF	RM6A549ADAF	RM6A549DDAF	RM6A549FDAF
RM6A658ADAF	RM6A658DDAF	RM6A658FDAF	RM6E153DDAF	RM6E153EDAF	RM6E153FDAF
RM6E153GDAF	RM6E184DDAF	RM6E184EDAF	RM6E184FDAF	RM6E184GDAF	RM6E311DDAF
RM6E311EDAF	RM6E311FDAF	RM6E311GDAF	RM6E374DDAF	RM6E374EDAF	RM6E374FDAF
RM6E374GDAF	RM6E469EDAF	RM6E469FDAF	RM6E469GDAF	RM6E564EDAF	RM6E564FDAF

RM6E564GDAF	RM4E110DDAF	RM4E110EDAF	RM4E110FDAF	RM4E110GDAF	RM4E143DDAF
RM4E143EDAF	RM4E143FDAF	RM4E143GDAF	RM4E232DDAF	RM4E232EDAF	RM4E232FDAF
RM4E232GDAF	RM4E288DDAF	RM4E288EDAF	RM4E288FDAF	RM4E288GDAF	RM4E336EDAF
RM4E336FDAF	RM4E336GDAF	RM4E419EDAF	RM4E419FDAF	RM4E419GDAF	
RV6A043ADAF	RV6A043DDAF	RV6A053ADAF	RV6A053DDAF	RV6A085ADAF	RV6A085DDAF
RV6A106ADAF	RV6A106DDAF	RV6A129ADAF	RV6A129DDAF	RV6A158ADAF	RV6A158DDAF
RV6A176ADAF	RV6A176DDAF	RV6A218ADAF	RV6A218DDAF	RV6A271ADAF	RV6A271DDAF
RV6E043DDAF	RV6E053DDAF	RV6E085DDAF	RV6E106DDAF	RV6E129DDAF	RV6E158DDAF
RV6E176DDAF	RV6E218DDAF	RV6E271DDAF			
ASLA25048ADAF	ASLA25048DDAF	ASLA25061ADAF	ASLA25061DDAF	ASLA35073ADAF	ASLA35073DDAF
ASLA45098ADAF	ASLA45098DDAF	ASLA55122ADAF	ASLA55122DDAF	ASLA65158ADAF	ASLA65158DDAF
ASLE25048DDAF	ASLE25058DDAF	ASLE35070DDAF	ASLE45094DDAF	ASLE55117DDAF	ASLE65150DDAF
RE6A041ADAF	RE6A041DDAF	RE6A070ADAF	RE6A070DDAF	RE6A084ADAF	RE6A084DDAF
RE6A104ADAF	RE6A104DDAF	RE6A128ADAF	RE6A128DDAF	RE6A141ADAF	RE6A141DDAF
RE6A169ADAF	RE6A169DDAF	RE6A204ADAF	RE6A204DDAF	RE6A258ADAF	RE6A258DDAF
RE6E037DDAF	RE6E045DDAF	RE6E075DDAF	RE6E089DDAF	RE6E108DDAF	RE6E125DDAF
RE6E137DDAF	RE6E182DDAF	RE6E221DDAF	RE6E278DDAF	RE4E037DDAF	RE4E075DDAF
RE4E107DDAF	RE4E149DDAF	RE4E186DDAF	RE4E234DDAF		
RH6A031DDAF	RH6A031FDAF	RH6A043DDAF	RH6A043FDAF	RH6A052DDAF	RH6A052FDAF
RH6A063DDAF	RH6A063FDAF	RH6A087DDAF	RH6A087FDAF	RH6A105DDAF	RH6A105FDAF
RH6A132DDAF	RH6A132FDAF	RH6A156DDAF	RH6A156FDAF	RH6A175DDAF	RH6A175FDAF
RH6A209DDAF	RH6A209FDAF	RH6E033DDAF	RH6E033EDAF	RH6E033FDAF	RH6E033GDAF
RH6E044DDAF	RH6E044EDAF	RN6E044FDAF	RH6E044GDAF	RH6E053DDAF	RH6E053EDAF
RH6E053FDAF	RH6E053GDAF	RH6E066DDAF	RH6E066EDAF	RH6E066FDAF	RH6E066GDAF
RH6E089DDAF	RH6E089EDAF	RH6E089FDAF	RH6E089GDAF	RH6E109DDAF	RH6E109EDAF
RH6E109FDAF	RH6E109GDAF	RH6E134DDAF	RH6E134EDAF	RH6E134FDAF	RH6E134GDAF
RH6E163DDAF	RH6E163EDAF	RH6E163FDAF	RH6E163GDAF	RH6E199DDAF	RH6E199EDAF
RH6E199FDAF	RH6E199GDAF	RH4E035DDAF	RH4E035EDAF	RH4E035FDAF	RH4E035GDAF
RH4E044DDAF	RH4E044EDAF	RH4E044FDAF	RH4E044GDAF	RH4E071DDAF	RH4E071EDAF
RH4E071FDAF	RH4E071GDAF	RH4E087DDAF	RH4E087EDAF	RH4E087FDAF	RH4E087GDAF
RH4E107DDAF	RH4E107EDAF	RH4E107FDAF	RH4E107GDAF	RH4E131DDAF	RH4E131EDAF
RH4E131FDAF	RH4E131GDAF	RH4E167DDAF	RH4E167EDAF	RH4E167FDAF	RH4E167GDAF

(2) The HTPG basic models identified in paragraph (1) of this Interim Waiver Order shall be tested according to the test procedure for walk-in cooler and walk-in freezer refrigeration systems prescribed by DOE at 10 CFR part 431, subpart R, appendix C (''Appendix C''), except that the liquid inlet saturation temperature test condition and liquid inlet subcooling temperature test condition shall be modified to 38°F and 5°F, respectively, for both walk-in refrigerator unit coolers and walk-in freezer unit coolers, as detailed below. All other requirements of Appendix C and DOE's regulations remain applicable.

In Appendix C, under section 3.1. *General modifications: Test Conditions and Tolerances,* revise section 3.1.5., to read as follows:

3.1.5. Tables 15 and 16 shall be modified to read as follows:

TABLE 15—REFRIGERATOR UNIT COOLER

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, %	Saturated suction temp, °F	Liquid inlet saturation temp, °F	Liquid inlet subcooling temp, °F	Compressor capacity	Test objective
Off Cycle Fan Power ..	35	<50	.....	.....	.....	Compressor Off ..	Measure fan input power during compressor off cycle.
Refrigeration Capacity Suction A.	35	<50	25	38	5	Compressor On ..	Determine Net Refrigeration Capacity of Unit Cooler.

Note: Superheat to be set according to equipment specification in equipment or installation manual. If no superheat specification is given, a default superheat value of 6.5 °F shall be used. The superheat setting used in the test shall be reported as part of the standard rating.

TABLE 16—FREEZER UNIT COOLER

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, %	Saturated suction temp, °F	Liquid inlet saturation temp, °F	Liquid inlet subcooling temp, °F	Compressor capacity	Test objective
Off Cycle Fan Power ..	−10	<50	.....	.....	.....	Compressor Off ..	Measure fan input power during compressor off cycle.
Refrigeration Capacity Suction A.	−10	<50	−20	38	5	Compressor On ..	Determine Net Refrigeration Capacity of Unit Cooler.
Defrost	−10	Various	.....	.....	.....	Compressor Off ..	Test according to Appendix C Section C11.

Note: Superheat to be set according to equipment specification in equipment or installation manual. If no superheat specification is given, a default superheat value of 6.5 °F shall be used. The superheat setting used in the test shall be reported as part of the standard rating.

(3) *Representations.* HTPG may not make representations about the energy efficiency of a basic model listed in paragraph (1) of this Interim Waiver Order for compliance, marketing, or other purposes unless the basic model has been tested in accordance with the provisions set forth in this alternate test procedure and such representations fairly disclose the results of such testing.

(4) This Interim Waiver Order shall remain in effect according to the provisions of 10 CFR 431.401.

(5) This Interim Waiver Order is issued on the condidion that the statements and representations provided by HTPG are valid. If HTPG makes any modifications to the controls or configurations of a basic model subject to this Interim Waiver Order, such modifications will render the waiver invalid with respect to that basic model, and HTPG will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for the Interim Waiver Order is incorrect, or the results from the alternate test procedure are unrepresentative of the basic model's true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, HTPG may request that DOE rescind or modify the Interim Waiver Order if HTPG discovers an error in the information provided to DOE as part of its petition, determines that the interim waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

(6) Issuance of this Interim Waiver Order does not release HTPG from the applicable requirements set forth at 10 CFR part 429.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petiion, not future models that may be manufactured by the petitioner. HTPG may submit a new or amended petition for waiver and rerquest for grant of interim waiver, as appropriate, for additional basic models of CO_2 direct expansion unit coolers. Alternatively, if appropriate, HTPG may rerquest that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 431.401(g).

Signed in Washington, DC, on November 24, 2020.

Alexander N. Fitzsimmons,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

BILLING CODE 6450–01–P

HTPG

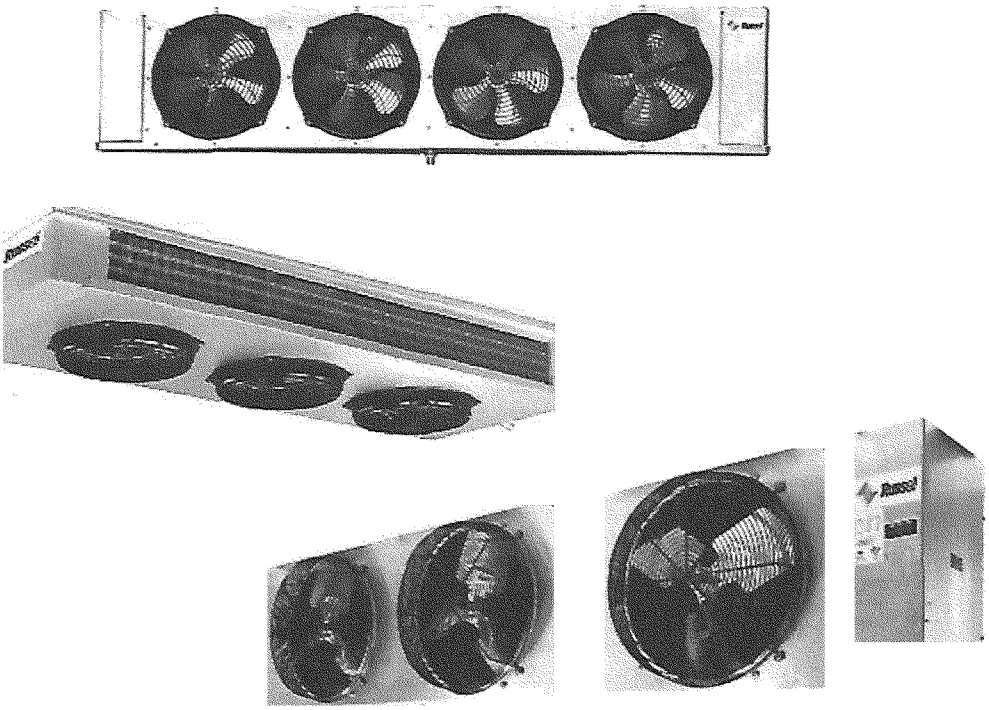
Heat Transfer Products Group, LLC.
a division of RHEEM Manufacturing

July 6, 2020

Petition for a Waiver and Interim Waiver

Request for Waiver and Interim Waiver from a DOE test procedure pursuant to provisions described in 10 CFR 431.401 for the following products on the grounds that "the basic model contains one or more design characteristics that prevent testing of the basic model according to the prescribed test procedures."

CO2 Direct Expansion Unit Coolers in Medium and Low Temperature



KRAMER ColdZone Russell Witt

205 Thomas French Dr. Scottsboro AL 35769-7405 Ph. 256-259-7400 Fax: 256-259-7474

BILLING CODE 6450–01–C

July 6, 2020

The design characteristics constituting the grounds for the Waiver and Interim Waiver Application:

• Appendix C to Subpart R of Part 431—Uniform Test Method for the Measurement of Net Capacity and AWEF of Walk-in Cooler and Walk-in Freezer Refrigeration Systems specifies that unit coolers tested alone use the test procedures described in AHRI 1250–2009. Table 15 and Table 16 of AHRI 1250–2009 are as follows:

TABLE 15—REFRIGERATOR UNIT COOLER

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, %	Saturated suction temp, °F	Liquid inlet saturation temp, °F	Liquid inlet subcooling temp, °F	Compressor capacity	Test objective
Off Cycle Fan Power ..	35	<50	.....	.....	.....	Compressor Off ..	Measure fan input power during compressor off cycle.
Refrigeration Capacity Suction A.	35	<50	25	105	9	Compressor On ..	Determine Net Refrigeration Capacity of Unit Cooler.
Refrigeration Capacity Suction B.	35	<50	20	105	9	Compressor On ..	Determine Net Refrigeration Capacity of Unit Cooler.

TABLE 16—FREEZER UNIT COOLER

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, %	Saturated suction temp, °F	Liquid inlet saturation temp, °F	Liquid inlet subcooling temp, °F	Compressor capacity	Test objective
Off Cycle Fan Power ..	−10	<50	.....	.....	.....	Compressor Off ..	Measure fan input power during compressor off cycle.
Refrigeration Capacity Suction A.	−10	<50	−20	105	9	Compressor On ..	Determine Net Refrigeration Capacity of Unit Cooler.
Refrigeration Capacity Suction B.	−10	<50	−26	105	9	Compressor On ..	Determine Net Refrigeration Capacity of Unit Cooler.
Defrost	−10	Various	.....	.....	.....	Compressor Off ..	Test according to Appendix C Section C11.

• CO_2 refrigerant has a critical temperature of 87.8 °F thus the liquid inlet saturation temperature of 105 °F and the liquid inlet subcooling temperature of 9 °F as specified in Table 15 and Table 16 are not achievable.

• The test condition values need to be more in line with typical operating conditions for a transcritical CO_2 booster system.

Basic Models on which the Waiver and Interim Waiver is being requested (All Russell Brand):

RL6A041ADAF	RL6A041DDAF	RL6A052ADAF	RL6A052DDAF	RL6A066ADAF	RL6A066DDAF
RL6A073ADAF	RL6A073DDAF	RL6A094ADAF	RL6A094DDAF	RL6A117ADAF	PL6A117DDAF
RL6A130ADAF	RL6A130DDAF	RL6A141ADAF	RL6A141DDAF	RL6A161ADAF	RL6A161DDAF
RL6A181ADAF	RL6A181DDAF	RL6A195ADAF	RL6A195DDAF	RL6A235ADAF	RL6A235DDAF
RL6A260ADAF	RL6A260DDAF	RL6A295ADAF	RL6A295DDAF	RL6A330ADAF	RL6A330DDAF
RL6A390ADAF	RL6A390DDAF	RL6E035DDAF	RL6E042DDAF	RL6E049DDAF	RL6E066DDAF
RL6E077DDAF	RL6E090DDAF	RL6E105DDAF	RL6E121DDAF	RL6E142DDAF	RL6E162DDAF
RL6E182DDAF	RL6E200DDAF	RL6E200EDAF	RL6E244DDAF	RL6E244EDAF	RL6E281DDAF
RL6E281EDAF	RL4E027DDAF	RL4E032DDAF	RL4E038DDAF	RL4E051DDAF	RL4E064DDAF
RL4E080DDAF	RL4E094DDAF	RL4E110DDAF	RL4E125DDAF	RL4E141DDAF	RL4E155DDAF
RL4E155EDAF	RL4E195DDAF	RL4E195EDAF	RL4E230DDAF	RL4E230EDAF	
RM6A182ADAF	RM6A182DDAF	RM6A182FDAF	RM6A220ADAF	RM6A220DDAF	RM6A220FDAF
RM6A276ADAF	RM6A276DDAF	RM6A276FDAF	RM6A370ADAF	RM6A370DDAF	RM6A370FDAF
RM6A442ADAF	RM6A442DDAF	RM6A442FDAF	RM6A549ADAF	RM6A549DDAF	RM6A549FDAF
RM6A658ADAF	RM6A658DDAF	RM6A658FDAF	RM6E153DDAF	RM6E153EDAF	RM6E153FDAF
RM6E153GDAF	RM6E184DDAF	RM6E184EDAF	RM6E184FDAF	RM6E184GDAF	RM6E311DDAF
RM6E311EDAF	RM6E311FDAF	RM6E311GDAF	RM6E374DDAF	RM6E374EDAF	RM6E374FDAF
RM6E374GDAF	RM6E469EDAF	RM6E469FDAF	RM6E469GDAF	RM6E564EDAF	RM6E564FDAF
RM6E564GDAF	RM4E110DDAF	RM4E110EDAF	RM4E110FDAF	RM4E110GDAF	RM4E143DDAF
RM4E143EDAF	RM4E143FDAF	RM4E143GDAF	RM4E232DDAF	RM4E232EDAF	RM4E232FDAF
RM4E232GDAF	RM4E288DDAF	RM4E288EDAF	RM4E288FDAF	RM4E288GDAF	RM4E336EDAF
RM4E336FDAF	RM4E336GDAF	RM4E419EDAF	RM4E419FDAF	RM4E419GDAF	
RV6A043ADAF	RV6A043DDAF	RV6A053ADAF	RV6A053DDAF	RV6A085ADAF	RV6A085DDAF
RV6A106ADAF	RV6A106DDAF	RV6A129ADAF	RV6A129DDAF	RV6A158ADAF	RV6A158DDAF
RV6A176ADAF	RV6A176DDAF	RV6A218ADAF	RV6A218DDAF	RV6A271ADAF	RV6A271DDAF
RV6E043DDAF	RV6E053DDAF	RV6E085DDAF	RV6E106DDAF	RV6E129DDAF	RV6E158DDAF
RV6E176DDAF	RV6E218DDAF	RV6E271DDAF			
ASLA25048ADAF	ASLA25048DDAF	ASLA25061ADAF	ASLA25061DDAF	ASLA35073ADAF	ASLA35073DDAF
ASLA45098ADAF	ASLA45098DDAF	ASLA55122ADAF	ASLA55122DDAF	ASLA65158ADAF	ASLA65158DDAF
ASLE25048DDAF	ASLE25058DDAF	ASLE35070DDAF	ASLE45094DDAF	ASLE55117DDAF	ASLE65150DDAF
RE6A041ADAF	RE6A041DDAF	RE6A070ADAF	RE6A070DDAF	RE6A084ADAF	RE6A084DDAF
RE6A104ADAF	RE6A104DDAF	RE6A128ADAF	RE6A128DDAF	RE6A141ADAF	RE6A141DDAF
RE6A169ADAF	RE6A169DDAF	RE6A204ADAF	RE6A204DDAF	RE6A258ADAF	RE6A258DDAF
RE6E037DDAF	RE6E045DDAF	RE6E075DDAF	RE6E089DDAF	RE6E108DDAF	RE6E125DDAF
RE6E137DDAF	RE6E182DDAF	RE6E221DDAF	RE6E278DDAF	RE4E037DDAF	RE4E075DDAF
RE4E107DDAF	RE4E149DDAF	RE4E186DDAF	RE4E234DDAF		
RH6A031DDAF	RH6A031FDAF	RH6A043DDAF	RH6A043FDAF	RH6A052DDAF	RH6A052FDAF
RH6A063DDAF	RH6A063FDAF	RH6A087DDAF	RH6A087FDAF	RH6A105DDAF	RH6A105FDAF

RH6A132DDAF	RH6A132FDAF	RH6A156DDAF	RH6A156FDAF	RH6A175DDAF	RH6A175FDAF
RH6A209DDAF	RH6A209FDAF	RH6E033DDAF	RH6E033EDAF	RH6E033FDAF	RH6E033GDAF
RH6E044DDAF	RH6E044EDAF	RN6E044FDAF	RH6E044GDAF	RH6E053DDAF	RH6E053EDAF
RH6E053FDAF	RH6E053GDAF	RH6E066DDAF	RH6E066EDAF	RH6E066FDAF	RH6E066GDAF
RH6E089DDAF	RH6E089EDAF	RH6E089FDAF	RH6E089GDAF	RH6E109DDAF	RH6E109EDAF
RH6E109FDAF	RH6E109GDAF	RH6E134DDAF	RH6E134EDAF	RH6E134FDAF	RH6E134GDAF
RH6E163DDAF	RH6E163EDAF	RH6E163FDAF	RH6E163GDAF	RH6E199DDAF	RH6E199EDAF
RH6E199FDAF	RH6E199GDAF	RH4E035DDAF	RH4E035EDAF	RH4E035FDAF	RH4E035GDAF
RH4E044DDAF	RH4E044EDAF	RH4E044FDAF	RH4E044GDAF	RH4E071DDAF	RH4E071EDAF
RH4E071FDAF	RH4E071GDAF	RH4E087DDAF	RH4E087EDAF	RH4E087FDAF	RH4E087GDAF
RH4E107DDAF	RH4E107EDAF	RH4E107FDAF	RH4E107GDAF	RH4E131DDAF	RH4E131EDAF
RH4E131FDAF	RH4E131GDAF	RH4E167DDAF	RH4E167EDAF	RH4E167FDAF	RH4E167GDAF

Specific Requirement sought to be waived—Petitioning for a waiver and interim waiver to exempt CO_2 Direct Expansion Unit Coolers in Medium and Low Temperature application from being tested to the current test procedure. The prescribed test procedure is not appropriate for these products for the reasons stated previously (liquid inlet saturation temperature and liquid inlet subcooling temperature test condition values are not appropriate for a transcritical CO_2 booster system application).

List of manufacturers of all other basic models marketing in the United States and known to the petitioner to incorporate similar design characteristics—

Manufacturer: Heatcraft Refrigeration Products

Manufacturer: Keeprite Refrigeration

Manufacturer: Hussmann/Krack Refrigeration

Proposed alternate test procedure:

1. Utilize the test procedure as outlined in Appendix C to Subpart R of Part 431—Uniform Test Method for the Measurement of Net Capacity and AWEF of Walk-in Cooler and Walk-in Freezer Refrigeration Systems with the exception of modifying the test conditions in Table 15 and 16 for liquid inlet saturation temperature and liquid inlet subcooling temperature as noted below. In addition, per Appendix C to Subpart R of 431 use the calculations in AHRI 1250 section 7.9 to determine AWEF and net capacity for unit coolers matched to parallel rack systems. Use AHRI 1250 Table 17, EER for Remote Commercial Refrigerated Display Merchandisers and Storage Cabinets to determine the power consumption of the system.

TABLE 15—REFRIGERATOR UNIT COOLER

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, %	Saturated suction temp, °F	Liquid inlet saturation temp, °F	Liquid inlet subcooling temp, °F	Compressor capacity	Test objective
Off Cycle Fan Power ..	35	<50	.....	.....	.....	Compressor Off ..	Measure fan input power during compressor off cycle.
Refrigeration Capacity Suction A.	35	<50	25	38	5	Compressor On ..	Determine Net Refrigeration Capacity of Unit Cooler.

TABLE 16—FREEZER UNIT COOLER

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, %	Saturated suction temp, °F	Liquid inlet saturation temp, °F	Liquid inlet subcooling temp, °F	Compressor capacity	Test objective
Off Cycle Fan Power ..	−10	<50	.....	.....	.....	Compressor Off ..	Measure fan input power during compressor off cycle.
Refrigeration Capacity Suction A.	−10	<50	−20	38	5	Compressor On ..	Determine Net Refrigeration Capacity of Unit Cooler.
Defrost	−10	Various	.....	.....	.....	Compressor Off ..	Test according to Appendix C Section C11.

Success of the application for Waiver and interim Waiver will: Ensure that manufacturers of CO_2 Direct Expansion Unit Coolers in Medium and Low Temperature application can continue to participate in the market.

What economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Waiver and Interim Waiver—Economic hardship will be loss of sales due to not meeting the DOE requirements set forth.

Conclusion:

Heat Transfer Products Group respectfully requests that DOE grant this petition for a Waiver and Interim Waiver from DOE's current requirement to test CO_2 direct expansion unit coolers.

/s/

Michael Straub,

Director, Engineering and Product Development.

[FR Doc. 2020–26322 Filed 12–22–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 12–101–LNG]

Gulf LNG Liquefaction Company, 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

December 15, 2020, by Gulf LNG Liquefaction Company, LLC (GLLC). GLLC 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. 4410, to a term ending on December 31, 2050. GLLC 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, January 7, 2021.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34) Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Amy Sweeney, U.S. Department of Energy (FE–34) Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7893; (202) 586–2627, *benjamin.nussdorf@hq.doe.gov* or *amy.sweeney@hq.doe.gov.*

Cassandra Bernstein or Edward Toyozaki, U.S. Department of Energy (GC–76) Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793; (202) 586–0126, *cassandra.bernstein@hq.doe.gov* or *edward.toyozaki@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

On July 31, 2019, in Order No. 4410, DOE/FE authorized GLLC to export domestically produced LNG in a volume equivalent to 558.9 billion cubic feet per year of natural gas, pursuant to NGA section 3(a), 15 U.S.C. 717b(a).[1] GLLC is authorized to export this LNG by vessel from the proposed Gulf LNG Liquefaction Project to be located at the Gulf LNG Terminal in Jackson County, Mississippi, to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries) for a 20-year term. In the Application,[2] GLLC 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/2020/12/f81/Gulf%20LNG%20Liquefaction%20Company%2C%20LLC%202050%20App.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 GLLC'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

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[1] *Gulf LNG Liquefaction Company, LLC,* DOE/FE Order No. 4410, FE Docket No. 12–101–LNG, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (July 31, 2019).

[2] Gulf LNG Liquefaction Company, LLC, Application to Amend Export Term for Existing Long-Term Authorization(s) Through December 31, 2050, FE Docket Nos. 12–47–LNG and 12–101–LNG (Dec. 15, 2020). GLLC'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.*

intervene, or notices of intervention. The public previously was given an opportunity to intervene in, protest, and comment on GLLC'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. 12–101–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. 12–101–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: *https://www.energy.gov/fe/services/natural-gas-regulation.*

Signed in Washington, DC, on December 18, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy.

[FR Doc. 2020–28416 Filed 12–22–20; 8:45 am]

BILLING CODE 6450–01–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: EC21–10–000.

Applicants: NextEra Energy Transmission, LLC, GridLiance West LLC, GridLiance High Plains LLC, GridLiance HeartLand LLC.

Description: Response to December 10, 2020 Deficiency Letter of NextEra Energy Transmission, LLC, et al.

Filed Date: 12/16/20.

Accession Number: 20201216–5243.

Comments Due: 5 p.m. ET 1/6/21.

Docket Numbers: EC21–35–000.

Applicants: Lone Valley Solar Park I LLC, Lone Valley Solar Park II LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Lone Valley Solar Park I LLC, et al.

Filed Date: 12/16/20.

Accession Number: 20201216–5242.

Comments Due: 5 p.m. ET 1/6/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2819–006; ER10–2358–007; ER10–2431–007; ER14–1390–005; ER14–1397–005; ER14–413–004; ER19–1778–002.

Applicants: ALLETE, Inc., ALLETE Clean Energy, Inc., Chanarambie Power Partners, LLC, Glen Ullin Energy Center, LLC, Lake Benton Power Partners LLC, Storm Lake Power Partners I LLC, Storm Lake Power Partners II, LLC.

Description: Triennial Market Power Analysis for Central Region of ALLETE, Inc., et al.

Filed Date: 12/16/20.

Accession Number: 20201216–5241.

Comments Due: 5 p.m. ET 2/16/21.

Docket Numbers: ER20–55–001.

Applicants: OhmConnect, Inc.

Description: Notice of Non-Material Change in Status of OhmConnect, Inc.

Filed Date: 12/16/20.

Accession Number: 20201216–5246.

Comments Due: 5 p.m. ET 1/6/21.

Docket Numbers: ER20–2768–001.

Applicants: Greensville County Solar Project, LLC.

Description: Compliance filing: Amended Market-Based Rate Tariff to be effective 2/15/2021.

Filed Date: 12/16/20.

Accession Number: 20201216–5191.

Comments Due: 5 p.m. ET 1/6/21.

Docket Numbers: ER21–281–001.

Applicants: MidAmerican Energy Company.

Description: Tariff Amendment: Services Tariff v. 2—Revised (Amendment 1) to be effective 12/31/9998.

Filed Date: 12/17/20.

Accession Number: 20201217–5088.

Comments Due: 5 p.m. ET 1/7/21.

Docket Numbers: ER21–667–000.

Applicants: Glen Ullin Energy Center, LLC.

Description: § 205(d) Rate Filing: Glen Ullin Energy Center, LLC Revised MBR Tariff Filing to be effective 2/15/2021.

Filed Date: 12/16/20.

Accession Number: 20201216–5165.

Comments Due: 5 p.m. ET 1/6/21.

Docket Numbers: ER21–669–000.

Applicants: Morongo Transmission LLC.

Description: Baseline eTariff Filing: Initial Transmission Owner Tariff and Transmission Revenue Requirement Filing to be effective 12/31/9998.

Filed Date: 12/17/20.

Accession Number: 20201217–5001.

Comments Due: 5 p.m. ET 1/7/21.

Docket Numbers: ER21–670–000.

Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.

Description: § 205(d) Rate Filing: 2020–12–17_SA 3604 OTP–MPC T20–02 TIA (Concrete 115kV) to be effective 12/10/2020.

Filed Date: 12/17/20.

Accession Number: 20201217–5022.

Comments Due: 5 p.m. ET 1/7/21.

Docket Numbers: ER21–671–000.

Applicants: New York State Reliability Council, L.L.C.

Description: Informational Filing of the Revised Installed Capacity Requirement for the New York Control Area by the New York State Reliability Council, L.L.C.

Filed Date: 12/15/20.
Accession Number: 20201215–5228.
Comments Due: 5 p.m. ET 1/5/21.

Docket Numbers: ER21–672–000.
Applicants: Duke Energy Florida, LLC.
Description: Pre-Arranged/Pre-Agreed (Settlement and Settlement Agreement) Filing of Duke Energy Florida, LLC.
Filed Date: 12/16/20.
Accession Number: 20201216–5248.
Comments Due: 5 p.m. ET 1/6/21.

Docket Numbers: ER21–673–000.
Applicants: PA Solar Park II, LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Tariff Filing to be effective 12/18/2020.
Filed Date: 12/17/20.
Accession Number: 20201217–5071.
Comments Due: 5 p.m. ET 1/7/21.

Docket Numbers: ER21–674–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2020–12–17 EIM Entity Agreement—Tacoma to be effective 3/1/2021.
Filed Date: 12/17/20.
Accession Number: 20201217–5073.
Comments Due: 5 p.m. ET 1/7/21.

Docket Numbers: ER21–675–000.
Applicants: San Diego Gas & Electric Company.
Description: § 205(d) Rate Filing: 2021 RS Filing to be effective 1/1/2021.
Filed Date: 12/17/20.
Accession Number: 20201217–5126.
Comments Due: 5 p.m. ET 1/7/21.

Docket Numbers: ER21–676–000.
Applicants: NSTAR Electric Company.
Description: Tariff Cancellation: Cancellation of SEMASS Design, Engineering and Construction Agreement to be effective 12/17/2020.
Filed Date: 12/17/20.
Accession Number: 20201217–5139.
Comments Due: 5 p.m. ET 1/7/21.

Docket Numbers: ER21–677–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: § 205(d) Rate Filing: 2020–12–17_NSP–MKPC–TCRA–598–0.1.0-Filing to be effective 2/16/2021.
Filed Date: 12/17/20.
Accession Number: 20201217–5142.
Comments Due: 5 p.m. ET 1/7/21.

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: December 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–28388 Filed 12–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FFP Project 101, LLC Project No. 14861–002]

Notice of Application Accepted For Filing And Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 14861–002.

c. *Date Filed:* June 23, 2020.

d. *Applicant:* FFP Project 101, LLC.

e. *Name of Project:* Goldendale Pumped Storage Project.

f. *Location:* Off-stream on the north side of the Columbia River at River Mile 215.6 in Klickitat County, Washington, with transmission facilities extending into Sherman County, Oregon. The project would be located approximately 8 miles southeast of the City of Goldendale, Washington. The project would occupy 18.1 acres of lands owned by the U.S. Army Corps of Engineers and administered by the Bonneville Power Administration.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Erik Steimle, Rye Development, 220 Northwest 8th Avenue Portland, Oregon 97209; (503) 998–0230; email—*erik@ryedevelopment.com.*

i. *FERC Contact:* Michael Tust at (202) 502–6522; or email at *michael.tust@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* February 16, 2021.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Goldendale Pumped Storage Project (P–14861–002).

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The application is *not* ready for environmental analysis at this time.

l. The project would include the following new facilities: (1) A 61-acre upper reservoir formed by a 175-foot-high, 8,000-foot-long rockfill embankment dam at an elevation of 2,950 feet mean sea level (MSL) with a vertical concrete intake-outlet structure; (2) a 63-acre lower reservoir formed by a 205-foot-high, 6,100-foot-long embankment at an elevation of 590 feet MSL with a horizontal concrete intake-outlet structure and vertical steel slide gates; (3) an underground conveyance tunnel system connecting the two reservoirs consisting of a 2,200-foot-long, 29-foot-diameter concrete-lined vertical shaft, a 3,300-foot-long, 29-foot-diameter concrete-lined high pressure tunnel, a 200-foot-long, 22-foot-diameter high pressure manifold tunnel, three 600-foot-long, 15-foot-diameter steel/concrete penstocks, three 200-foot-long, 20-foot-diameter steel-lined draft tube tunnels with bonneted slide gates, a 200-foot-long, 26-foot-diameter concrete-lined low-pressure tunnel, and a 3,200-foot-long, 30-foot-diameter concrete-lined tailrace tunnel; (4) an underground powerhouse located between the upper and lower reservoir in a 0.83-acre powerhouse cavern containing three, 400-megawatt (MW)

Francis-type pump-turbine units for a total installed capacity of 1,200 MW; (5) a 0.48-acre underground transformer cavern adjacent to the powerhouse containing intermediate step-up transformers that will step up the voltage from 18 kilovolts (kV) to 115 kV; (6) two 30-foot-diameter tunnels for accessing the powerhouse and transformer caverns; (7) a 0.84-mile-long, 115-kV underground transmission line extending from the transformer gallery through the combined access/transmission tunnel to where it emerges aboveground near the west side of the lower reservoir and extending an additional 0.27 miles to an outdoor 7.3-acre substation/switchyard where the voltage would be stepped up to 500 kV; (8) a 3.13-mile-long, 500-kV transmission line routed from the substation/switchyard south across the Columbia River and connecting to Bonneville Power Administration's existing John Day Substation; (9) a buried 30-inch-diameter water fill line leading from a shut-off and throttling valve within a non-project water supply vault owned by Klickitat Public Utility District (KPUD) to an outlet structure within the lower reservoir to convey water to fill the reservoirs; and (10) appurtenant facilities. The project would also include an existing 0.7-mile road for accessing the lower reservoir site and an existing 8.6-mile-long road for accessing the upper reservoir site both of which may be modified to provide access for construction vehicles.

The water supply used to initially fill the lower reservoir as well as to provide make-up water would be purchased from KPUD and would be obtained from KPUD's existing intake pond on the Columbia River. The project water fill line would connect to a new KPUD-owned flanged water supply service connection in a water supply vault located near the lower reservoir. Within the vault, and just downstream of the service connection, there would be a project shut-off and throttling valve to allow control of the initial fill and make-up water flow rate into the lower reservoir. The initial fill would require 7,640 acre-feet of water and would be completed in about six months at an average flow rate of approximately 21 cubic feet per second (maximum flow rate available is 35 cubic feet per second). It is estimated that the project would need 360 acre-feet of water each year to replenish water lost through evaporation.

m. A copy of the application is available for review via the internet through the Commission's Home Page (*http://www.ferc.gov*), using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title PROTEST or MOTION TO INTERVENE; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Comments on Scoping Document 1 Due.	December 2020.
Issue Scoping Document 2 (if necessary).	January 2021.
Request Additional Information (if necessary).	January 2021.
Issue Notice of Ready for Environmental Analysis.	April 2021.

Dated: December 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–28393 Filed 12–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–32–000]

Invenergy Solar Development North America LLC v. Tri-State Generation and Transmission Association, Inc.; Notice of Complaint

Take notice that on December 16, 2020, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e, 825e, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Invenergy Solar Development North America LLC (Complainant) filed a formal complaint against Tri-State Generation and Transmission Association, Inc., (Respondent) requesting that the Commission find improper the practice of the Respondent's processing of its interconnection and transmission service queues in a manner inconsistent with Commission policy and that gives preference to Tri-State's contracted generation, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondent in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov*. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all

interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov,* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 5, 2021.

Dated: December 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–28391 Filed 12–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL20–3–000]

Actions Regarding the Commission's Policy on Price Index Formation and Transparency, and Indices Referenced in Natural Gas and Electric Tariffs

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Proposed revised policy statement on natural gas and electric indices.

SUMMARY: The Commission's price index policy is set forth in its *Policy Statement on Natural Gas and Electric Price Indices.* The Commission proposes several revisions to that policy to encourage more market participants to report their transactions to price index developers and to provide greater transparency into the natural gas price formation process to increase confidence in the accuracy and reliability of wholesale natural gas prices. First, the Commission proposes to allow data providers (market participants that report transaction data to price index developers) to report either their non-index based next-day natural gas transactions, their non-index based next-month natural gas transactions, or both, to price index developers. In addition, the Commission proposes to encourage data providers to report to all available Commission approved price index developers and also allow data providers to self-audit on a biennial basis. The Commission also proposes to modify the Commission's standards to remain an approved natural gas price index developer such that price index developers should: Indicate whether a published index price is assessed in their published indices and obtain recertification in order for their indices to continue to be included in FERC-jurisdictional tariffs. Finally, the Commission proposes to clarify the review period for assessing the liquidity of price indices submitted for reference in FERC-jurisdictional tariffs.

DATES: Initial Comments are due March 23, 2021.

ADDRESSES: Comments, identified by docket number, may be filed electronically at *http://www.ferc.gov* in acceptable native applications and print-to-PDF, but not in scanned or picture format. For those unable to file electronically, comments may be filed by mail addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments must be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

Evan Oxhorn (Legal Information), Office of the General Counsel, 888 First Street NE, Washington, DC 20426, (202) 502–8183, *Evan.Oxhorn@ferc.gov.*

Eric Primosch (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6483, *Eric.Primosch@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. The Commission's price index policy is set forth in its *Policy Statement on Natural Gas and Electric Price Indices.*[1] We propose several revisions to that policy to encourage more market participants to report their transactions to price index developers and to provide greater transparency into the natural gas price formation process to increase confidence in the accuracy and reliability of wholesale natural gas prices. First, we propose to allow data providers (market participants that report transaction data to price index developers) to report either their non-index based next-day natural gas transactions, their non-index based next-month natural gas transactions, or both, to price index developers. In addition, we propose to: (1) Encourage data providers to report to all available Commission approved price index developers and (2) allow data providers to self-audit on a biennial basis.[2] We also propose to modify the Commission's standards to remain an approved natural gas price index developer such that price index developers should: (1) Indicate whether a published index price is assessed in their published indices and (2) obtain recertification in order for their indices to continue to be included in FERC-jurisdictional tariffs. Finally, we propose to clarify the review period for assessing the liquidity of price indices submitted for reference in FERC-jurisdictional tariffs. We seek comment on these proposed revisions.

I. Background

A. The Use of Natural Gas Price Indices in Commission Jurisdictional Activities

2. Natural gas price indices play a vital role in the energy industry, as they are used to price billions of dollars of natural gas and electricity transactions annually in both the physical and financial markets. A natural gas price index is a weighted average price derived from a set of fixed-price natural gas transactions [3] within distinct geographical boundaries that market participants voluntarily report to a price index developer.

3. Natural gas price indices serve as a proxy for the locational cost of natural gas in the daily and monthly markets, as many market participants reference natural gas index prices in their physical and financial transactions. Interstate natural gas pipelines, public utilities, Independent System Operators (ISOs), and Regional Transmission

[1] 104 FERC ¶ 61,121 (*Initial Policy Statement*), *clarified, Order on Clarification of Policy Statement on Natural Gas and Electric Price Indices,* 105 FERC ¶ 61,282 (2003) (*2003 Clarification Order*), *clarified, Order Further Clarifying Policy Statement on Natural Gas and Electric Price Indices,* 112 FERC ¶ 61,040 (2005) (*2005 Clarification Order*) (collectively, *Policy Statement*).

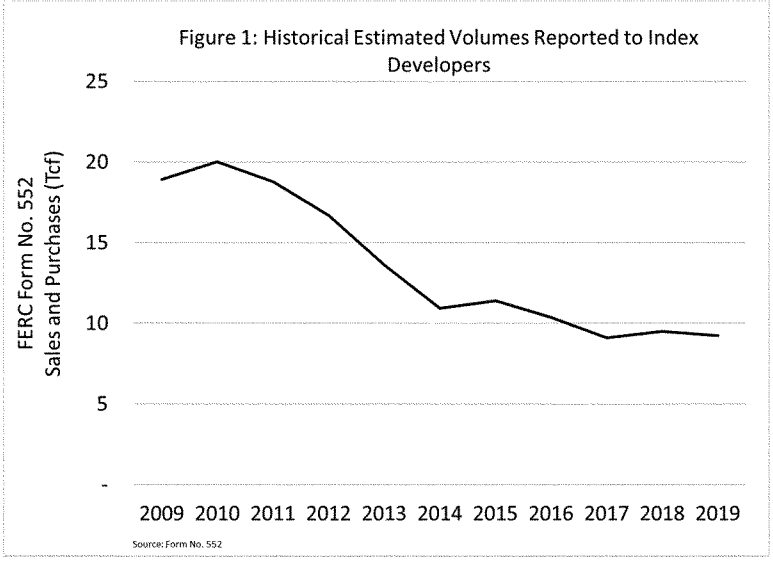
[2] S&P Global Platts (Platts), Natural Gas Intelligence (NGI), Argus Media, and Natural Gas Week are examples of price index developers.

[3] The term ''fixed-price natural gas transactions'' refers to fixed-price next-day delivery, fixed-price next-month delivery, and physical basis transactions (for next-month delivery). These transaction types are defined in the FERC Form No. 552: Annual Report of Natural Gas Transactions (FERC Form No. 552) instructions. The FERC Form No. 552 requires market participants that annually buy or sell more than 2.2 trillion British Thermal Units (Btu) of physical natural gas to provide aggregated data related to their fixed-price, physical basis, Nymex plus, and index-based transactions made in the next-day and next-month (bidweek) markets.

Organizations (RTOs) reference natural gas price indices in their FERC-jurisdictional tariffs for various terms and conditions of service. State commissions also use natural gas price indices as benchmarks when reviewing the prudence of natural gas or electricity purchases. Finally, many natural gas financial derivative contracts that are used in hedging and speculation settle against natural gas price indices.

4. Given that natural gas price index developers use physical fixed-price natural gas transactions to calculate the price of published natural gas price indices, it is important that transaction reporting is robust and that index development is transparent. The significant role played by natural gas indices became apparent during the 2000–2001 Western Energy Crisis, when companies intentionally misreported transactions to price index developers to manipulate natural gas index prices in the Western United States.[4] Subsequently, in the Energy Policy Act of 2005 (EPAct 2005), Congress amended the Natural Gas Act (NGA)[5] to give the Commission additional authority with respect to natural gas price indices. Pursuant to this authority, the Commission established guidelines to ensure that natural gas price indices that are used in tariffs are robust, free from manipulation, and reflect market fundamentals.[6]

5. Subsequently, market participants increased the reporting of their fixed-priced natural gas transactions to price index developers, which resulted in greater confidence in those indices. However, after 2010, the estimated traded volume of fixed-price natural gas transactions reported to price index developers began to decline significantly.[7] FERC Form No. 552 data show that the estimated volume of fixed-price transactions voluntarily reported to price index developers declined by approximately 54% from 2010 until 2019.[8] At the same time that fixed-price reporting to price index developers decreased, the traded volume of natural gas transactions that referenced natural gas indices, known as index gas, increased. For example, FERC Form No. 552 data showed that index gas increased from 69% of the traded volumes in the U.S. physical natural gas market in 2010 to 82% in 2019. Figure 1 shows estimated physical natural gas volumes reported to index developers based on FERC Form No. 552 data.



6. Commission staff held a technical conference on June 29, 2017, which addressed natural gas index liquidity and transparency issues and potential actions the Commission could consider taking to increase both the volume of transactions reported to natural gas price index developers and the transparency of the physical natural gas price formation process.[9]

B. Standards for Indices Used in Jurisdictional Tariffs

7. The Commission has a statutory obligation to ensure that the rates for energy transactions within its jurisdiction are just and reasonable. Under the NGA and Federal Power Act (FPA), the Commission's jurisdiction extends to sales of electricity and natural gas for resale in interstate commerce, interstate transmission of electricity and natural gas, and the related pricing mechanisms within jurisdictional tariffs.[10] One way the Commission ensures just and reasonable jurisdictional rates is through the review and approval of natural gas price indices referenced in Commission approved pipeline and ISO/RTO tariffs.

8. An interstate natural gas pipeline, public utility, ISO, or RTO proposing to include a price index in its FERC-jurisdictional tariff bears the burden of

[4] *See Initial Policy Statement,* 104 FERC ¶ 61,121 at P 8 & n.1.

[5] Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 691–692 (2005) (codified in relevant part at Natural Gas Act of 1938, 15 U.S.C. 717c–1, 717t–1, 717t–2).

[6] *Price Discovery in Natural Gas and Elec. Markets,* 109 FERC ¶ 61,184 (2004) (*Price Index Order*).

[7] Two index developers now include fixed-price transactions from the InterContinental Exchange (ICE) to increase the liquidity of their indices. Staff analysis of the estimated volumes reported to index developers does not include that supplemental information from ICE.

[8] The Commission must estimate the volumes reported to price index developers on the FERC Form No. 552 because FERC Form No. 552 filers can provide aggregated data for themselves and their affiliates, some of whom may or may not report to index developers. Commission staff estimates this volume by calculating the average of the minimum volume reported (filers with affiliates that all indicate that they report to price index developers) and the maximum possible volume reported (filers with at least one affiliate that indicates that it reports to price index developers).

[9] Docket No. AD17–12–000. A staff-led technical conference addressing similar issues was held in 2003 in Docket No. AD03–7–000.

[10] *See, e.g.,* 15 U.S.C. 717(b)–717(d); Natural Gas Policy Act of 1978, 15 U.S.C. 3431(a)(1)(A)–3431(a)(1)(D); 16 U.S.C. 824(b)–824(f).

supporting its proposed index.[11] In the *Price Index Order,*[12] the Commission stated that, when a pipeline or utility proposes to use a new natural gas or electric price index reference in a jurisdictional tariff or to change an existing natural gas price index reference, the Commission would apply a presumption that the proposed price index location will result in just and reasonable rates if the pipeline or ISO/RTO: (1) Proposes to use an index location published by one of the price index developers that the Commission has previously found to meet the developer criteria established in the *Policy Statement,* and (2) demonstrates that the price index location meets one or more of the applicable liquidity criteria for the appropriate review period.[13] If parties to the proceeding protest the use of the proposed price index location, they are required to support the protest with evidence that the selected location does not meet the criteria or show good reason why the location will not result in just and reasonable rates and should not be used. An interstate natural gas pipeline or public utility may also file to reference a price index location that falls outside of these two parameters. In such a case, the pipeline or utility bears the burden of showing that the price index location will result in just and reasonable rates and must support its filing accordingly.[14]

9. Under the *Policy Statement,* reporting by market participants to price index developers is voluntary. For those market participants that choose to report to price index developers, in the *Policy Statement,* the Commission set forth the following minimum reporting standards for data providers: (1) Code of conduct—adopting and making public a code of conduct that employees will follow when buying and selling natural gas or reporting data to index developers; (2) source of data—having trade data reported by a department of the company that is independent from and not responsible for natural gas trading; (3) data reported—reporting each bilateral transaction between non-affiliated companies which details the price, volume, whether it was a purchase or a sale, the delivery/receipt location, and whether it was a next-day or next-month transaction; (4) error resolution process—cooperating with the error resolution process adopted by the index developer in a timely manner; and (5) data retention and review—establishing minimum time periods for retaining all relevant data related to reported trades.[15] These standards are designed to create a uniform process of reporting which provides price index developers assurance that the data they receive from data providers is accurate and truthful. If the data provider can demonstrate that it has adopted and followed the standards for reporting set forth in the Commission's *Policy Statement,* it will benefit from a rebuttable presumption that it has submitted its transactions accurately, timely, and in good faith (Safe Harbor Policy).[16]

10. Under the *Policy Statement,* becoming a Commission-approved price index developer is also voluntary. Prior to the *Policy Statement,* the Commission evaluated on a case-by-case basis whether a price index developer's price index was appropriate for inclusion in a FERC-jurisdictional tariff. In the *Policy Statement,* the Commission set forth minimum standards that, if met, establish a presumption that a price index developer's index location will result in just and reasonable charges. These standards for index developers include the following elements: (1) A code of conduct and confidentiality—publicly disclosing how it will obtain, treat, and maintain price data, including how it calculates its indices while also entering into confidentiality agreements with its data providers; (2) completeness—publishing all available trade information for each hub including: Total volume, the number of transactions, the high/low range of prices, and the weighted average price; (3) data verification, error correction, and monitoring—verifying its data by matching purchases with sales and contacting data providers over any discrepancies as well as publishing a notice of the corrected price if a reported price is significantly erroneous; (4) verifiability—participating in an independent audit or verification of its processes annually and making the results of that audit public; and (5) accessibility—providing all interested customers reasonable access to the data in a timely fashion and providing the Commission access to the data to conduct an investigation.[17] The purpose of these standards is to ensure that market participants and regulators have confidence that natural gas price indices published by price index developers that are referenced in FERC-jurisdictional tariffs are based on consistent, transparent and verifiable processes and methodologies that help to ensure reliable prices.

11. Under the Commission's market behavior rules,[18] marketers and interstate pipelines making jurisdictional sales of natural gas and jurisdictional sellers of electric energy that have or are seeking market-based rate authority that elect to report to price index developers must submit accurate and factual information and report in a manner consistent with the procedures set forth in the *Policy Statement.*[19]

II. Discussion

12. As part of its mandate to ensure just and reasonable rates in the wholesale electric and natural gas markets, the Commission reviews its existing policies and regulations from time to time. The Commission's policies and regulations related to natural gas and electric price indices date to the early 2000s and were adopted in response to a lack of confidence in price indices. Since then, the physical trading of natural gas, the reporting of those transactions, and the development of price indices by price index developers has changed.

13. Natural gas price indices are calculated by the voluntary reporting of fixed-price transactions to price index developers; however, in recent years, such reporting has declined. FERC Form No. 552 data show that the estimated volume of fixed-price transactions voluntarily reported to price index developers declined by approximately 54% from 2010 until 2019. In addition, FERC Form No. 552 data show that an increasing amount of physical natural gas transactions are being priced off of indices while the prices of those indices were being calculated based on a decreasing amount of volume of fixed-price transactions estimated to be

[11] *See, e.g., Northern Natural Gas Co.,* 104 FERC ¶ 61,182, at P 10 (2003) (*Northern Natural*).

[12] *Price Index Order,* 109 FERC ¶ 61,184 at P 68 (citing *Northern Natural,* 104 FERC ¶ 61,182 at P 10).

[13] *Id.* P 68.

[14] *Id.* P 69.

[15] *Initial Policy Statement,* 104 FERC ¶ 61,121 at P 34.

[16] *Id.* P 37.

[17] *Id.* P 33.

[18] The natural gas market behavior rules were codified in 2003 in Order No. 644. *Amendment to Blanket Sales Certificates,* Order No. 644, 105 FERC ¶ 61,217 (2003), *reh'g denied,* 107 FERC ¶ 61,174 (2004) (codified at 18 CFR 284.288, 18 CFR 284.403); *Order Amending Market-Based Rate Tariffs and Authorizations,* 105 FERC ¶ 61,218 (2003), *order on reh'g and clarification,* 107 FERC ¶ 61,175 (2004). The electric market behavior rules were codified later in 2006. *Conditions for Public Utility Market-Based Rate Authorization Holders,* Order No. 674, 114 FERC ¶ 61,163 (2006) (codified at 18 CFR 35.41(c)).

[19] 18 CFR 35.41; 18 CFR 284.288(a); 18 CFR 284.403(a); *Initial Policy Statement,* 104 FERC ¶ 61,121 at P 37. These standards are also the subject of a Notice of Proposed Rulemaking that is being issued concurrently with the instant order, in which the Commission proposes to codify the Safe Harbor Policy at 18 CFR 35.41(c), 284.288(a), and 284.403(a) (2020), 173 FERC ¶ 61,238 (2020).

reported to price index developers. For example, FERC Form No. 552 data show that in 2019, index gas represented 82% of the traded volumes in the U.S. physical natural gas market compared to 2010 when index gas represented 69% of such transactions.

14. As a result of these changes, on June 29, 2017, Commission staff held a technical conference that addressed index liquidity and transparency and potential actions the Commission could consider taking in order to increase both the volume of transactions reported to natural gas price index developers and the transparency of the physical natural gas price formation process. Among other things, Commission staff sought industry input on the existing policies for natural gas price index developers and the use of price indices in jurisdictional tariffs set forth in the *Policy Statement* and the *Price Index Order.*

15. Post-technical conference comments suggested policy changes would encourage more parties to engage in price reporting and result in more reliable, robust, and transparent index formation.[20] Commenters suggested several revisions to the Commission's *Policy Statement.* These proposed revisions included: (1) Changes to the Commission's Safe Harbor Policy (including placing the Safe Harbor Policy into the Commission's regulations); (2) allowing market participants to report just their next-day or their next-month transactions; (3) encouraging data providers to report to all available price index developers; and (4) changes to the data provider price index data audit structure.

16. With information gained at the technical conference, we propose several revisions to the Commission's natural gas price index policy applicable to natural gas data providers. These changes are intended to reduce the reporting burden and, thereby, increase reporting to natural gas price index developers. Increased price reporting would contribute to the robustness of the price indices which would lead to more accurate and reliable index prices referenced in jurisdictional tariffs.

17. We also propose revisions to the *Policy Statement* applicable to natural gas price index developers. These revisions are intended to reflect changes in how such developers form natural gas price indices and to ensure that natural gas price index developers continue to adhere to the Commission's policies. These revisions will increase the transparency of the natural gas price formation process and maintain industry confidence in the price indices. Finally, we propose to clarify the timeframe over which to assess the liquidity for natural gas and electric price indices referenced in natural gas and electric tariffs. This revision would ensure that natural gas price indices referenced in Commission jurisdictional tariffs are liquid at the time of attestation. We seek comment on these proposed revisions, which we now describe in detail.

A. Reporting Transactions to Price Index Developers

18. Under the Commission's *Policy Statement,* a natural gas or electric data provider should report ''*each* bilateral, arm's length transaction between non-affiliated companies in the physical (cash) markets.'' [21] These transactions are non-index based transactions and include both a data provider's next-day and next-month transactions.[22] The Commission later acknowledged that physical basis transactions during bidweek [23] ''are a significant aspect of wholesale natural gas markets and utilize or could contribute to the formation of price indices.'' [24]

19. Under the current policy, a data provider should report both its next-day fixed-price natural gas transactions as well as its next-month bidweek fixed-price and physical basis natural gas transactions to price index developers. However, allowing a data provider to report only next-day transactions or only next-month transactions may ease the reporting burden on data providers and result in increased reporting. At the 2017 technical conference, several commenters and panelists stated that market participants would be more likely to report their next-month transactions to price index developers if they were given the option to report only their next-month transactions rather than both their next-day and next-month transactions.[25] Many cited the significant burden of reporting next-day transactions, especially for those market participants that primarily transact in next-month markets. Panelists also noted that trading and reported volumes in the next-month market showed a continued decline relative to the next-day market. Panelists added that this was a concern among data providers who trade in the next-month markets due to perceived increased compliance scrutiny with higher market concentrations from trading in these comparatively less-liquid markets.

20. Accordingly, to reduce the burden on data providers and encourage more reporting, we propose to allow data providers to report either their next-day transactions *or* their next-month transactions to price index developers. Data providers may also report both sets of transactions. This policy revision could benefit reporting in the next-month market, where reporting to price index developers is most needed, according to the FERC Form No. 552 data. For instance, the data show that in 2019, the estimated reported fixed-price and physical basis volume in the next-month market was smaller than the estimated reported volume in the next-day market.[26] But, nonetheless, the

[20] American Gas Ass'n (AGA), Comments, Docket No. AD17–12–000, at 3; American Public Gas Ass'n, Comments, Docket No. AD17–12–000, at 3; Edison Electric Institute, Comments, Docket No. AD17–12–000, at 8; Energy Intelligence Group, Inc., Comments, Docket No. AD17–12–000, at 1; NGI, Comments, Docket No. AD17–12–000, at 8; Natural Gas Supply Ass'n, Comments, Docket No. AD17–12–000, at 12; Platts Comments, Docket No. AD17–12–000, at 2; Process Gas Consumers Group, Comments, Docket No. AD17–12–000, at 9; Tenaska Marketing Ventures, Comments, Docket No. AD17–12–000, at 4 (all filed July 31, 2017); and Rice Energy Marketing LLC, Comments, Docket No. AD17–12–000, at 4 (filed Aug. 1, 2017).

[21] *See Initial Policy Statement,* 104 FERC ¶ 61,121 at P 34 (''[A] data provider should report *each* bilateral, arm's length transaction between non-affiliated companies in the physical (cash) markets at all trading locations.'') (emphasis added). As a part of outreach with market participants over the past couple of years, Commission staff have directed market participants to report both their next-day and next-month transactions, or to not report at all.

[22] *See 2003 Clarification Order,* 105 FERC ¶ 61,282 at P 12 & n.4 (''As noted in Policy Statement ¶ 34.3, reportable transactions are non-index based 'bilateral, arm's-length transaction between non-affiliated companies in the physical (cash) markets at all trading locations.' Note, however, that if a participant reports trades to an index developer that publishes only a limited or regional index, the market participant must report trades in other areas not covered by the limited or regional index to another index developer.'').

[23] Bidweek is a time frame occurring during the last five business days of every month at which most next-month contracts are traded. Delivery of these contracts take place the following the month.

[24] *Transparency Provisions of Section 23 of the Natural Gas Act,* Order No. 704, 121 FERC ¶ 61,295 (2007), *order on reh'g and clarification,* Order 704–A, 124 FERC ¶ 61,269, at P 89, *reh'g denied,* Order No. 704–B, 125 FERC ¶ 61,302 (2008).

[25] Energy Intelligence Group, Inc., Comments, Docket No. AD17–12–000, at 2; Tenaska Marketing Ventures, Comments, Docket No. AD17–12–000, at 5; Process Gas Consumers Group, Comments, Docket No. AD17–12–000, at 9; Platts Comments, Docket No. AD17–12–000, at 2; Edison Electric Institute, Comments, Docket No. AD17–12–000, at 8; NGI, Comments, Docket No. AD17–12–000, at 8; American Public Gas Ass'n, Comments, Docket No. AD17–12–000, at 10; Natural Gas Supply Ass'n, Comments, Docket No. AD17–12–000, at 12–13 (all comments were filed July 31, 2017); and Rice Energy Marketing LLC, Comments, Docket No. AD17–12–000, at 4 (filed Aug. 1, 2017).

[26] Next-month fixed-price and physical basis values were approximately 88% of the next-day fixed-price values.

volume of index gas in the next-month market was larger than the volume of index gas in the next-day market.[27] Further, the estimated voluntarily reported volume for the next-month market for 2019 remain 55% below 2010 levels.[28]

21. Thus, in order to ease the burden associated with next-month price reporting, we propose to modify the *Policy Statement* to allow market participants to elect to report either all non-index based next-day transactions, all non-index based bidweek next-month transactions, or both non-index based next-day and non-index based bidweek next-month transactions. Under this proposal, whichever set of transactions a data provider chooses to report (next-day, next-month, or both) it should submit data on *each* bilateral, arm's length transaction within that set.

B. Encouraging Comprehensive Reporting

22. Under the Commission's price index policy, ''[g]enerally, a market participant need not report to more than one index developer, so long as the relevant data for all reportable transactions are given to that developer.'' [29] Some market participants have interpreted this language to mean that data providers *should not* report to more than one price index developer.[30] This interpretation is not correct. We reiterate that ''a participant, of course, may report transactions to more than one index developer.'' [31] We strongly encourage data providers to report to as many Commission approved price index developers as possible.

23. Although there may be some burden for reporting to additional price index developers, we understand that the burden of reporting to multiple price index developers has declined since the issuance of the *Policy Statement.*[32] If more market participants voluntarily report their transactions to multiple price index developers, it will likely result in more robust price formation for all price index developers. Thus, we urge all data providers to report their transaction data to as many Commission approved price index developers as possible.

C. Reducing the Self-Audit Burden

24. In the *Policy Statement,* the Commission stated that data providers should perform a self-audit of their reporting process every year either by an independent third-party auditor or an internal auditor. In an effort to encourage price reporting, we propose to allow data providers to now perform a self-audit on a biennial basis. In other words, every other year a data provider would perform an audit covering the previous two years, if choosing this option. This revision would ease the burden on data providers, potentially increasing the number of market participants who voluntarily report.[33]

25. More specifically, we propose to revise the timing of the standard that a data provider have an independent auditor review the implementation of, and adherence to, the data gathering and submission process adopted by the company so that the audit be undertaken on a biennial basis. As stated in the *Policy Statement,* the results of the audit should be made available to any price index developer to which the data provider submits trade data, and the data provider should permit the price index developer to recommend changes to improve the accuracy and timeliness of data reporting.[34]

26. To the extent that the terms and costs for such an external audit may be overly burdensome, we continue to find that it is acceptable for internal auditors to perform the self-audits, in order to avoid raising barriers to voluntary reporting. While there are advantages to having an independent third-party audit, the independent audit can be performed by a company's internal auditor, so long as the internal audit personnel are independent from the trading and reporting departments and personnel, and the audit follows internal auditing standards, such as those prescribed by the Institute of Internal Auditors or other similar generally accepted auditing standards.[35] Adequately documented and effective audits by an independent internal or external audit function can serve as an appropriate compliance control. Relying on these self-audits will ensure that price reporting by market participants is accurate and reliable to maintain industry confidence in indices.

D. Increasing Confidence in Price Indices

27. Under the price index policy, for the Commission to approve a price index for use in a jurisdictional tariff, the price index developer should adopt and make public a written code of conduct and confidentiality. Specifically, a price index developer's code of conduct ''should inform customers how the price information was developed, including index calculation method, relevant formulas and algorithms, treatment of aberrant data, and use of judgments, assessments, or similar subjective adjustments.'' [36] We propose to clarify that, with respect to assessments, a price index developer's code of conduct should inform customers how it makes assessments in its publications and in its data distributions. Price index assessment transparency would give market participants better information about the liquidity of certain hub locations.

28. A price index developer is considered to use a ''market assessment'' when it uses market information, other than the trades at the index's specified location, to determine the value of the index price. Some price index developers use market assessments to produce index prices when an insufficient amount of volume or number of reported deals are available at a given location. In its post-technical conference comments, the AGA recommended that price index developers should clearly indicate when they engage in market assessments rather than calculating price indices based on weighted averages of reported trades.[37]

29. We believe that this clarification is timely because the number of market assessments appears to have recently

[27] Next-month index gas values were approximately 117% of the next-day index gas values.

[28] As mentioned earlier, two price index developers now include transactions from ICE to increase the level of fixed-price volumes used to calculate their next-day and next-month indices. Trading on ICE in the next-day market is more robust than trading in the next-month market. For example, the inclusion of ICE transactions in Platts' indices resulted in a 126% increase in Platts' next-day index volumes but Platts' next-month indices only resulted in a 76% increase. Thus, although Platts next-day and next-month index volumes increased with the inclusion of ICE's transactions in its indices, the benefit to its indices was greater in the next-day market than the next-month market.

[29] *2003 Clarification Order,* 105 FERC ¶ 61,282 at P 12.

[30] *See, e.g.,* Energy Intelligence Group, Inc., Comments, Docket No. AD17–12–000, at 1–2 (July 31, 2017).

[31] *2003 Clarification Order,* 105 FERC ¶ 61,282 at P 12.

[32] For example, data providers can now send one email with price reporting data to multiple index developers.

[33] The previous data retention period of three years described in the *Initial Policy Statement* was superseded by changes to our regulations and is now five years, and the biennial audit period does not change the data retention requirements set forth in the regulations at 18 CFR 284.288 and 18 CFR 284.403.

[34] *Initial Policy Statement,* 104 FERC ¶ 61,121 at P 34.

[35] *See* the Institute of Internal Auditors' (IIA), *International Standards for the Professional Practice of Internal Auditing* (the *Standards*) (Oct. 2016), *https://na.theiia.org/standards-guidance/Public%20Documents/IPPF-Standards-2017.pdf.*

[36] *Id.* P 33.

[37] AGA, Comments, Docket No. AD17–12–000, at 3 (filed July 31, 2017).

increased. Platts, for instance, published 356 index prices at various hubs in 2019 without publishing a corresponding number of deals for those prices.[38] This represents a significant increase from 2018, when Platts published 246 index prices without a corresponding number of deals.

30. We agree with AGA that a price index developer should distinguish assessed index prices from index prices calculated from weighted averages of reported trades. We propose that price index developers indicate in their publications and data distributions when they use a market assessment to calculate a published index price in order for that price index developer to maintain its status as a Commission approved price index developer. Specifically, we propose that price index developers clearly define in their methodology guide a method to determine if a price assessment is made in its data distributions.[39] This revision would give market participants a mechanism for identifying assessments. The additional clarity provided by indicating assessed prices should increase the transparency of price index development and, more generally, natural gas price formation and provide the market with more information about the liquidity of certain locations. In turn, such transparency should increase industry's confidence in price indices.

E. Ensuring Price Index Developers' Continued Adherence to the Price Index Policy

31. In the *Policy Statement,* the Commission developed five standards for price index developers to show that their internal processes were sufficient to become a Commission approved price index developer and, thus, have their price indices referenced in jurisdictional tariffs. As detailed above, those five standards include: (1) A code of conduct and confidentiality; (2) completeness; (3) data verification, error correction, and monitoring; (4) verifiability; and (5) accessibility. After the *Policy Statement* was issued, 10 price index developers made filings with the Commission asserting that they complied with these standards. In the *Price Index Order,* the Commission approved those price index developers as satisfying all or substantially all of the standards.[40] Since then, the Commission also granted approval to three additional price index developers.[41]

32. Under the current *Policy Statement,* once approved, there is no verification process to ensure that price index developers continue to meet these standards. As a result, for most of the currently approved price index developers, the Commission has not reexamined their compliance with the price index developer standards in 16 years, despite the myriad changes in natural gas markets that have occurred during that time.[42]

33. To ensure that price index developers continue to meet these standards, we propose to revise the price index policy. A Commission approved price index developer should now seek re-approval from the Commission every seven years that it continues to meet the standards. We propose that, beginning six months after the adoption of this proposal, interstate natural gas pipelines and public utilities proposing the use of the indices in jurisdictional tariffs will no longer be entitled to the rebuttable presumption that a price index developer's indices produce just and reasonable rates unless the price index developer has obtained re-approval from the Commission within the last seven years that it continues to meet the criteria in the *Policy Statement.*[43]

34. We believe that these proposed changes will confirm that price index developers continue to meet the Commission's standards, which will help to ensure that rates which reference price indices remain just and reasonable.

F. Clarifying Liquidity Standards for Price Index References

35. In the *Price Index Order,* the Commission adopted a set of criteria delineating the minimum level of activity at a particular trading location in order for that price index trading location to be referenced in a FERC-jurisdictional tariff—effectively known as liquidity standards.[44] We propose to clarify these liquidity standards.

36. The *Price Index Order* states that interstate natural gas pipelines and ISOs/RTOs, when proposing new natural gas and electric price indices to be used in jurisdictional tariffs, should confirm that the proposed price index location(s) have met the minimum liquidity standards over a 90-day period for daily or weekly indices, and a six-month period for monthly indices.[45] The *Price Index Order* did not specify a specific timeframe during which the applicant should show that the proposed price index location meets the liquidity threshold. As a result, interstate natural gas pipelines and ISOs/RTOs have used different 90-day or six month-periods to submit price index location data in order to assess liquidity.[46]

37. Shifts in regional production and market demand areas have resulted in changes in the liquidity of natural gas price index hubs across the U.S. In light of the dynamic and seasonal nature of natural gas trading, some price indices may not provide a reasonable representation of natural gas costs consistently enough to be included within a tariff at the time of attestation. We believe additional clarity would be helpful to ensure applicants' approach to assessing liquidity is reflective of the most recent market activity.[47] While we continue to find the current minimum levels of activity for each price index location to be appropriate market activity thresholds, we propose to modify the review period over which the price index location should meet the minimum level of activity for all indices

[38] Staff calculated this figure by counting the number of index prices published without a corresponding number of deals.

[39] Price index developers publicly post a document which describes how their indices are calculated. This is commonly referred to as a methodology guide. *See, e.g.,* Platts, *Methodology and Specifications Guide* (March 2020), *https://www.spglobal.com/platts/plattscontent/_assets/_files/en/our-methodology/methodology-specifications/na_gas_methodology.pdf.*

[40] *Price Index Order,* 109 FERC ¶ 61,184 at P 24 (Argus Media, Inc., Bloomberg L.P., Btu/Data Transmission Network, Dow Jones and Company, Energy Intelligence Group, Inc., Intelligence Press, Inc. (NGI), ICE, Io Energy LLC, Platts, Powerdex, Inc.).

[41] Many of the original indices have ceased publication or been acquired and rebranded and not reapproved. As such, only five pre-approved price index developers remain: Energy Intelligence Group, Inc. (Natural Gas Week), Intelligence Press/NGI, Platts, Powerdex, and Argus Media. Although, it was not pre-approved, SNL Energy continues to publish indices after purchasing IO Energy and BTU/Data Transmission Network in 2004 and 2009, respectively.

[42] For example, some price index developers now receive transactions from ICE, at some hub locations basis transactions are now being used to create next-day indices, and declines in reporting have resulted in hubs that were historically liquid to require routine price assessments.

[43] Consistent with prior practice, price index developers would file for both initial Commission approval and re-approval in the PL03–3–000 docket.

[44] *Price Index Order,* 109 FERC ¶ 61,184 at P 66.

[45] *Id.* P 65.

[46] *E.g.,* in Docket No. RP20–59–000, filed on October 10, 2019, Dominion Energy Transmission Inc. submitted transactions for an index location for the period from June 4, 2019 to August 30, 2019. In Docket No. RP19–1395–000, filed on July 24, 2019, Southern Natural Gas Company, L.L.C. submitted transactions for an index location on April 1, 2019 to July 16, 2019. Both of these filings were accepted given that the pipelines provided 90 days of data, but the latter filing included a more timely review period closer to the date of filing.

[47] As explained previously, the voluntary reporting of fixed-price transactions to price index developers has declined in recent years. This has resulted in fluctuating liquidity for certain natural gas price index locations.

referenced in FERC-jurisdictional tariffs to at least 180 continuous days out of the most recent 365 days from the filing date of any such proposal. We believe that expanding the review period will ensure that natural gas price index references in FERC-jurisdictional tariffs are sufficiently liquid which will ultimately benefit customers who are subject to the tariff provisions.

38. Accordingly, we propose to revise the criteria established in the *Price Index Order* as follows (revised language shown in italics). We also propose removing the term ''daily'' from the daily, weekly, and monthly liquidity requirements to provide clarity to the conditions that should be met for those types of price indices.[48]

Daily or hourly indices should meet at least one of the following conditions, on average, for all non-holiday weekdays *for at least 180 continuous days out of the most recent 365 days:*

1. Average volume traded of at least 25,000 million Btus (MMBtu) *per day* for natural gas or 2,000 Megawatt hours (MWh) *per day* for power; or

2. Average number of transactions of five or more *per day;* or

3. Average-number of counterparties of five or more *per day.*

Weekly indices should meet at least one of the following conditions on average for all weeks *for at least 180 continuous days out of the most recent 365 days:*

1. Average volume traded of at least 25,000 MMBtu *per day* for gas or 2,000 MWh *per day* for power; or

2. Average number of transactions of eight or more per week; or

3. Average number of counterparties of eight or more per week.

Monthly indices should meet at least one of the following conditions on average *for at least 180 continuous days out of the most recent 365 days:*

1. Average volume traded of 25,000 MMBtu *per day* for gas or 2,000 MWh *per day* for power; or

2. Average number of transactions of ten or more per month; or

3. Average number of counterparties of ten or more per month.

39. Aside from the changes to the minimum criteria specifically discussed above, all other criteria for reflecting adequate liquidity at referenced points adopted in the *Policy Statement* would remain unchanged.

G. Additional Policy Changes to Electric Indices and Electric Price Index Developers

40. The modifications in this proposed *Revised Policy Statement* would apply solely to natural gas price indices and natural gas price index developers. However, we recognize that the Policy Statement applied to both the electric and natural gas industries. For that reason, Commission staff will conduct outreach to explore the need for, and scope of, any potential policy updates for the electric industry.

III. Information Collection Statement

41. The Paperwork Reduction Act (PRA) requires each federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information (including reporting, record keeping, and public disclosure requirements) directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements (including deletion, revision, or implementation of new requirements). Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

42. The Commission solicits comments from the public on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility and clarity of the information collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Specifically, the Commission asks that any revised burden or cost estimates submitted by commenters be supported by sufficient detail to understand how the estimates are generated.

43. This proposed revised policy statement will affect the existing data collection: FERC–549, NGPA Title III Transactions and NGA Blanket Certificate Transactions. Estimates of the PRA-related burden and cost[49] follow. The following table summarizes the estimated increases and decreases in burden due to the proposed policy changes above.

MODIFICATIONS DUE TO THE PROPOSED REVISED POLICY STATEMENT IN DOCKET NO. PUBLIC LAW 20–3

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden (hrs.) and cost ($) per response	Total annual burden hrs. and total annual cost ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
Proposed Burden Reductions[50]					
Data Providers—perform biennial self-audit (not annual).	125	.5	62.5	80 hrs.; $6,640	5,000 hrs.; $415,000.
Data Providers—provide month-ahead (not day-ahead on a daily basis)[51].	9	[52] 249	2,241	4 hrs.; $332	8,964 hrs.; $744,012.
Proposed Reductions	.....	.....	.....	.....	13,964 hrs.; $1,159,012.
Proposed Burden Increases to FERC–549					
Price Index Developers—re-certify every 7 yrs..	6	0.14	0.84	320 hrs.; $26,560 ..	268.8 hrs.; $22,310.40.

[48] The *Price Index Order* used the term ''daily'' as the metric for determining the average volume, average number of transactions, and average number of counterparties required for indices to be sufficiently liquid for use in jurisdictional tariffs. In this *Revised Policy Statement,* we remove the term ''daily'' from the Commission's index liquidity measurements. We do not believe that this revision changes the original intent of the criteria as indices will continue to meet the same minimum liquidity conditions necessary as before but now for 180 continuous days out of the most recent 365 days.

[49] The Commission staff estimates that industry is similarly situated in terms of hourly cost (for wages plus benefits). Based on the Commission's Fiscal Year (FY) 2020 average cost of $172,329/year (for wages plus benefits, for one full-time employee), $83.00/hour is used.

MODIFICATIONS DUE TO THE PROPOSED REVISED POLICY STATEMENT IN DOCKET NO. PUBLIC LAW 20–3—Continued

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden (hrs.) and cost ($) per response (4)	Total annual burden hrs. and total annual cost ($) (3) * (4) = (5)
Price Index Developers—code of conduct & confident.; & inform customers.	6	1	6	80 hrs.; $6,640	480 hrs.; $39,840.
Price Index Developers—identify assessed index price vs. calculated.	6	1	6	80 hrs.; $6,640	480 hrs.; $39,840.
Proposed Increases to FERC–549	.....	.....	.....	.....	1,228.8 hrs.; $101,990.40.
Net Total Proposed Reduction	.....	.....	.....	.....	12,735.2 hrs.; $1,4057,021.6.

The Commission seeks comments on the burden and cost related to complying with the proposed revised policy statement.

Title: FERC–549, NGPA Title III Transactions and NGA Blanket Certificate Transactions.

OMB Control No.: 1902–0086.

Respondents: Natural Gas Data Providers (Market Participants That Report Transaction Data to Price Index Developers) and Price Index Developers.

Frequency of Responses: As discussed.

Necessity of the Information:

The collection of this information helps to provide accuracy and transparency to the formation of natural gas price indices.

Internal Review: These requirements conform to the Commission's goal for efficient information collection, communication, and management. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

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

[50] The proposed burden reductions are provided for information and comment. To be conservative, the Commission may not remove the hours from its information collection estimates in the OMB-approved inventory.

[51] Staff assumes respondents with 2019 estimated volumes of next-month and physical basis transactions reported to index developers that exceeded two thirds of their total estimated volumes reported to index developers will no longer report their next-day transactions to index developers.

[52] We are proposing to allow companies to report just monthly, instead of monthly and daily. The figure (249 annual responses per respondent) relates to reporting on all non-holiday trading days.

IV. Comment Procedures

44. We invite comments on this proposed *Revised Policy Statement* within March 23, 2021.

V. Document Availability

45. 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*). 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.

46. 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.

47. 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.*

By the Commission. Commissioner Clements is not participating.

Issued: December 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–28387 Filed 12–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP20–52–000; CP20–52–001]

WBI Energy Transmission, Inc.; Notice of Availability of the Environmental Assessment for the Proposed North Bakken Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the North Bakken Expansion Project proposed by WBI Energy Transmission, Inc. (WBI Energy) in the above-referenced docket. WBI Energy requests authorization to construct, modify, operate, and maintain a new natural gas pipeline and associated facilities in McKenzie, Williams, Mountrail, and Burke Counties, North Dakota to transport up to 250,000 million cubic feet per day of natural gas from the Williston Basin in northwest North Dakota to a new interconnect with Northern Border Pipeline Company's existing mainline. The proposed facilities are collectively known as the North Bakken Expansion Project (Project).

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers (USACE), the U.S. Bureau of Land Management (BLM), and the U.S. Forest Service (USFS) participated as cooperating agencies in the preparation

of this EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by WBI Energy's proposal and participate in the NEPA analysis. The USACE will use the EA and supporting documentation to consider the issuance of Clean Water Act Section 404, Section 408, and Rivers and Harbors Act Section 10 permits. The Project would also cross lands administered by the USACE and USFS. While the BLM does not have any BLM-administered lands identified as part of the proposed route alignment for this Project, the BLM will use the EA, along with other supporting documentation, in coordination with the USACE and USFS, in the issuance of a Mineral Leasing Act (MLA) right-of-way grant over federally administered lands (USACE and USFS). Although the cooperating agencies provided input to the conclusions and recommendations presented in the EA, the agencies will present their own conclusions and recommendations in their respective decision process for the Project.

The proposed North Bakken Expansion Project includes the following facilities in North Dakota:

- 62.8 miles of new 24-inch-diameter pipeline from WBI Energy's Tioga Compressor Station in Williams County to the proposed Elkhorn Creek Compressor Station in McKenzie County;
- 0.3 mile of new 24-inch-diameter pipeline between the proposed Elkhorn Creek Compressor Station and Northern Border Pipeline Company in McKenzie County;
- 20.3 miles of new 12-inch-diameter pipeline looping along WBI Energy's existing Line Section 25 between the Tioga Compressor Station and the proposed Norse Transfer Station in Burke County; [1]
- replacement of the existing 0.1 mile 6-inch-diameter Stoneview-Conoco Lateral with 0.1 mile of 8-inch-diameter natural gas pipeline from Line Section 25 to the proposed Norse Transfer Station in Burke County.
- 9.6 miles of new 12-inch-diameter natural gas pipeline looping along WBI Energy's Line Section 30 between the Nesson Valve Setting and the Tioga Compressor Station in Williams County;
- 0.5 mile of new 20-inch-diameter natural gas pipeline between the new Tioga Plant Receipt Station and new facilities at the Tioga Compressor Station in Williams County;
- uprates to WBI Energy's Line Section 25 in Burke County;
- one new 3,750 horsepower compressor station (Elkhorn Creek Compressor Station) in McKenzie County and the addition of 11,250 horsepower at the existing Tioga Compressor Station in Williams County;
- new, and modifications to, existing delivery, receipt, and transfer stations along WBI Energy's pipeline routes in Burke, McKenzie, Mountrail, and Williams Counties; and
- replacement of small segments of pipeline facilities and installation of block valves, pig [2] launcher/receiver stations, and associated appurtenances.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners, and local libraries and newspapers. The EA is only available in electronic format. It may be viewed and downloaded from FERC's website (*www.ferc.gov*) on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environmental-document*). In addition, the EA may be accessed by using the eLibrary link on FERC's website. Click on the eLibrary link (*https://www.ferc.gov/ferc-online/elibrary*), select General Search and enter the docket number in the Docket Number field (*i.e.,* CP20–52). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this Project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on January 19, 2021.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on eRegister. You must select the type of filing you are making. If you are filing a comment on a particular project, please select Comment on a Filing; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP20–52–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.*

Additional information about the Project is available from the Commission's Office of External Affairs,

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] A pipeline pig is a device used to clean or inspect the pipeline. A pig launcher/receiver is an aboveground facility where pigs are inserted or retrieved from the pipeline.

at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. 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. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: December 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–28390 Filed 12–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2883–009]

Aquenergy Systems, LLC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new license for the Fries Hydroelectric Project, located on the New River, in Grayson County, Virginia and has prepared an Environmental Assessment (EA) for the project. The project does not occupy federal land.

The EA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filings. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2883–009.

For further information, contact Jody Callihan at (202) 502–8278 or by email at *jody.callihan@ferc.gov.*

Dated: December 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–28392 Filed 12–22–20; 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: RP21–310–000.

Applicants: NGO Transmission, Inc.

Description: § 4(d) Rate Filing: Negotiated Rate Filing to be effective 1/1/2021.

Filed Date: 12/16/20.

Accession Number: 20201216–5006.

Comments Due: 5 p.m. ET 12/28/20.

Docket Numbers: RP21–311–000.

Applicants: Northwest Pipeline LLC.

Description: § 4(d) Rate Filing: Revise Customer-Specific Entitlement Provisions—GT&C 14.6 & 15.3 to be effective 1/16/2021.

Filed Date: 12/16/20.

Accession Number: 20201216–5069.

Comments Due: 5 p.m. ET 12/28/20.

Docket Numbers: RP21–312–000.

Applicants: Sea Robin Pipeline Company, LLC.

Description: Compliance filing Annual Flowthrough Crediting Mechanism Filing on 12/16/20 to be effective N/A.

Filed Date: 12/16/20.

Accession Number: 20201216–5070.

Comments Due: 5 p.m. ET 12/28/20.

Docket Numbers: RP21–313–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 121620 Negotiated Rates—Freepoint Commodities LLC R–7250–30 to be effective 1/1/2021.

Filed Date: 12/16/20.

Accession Number: 20201216–5096.

Comments Due: 5 p.m. ET 12/28/20.

Docket Numbers: RP21–314–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 121620 Negotiated Rates—Freepoint Commodities LLC R–7250–31 to be effective 1/1/2021.

Filed Date: 12/16/20.

Accession Number: 20201216–5097.

Comments Due: 5 p.m. ET 12/28/20.

Docket Numbers: RP21–315–000.

Applicants: Guardian Pipeline, L.L.C.

Description: § 4(d) Rate Filing: Update Non-Conform Agmt RW0068-Wisconsin Elec Power Co to be effective 1/16/2021.

Filed Date: 12/16/20.

Accession Number: 20201216–5147.

Comments Due: 5 p.m. ET 12/28/20.

Docket Numbers: RP21–316–000.

Applicants: Guardian Pipeline, L.L.C.

Description: § 4(d) Rate Filing: Update Part 6.0 Reserving for Future Use to be effective 1/16/2021.

Filed Date: 12/16/20.

Accession Number: 20201216–5151.

Comments Due: 5 p.m. ET 12/28/20.

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: December 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–28389 Filed 12–22–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9054–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed December 14, 2020 10 a.m. EST Through December 17, 2020 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20200262, Draft, USFS, ID, Caribou-Targhee National Forest and Curlew National Grassland Integrated Weed Management Analysis, Comment Period Ends: 02/08/2021, Contact: Heidi Heyrend 208–847–0375.

Amended Notice

EIS No. 20200223, Draft, NRC, NM, Disposal of Mine Waste at the United Nuclear Corporation Mill Site in McKinley County, New Mexico, Comment Period Ends: 02/26/2021, Contact: Ashley Waldron 301–415–7317.

Revision to FR Notice Published 11/13/2020; Extending the Comment Period from 12/28/2020 to 02/26/2021.

Dated: December 17, 2020.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020–28352 Filed 12–22–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement 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.: 201352.

Agreement Name: Marine Terminal Services Agreement Port of Houston Authority and Ocean Network Express Pte. Ltd.

Parties: Port of Houston Authority; Ocean Network Express Pte. Ltd.

Filing Party: Rebecca Piller; Port of Houston Authority.

Synopsis: The Agreement sets forth certain discounted rates and charges applicable to ONE's container vessels calling at the Port of Houston Authority's Barbours Cut and Bayport Container Terminals in the Port of Houston.

Proposed Effective Date: 12/15/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/37506.

Agreement No.: 011962–018.

Agreement Name: Consolidated Chassis Management Pool Agreement.

Parties: Ocean Carrier Equipment Management Association, Inc.; Consolidated Chassis Enterprises LLC; CCM Pools LLC; Consolidated Chassis Management LLC; Chicago Ohio Valley Consolidated Chassis Pool LLC; Denver Consolidated Chassis Pool LLC; Gulf Consolidated Chassis Pool LLC; Mid-South Consolidated Chassis Pool LLC; Midwest Consolidated Chassis Pool LLC; Maersk A/S and Hamburg Sud (acting as a single party); CMA CGM S.A., APL Co. Pte Ltd., and American President Lines, Ltd. (acting as a single party); COSCO SHIPPING Lines Co., Ltd.; Evergreen Line Joint Service Agreement; Ocean Network Express Pte. Ltd.; Hapag-Lloyd AG and Hapag-Lloyd USA (acting as a single party); HMM Company Limited; MSC Mediterranean Shipping Co., S.A.; Zim Integrated Shipping Services Ltd.; Matson Navigation Company; Westwood Shipping Lines; and Yang Ming Marine Transport Corp.

Filing Party: Jeffrey Lawrence and Joshua Stein; Cozen O'Connor.

Synopsis: The Amendment specifies that all parties to the Agreement are listed in Appendix A; and clarifies the governance and decision making processes detailed in Articles 6.1 and 8.2.

Proposed Effective Date: 1/30/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/454.

Dated: December 18, 2020.

Rachel E. Dickon,

Secretary.

[FR Doc. 2020–28382 Filed 12–22–20; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Margin Credit Reports (FR G–1, FR G–2, FR G–3, FR G–4, FR T–4 and FR U–1; OMB No. 7100–0011)

DATES: Comments must be submitted on or before February 22, 2021.

ADDRESSES: You may submit comments, identified by FR G–1, FR G–2, FR G–3, FR G–4, FR T–4, or FR U–1, by any of the following methods:

- *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://*

www.federalreserve.gov/apps/foia/proposedregs.aspx 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 electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collections

Report title: Registration Statement for Persons Who Extend Credit Secured by Margin Stock (Other Than Banks, Brokers, or Dealers).

Agency form number: FR G–1.

OMB control number: 7100–0011.

Frequency: Event-generated.

Respondents: Federal and state credit unions; insurance companies; commercial and consumer credit organizations; production credit associations; small businesses; insurance premium funding plans; plan-lenders (a company or its affiliate that extends credit to employees to purchase company stock under an eligible employee stock option or stock purchase plan); lenders to Employee Stock Ownership Plans (ESOPs), thrift plans, and broker-dealer affiliates; and other lenders.

Estimated number of respondents: 13.

Estimated average hours per response: 2.5.

Estimated annual burden hours: 33.

General description of report: The FR G–1 registration statement is required to enable the Federal Reserve to identify nonbank lenders subject to Regulation U, to verify compliance with the regulation, and to monitor margin credit. In addition, registered nonbank lenders can be subject to periodic review by the Board, National Credit Union Administration, and Farm Credit Administration. Information collected on the registration statement consists of certain background questions, information regarding the credit being extended, and dollar amounts of margin credit.

Report title: Deregistration Statement for Persons Registered Pursuant to Regulation U.

Agency form number: FR G–2.

OMB control number: 7100–0011.

Frequency: Event-generated.

Respondents: Federal and state credit unions; insurance companies; commercial and consumer credit organizations; production credit associations; small businesses; insurance premium funding plans; plan-lenders (a company or its affiliate that extends credit to employees to purchase company stock under an eligible employee stock option or stock purchase plan); lenders to Employee Stock Ownership Plans (ESOPs), thrift plans, and broker-dealer affiliates; and other lenders.

Estimated number of respondents: 8.

Estimated average hours per response: 0.25.

Estimated annual burden hours: 2.

General description of report: The FR G–2 deregistration statement is used by nonbank lenders to deregister if their margin credit activities no longer exceed the regulatory threshold found in Regulation U. Under section 221.3(b)(2) of Regulation U, a registered nonbank lender may apply to terminate its registration if the lender has not, during the preceding six calendar months, had more than $200,000 of such credit outstanding. The deregistration statement requires six items, including the name and phone number of the registrant, the firm's Internal Revenue Service Identification Number (registrants that are individuals are not required to disclose their Social Security number), the authorizing officer's signature and title, and the date. A nonbank lender who has deregistered must reregister if subsequent lending volume exceeds the thresholds identified in Regulation U.

Report title: Statement of Purpose for an Extension of Credit Secured by Margin Stock by a Person Subject to Registration Under Regulation U.

Agency form number: FR G–3.

OMB control number: 7100–0011.

Frequency: Event-generated.

Respondents: Other lenders (not brokers, dealers, or banks).

Estimated number of respondents: 6.

Estimated average hours per response: 0.17.

Estimated annual burden hours: 20.

General description of report: Any nonbank lender subject to the

registration requirements of Regulation U must complete an FR G–3 purpose statement for each extension of credit secured directly or indirectly, in whole or in part, by any margin stock. The purpose statement is intended to ensure that a lender does not extend credit to purchase or carry margin stock in excess of the amount permitted by the Federal Reserve pursuant to Regulation U.

Report title: Annual Report.

Agency form number: FR G–4.

OMB control number: 7100–0011.

Frequency: Annually.

Respondents: Federal and state credit unions; insurance companies; commercial and consumer credit organizations; production credit associations; small businesses; insurance premium funding plans; plan-lenders (a company or its affiliate that extends credit to employees to purchase company stock under an eligible employee stock option or stock purchase plan); lenders to Employee Stock Ownership Plans (ESOPs), thrift plans, and broker-dealer affiliates; and other lenders.

Estimated number of respondents: 70.

Estimated average hours per response: 2.

Estimated annual burden hours: 140.

General description of report: The FR G–4 annual report requires nonbank lenders to provide the total amount of credit outstanding secured directly or indirectly by margin stock as of June 30, and the amount of credit extended secured directly or indirectly by margin stock during the year. Lenders are required to indicate whether the loans involved are purpose or nonpurpose and to disclose whether credit is used to fund employee stock options, purchases, or ownership plans. Those lenders funding stock options, purchases, and ownership plans must specify whether such credit was extended pursuant to the provisions set forth in section 221.4 of Regulation U, which authorizes employers to extend credit to employees and ESOPs without regard to the margin requirements. All nonbank lenders registered pursuant to Regulation U must file an annual report with the Federal Reserve. Any new registrants are required to file the annual report for the year following their registration date.

Report title: Statement of Purpose for an Extension of Credit by a Creditor.

Agency form number: FR T–4.

OMB control number: 7100–0011.

Frequency: Event-generated.

Respondents: Brokers and dealers.

Estimated number of respondents: 4.

Estimated average hours per response: 0.17.

Estimated annual burden hours: 14.

General description of report: The FR T–4 must be completed only if the purpose of the credit being extended is not to purchase, carry, or trade in securities and the credit is in excess of that otherwise permitted under Regulation T (nonpurpose credit). The information captured on FR T–4 provides a written record of the amount of nonpurpose credit being extended, the purpose for which the money is to be used, and a listing and valuation of collateral.

Report title: Statement of Purpose for an Extension of Credit Secured by Margin Stock.

Agency form number: FR U–1.

OMB control number: 7100–0011.

Frequency: Event-generated.

Respondents: Banks.

Estimated number of respondents: 4.

Estimated average hours per response: 0.17.

Estimated annual burden hours: 51.

General description of report: A bank must complete the FR U–1 purpose statement when it extends credit in excess of $100,000 secured directly or indirectly, in whole or in part, by any margin stock. The information captured on FR U–1 provides a written record of the amount of credit being extended, the purpose for which the money is to be used, and a listing and valuation of collateral.

Legal authorization and confidentiality: The FR G–1, G–2, G–3, G–4, T–4, and U–1 are authorized by sections 7 and 23 of the Securities Exchange Act of 1934 which state, respectively, that the Board shall ''prescribe rules and regulations with respect to the amount of credit that may be initially extended and subsequently maintained on any security'' and that ''[t]he Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 78c(a)(34) of this title shall each have power to make such rules and regulations as may be necessary or appropriate to implement the provisions of this chapter for which they are responsible or for the execution of the functions vested in them by this chapter, and may for such purposes classify persons, securities, transactions, statements, applications, reports, and other matters within their respective jurisdictions, and prescribe greater, lesser, or different requirements for different classes thereof.''

All six reports are mandatory. Individual respondents may request that information submitted to the Board through the FR G–1 and FR G–4 be kept confidential. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on a case-by-case basis. To the extent a respondent submits nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, the respondent may request confidential treatment pursuant to exemption 4 of the Freedom of Information Act (FOIA). To the extent a respondent submits personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy, the respondent may request confidential treatment pursuant to exemption 6 of the FOIA.

Because the FR T–4, FR U–1, and FR G–3 are maintained at each banking organization, the FOIA would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process. Information collected through the FR G–2 is not considered to be confidential.

Board of Governors of the Federal Reserve System, December 17, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–28327 Filed 12–22–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Interagency Notice of Change in Control, the Interagency Notice of Change in Director or Senior Executive Officer, and the Interagency Biographical and Financial Report (FR 2081a,b,c; OMB No. 7100–0134).

DATES: Comments must be submitted on or before February 22, 2021.

ADDRESSES: You may submit comments, identified by FR 2081a, FR 2081b, or FR 2081c, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at

https://www.federalreserve.gov/apps/foia/proposedregs.aspx.

- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* 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 electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collections

Report title: Interagency Notice of Change in Control.

Agency form number: FR 2081a.

OMB control number: 7100–0134.

Frequency: Event generated.

Respondents: All financial institutions regulated by the Board.

Estimated number of respondents: 162.

Estimated average hours per response: Reporting, 29.5; Disclosure, 1.

Estimated annual burden hours: Reporting, 4,779; Disclosure, 162.

General description of report: The FR 2081a is submitted in connection with the acquisition of shares of an insured depository institution, savings and loan holding company (SLHC), or bank holding company (BHC) (or group of BHCs or SLHCs) by an individual or a group of individuals or a company or group of companies that would not be BHCs or SLHCs after consummation of the proposed transaction. When the Board is the federal banking regulatory agency for the target organization, the notice must be submitted to the appropriate Reserve Bank. The notice must include a description of the proposed transaction, the purchase price and funding source, the personal and financial information of the proposed acquirer(s), and any proposed new management.

A FR 2081a filer must publish an announcement soliciting public comment on the proposed acquisition in a newspaper of general circulation in the community in which the head office of the depository institution or holding company is located. In the case of a BHC or SLHC, an announcement also must be published in each community in which the head office of a bank or savings association subsidiary of the holding company is located. A copy of the affidavit(s) of publication should be submitted to the appropriate Reserve Bank. The publication must (1) state the name and address of each person identified as an acquirer in the notice; (2) state the name of the bank or holding company to be acquired and each of its subsidiary banks; and (3) include a statement that interested persons may submit comments on the proposed transaction to the Board or the appropriate Reserve Bank. The newspaper notice must be published no more than 15 calendar days before and no later than 10 calendar days after the date that the application is filed with the appropriate Reserve Bank.

Report title: Interagency Notice of Change in Director or Senior Executive Officer.

Agency form number: FR 2081b.

OMB control number: 7100–0134.

Frequency: Event generated.

Respondents: All financial institutions regulated by the Board.

Estimated number of respondents: 119.

Estimated average hours per response: 2.

Estimated annual burden hours: 238.

General description of report: The FR 2081b is used, under certain circumstances, to notify the appropriate Reserve Bank of a proposed change to an institution's board of directors or senior executive officers. The notice must be filed if the institution is not in compliance with all minimum capital requirements, is in troubled condition, or is otherwise required by the Board to provide such notice. The reporting form may be filed by the relevant state

member bank (SMB), SLHC, or BHC, or by the affected individual. The notice must include (1) details of the proposed transaction; (2) steps taken by the insured depository institution or holding company to investigate and satisfy itself as to the competence, experience, character, and integrity of the subject individual; (3) if the notice represents a proposal to serve as a senior executive officer of an insured depository institution or holding company, a description of the duties and responsibilities of the subject position and proposed terms of employment; and (4) if it is an after-the-fact notice, an identification of the exception to the prior notice requirement upon which the notificant relies or a discussion of the reasons that prior notice was not given and what steps have been taken to avoid future violations.

Report title: Interagency Biographical and Financial Report.

Agency form number: FR 2081c.

OMB control number: 7100–0134.

Frequency: Event generated.

Respondents: All financial institutions regulated by the Board.

Estimated number of respondents: 959.

Estimated average hours per response: 4.5.

Estimated annual burden hours: 4,316.

General description of report: The FR 2081c is used by certain shareholders, directors, and executive officers in connection with the FR 2081a and FR 2081b. Information requested on this reporting form is subject to verification and must be complete. As with all the notices and reporting forms, requests for clarification or supplementation of the original filing may be necessary.

Proposed Revisions: The Board proposes to revise the FR 2081c by correcting an inadvertent and unintentional numbering error from the previous clearance. As a result of this error, currently, a respondent is required to provide their telephone number and email address only if they are not a U.S. citizen or are a dual citizen. With the corrected numbering and delineation, the form will clearly require all respondents to provide their telephone number and email address. This revision would be effective immediately. No changes are being proposed for the FR 2081a or FR 2081b.

Legal authorization and confidentiality: The FR 2081a and FR 2081c information collections are authorized by section 7(j) of the Federal Deposit Insurance Act, which states that ''[n]o person . . . shall acquire control of any insured depository institution . . . unless the appropriate Federal banking agency has been given sixty days' prior written notice of such proposed acquisition'' and requires the Federal Reserve to investigate the competence, experience, integrity, and financial ability of any such person.[1] The FR 2081a, FR 2081b, and FR 2081c information collections are authorized by section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), which provides that an insured depository institution or depository institution holding company shall notify the appropriate Federal banking agency of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer at least 30 days before such addition or employment becomes effective.[2]

In addition to being used in conjunction with the FR 2081a and FR 2081b, the FR 2081c is used in conjunction with the FR 2070 and the Application to Become a Bank Holding Company and/or Acquire an Additional Bank or Bank Holding Company (FR Y–3; OMB No. 7100–0121). When used in conjunction with the FR 2070, the FR 2081c is authorized by section 18(c) of the Federal Deposit Insurance Act, which requires that a SMB, when it is the acquiring, assuming, or resulting bank, obtain prior approval from the Board before merging or consolidating with another insured depository institution, or assuming liability to pay any deposits made in any other depository institution, and requires the Board to consider the managerial resources and future prospects of the existing and proposed institutions.[3] When used in conjunction with the FR Y–3, the FR 2081c is authorized by section 3(a) of the Bank Holding Company Act of 1956, which requires Board approval for formations, acquisitions, and mergers of bank holding companies, and requires the Board to consider the competence, experience, and integrity of the officers, directors, and principal shareholders of the company.[4]

The obligation to file these event-generated reports is mandatory. Individual respondents may request that information submitted to the Board through the FR 2081a, FR 2081b, or FR 2081c be kept confidential. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on a case-by-case basis. To the extent a respondent submits nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, the respondent may request confidential treatment pursuant to exemption 4 of the Freedom of Information Act (FOIA).[5] To the extent a respondent submits personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy, the respondent may request confidential treatment pursuant to exemption 6 of the FOIA.[6] To the extent a respondent submits information related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a financial supervisory agency, the respondent may request confidential treatment pursuant to exemption 8 of the FOIA.[7] The entity should separately designate any such information as ''confidential commercial information'' or ''confidential financial information,'' and the Board will treat such designated information as confidential to the extent permitted by law, including the FOIA.

Consultation outside the agency: An interagency working group responsible for reviewing this collection, comprised of representatives from the Board, OCC, and FDIC, collaborated on confirming that changes were needed to the FR 2081c form for this clearance cycle.

Board of Governors of the Federal Reserve System, December 17, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–28329 Filed 12–22–20; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 1817(j). The Board also has the authority to require reports from bank holding companies (12 U.S.C. 1844(c)), savings and loan holding companies (12 U.S.C. 1467a(b) and (g)), and state member banks (12 U.S.C. 248(a) and 324).

[2] 12 U.S.C. 1831i.

[3] 12 U.S.C. 1828(c).

[4] 12 U.S.C. 1842.

[5] 5 U.S.C. 552(b)(4)

[6] 5 U.S.C. 552(b)(6)

[7] 5 U.S.C. 552(b)(8).

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Notifications Related to Community Development and Public Welfare Investments of State Member Banks (FR H–6; OMB No.

7100–0278). The revisions are effective immediately.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Report title: Notifications Related to Community Development and Public Welfare Investments of State Member Banks.

Agency form number: FR H–6.

OMB control number: 7100–0278.

Effective date: The revisions are effective immediately.

Frequency: Event-generated.

Respondents: State member banks.

Estimated number of respondents: Post Notification, 132; and Application (Prior Approval), 74.

Estimated average hours per response: Post Notification, 2; and Application (Prior Approval), 5.

Estimated annual burden hours: Post Notification, 264; and Application (Prior Approval), 370.

General description of report: Regulation H requires state member banks planning to make community development or public welfare investments to comply with the Regulation H notification requirements: (1) For investments that do not require prior Board approval, a written notice must be sent to the appropriate Federal Reserve Bank; and (2) for investments that do require prior Board approval, a request for approval must be sent to the appropriate Federal Reserve Bank.

Legal authorization and confidentiality: Section 9(23) of the Federal Reserve Act authorizes the Board to prescribe regulations with regard to state member banks making investments primarily devoted to public welfare endeavors.[1] The obligation to respond is mandatory.

Individual respondents may request that information submitted to the Board through the FR H–6 be kept confidential. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on a case-by-case basis. To the extent a respondent submits nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, the information may be kept confidential under exemption 4 of the Freedom of Information Act (FOIA).[2] Additionally, to the extent the respondent submits information related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a financial supervisory agency, the information may be withheld from disclosure under FOIA exemption 8.[3]

Current actions: On September 17, 2020, the Board published a notice in the **Federal Register** (85 FR 58052) requesting public comment for 60 days on the extension, with revision, of the FR H–6. The Board revised the FR H–6 by removing the notification requirement to submit the request for extension of the divestiture period when the bank cannot divest within the established time limit. This requirement has been listed on the form and in the supporting statement for a number of years, but is not contained in the regulations. The comment period for this notice expired on November 16, 2020. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, December 17, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–28326 Filed 12–22–20; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 338a. The Board also has the authority to require reports from state member banks (12 U.S.C. 248(a) and 324).

[2] 5 U.S.C. 552(b)(4).

[3] 5 U.S.C. 552(b)(8).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Interagency Bank Merger Act Application (FR 2070; OMB No. 7100–0171).

DATES: Comments must be submitted on or before February 22, 2021.

ADDRESSES: You may submit comments, identified by FR 2070, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* 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 electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235,

725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Interagency Bank Merger Act Application.

Agency form number: FR 2070.

OMB control number: 7100–0171.

Frequency: Event generated.

Respondents: All state member banks regulated by the Federal Reserve.

Estimated number of respondents: Nonaffiliate transactions, 54; Affiliate transactions, 10.

Estimated average hours per response: Nonaffiliate transactions, 31; Affiliate transactions, 19.

Estimated annual burden hours: Nonaffiliate transactions, 1,674; Affiliate transactions, 190.

General description of report: The FR 2070 is an event-generated application and is completed by a state member bank (SMB) each time the bank requests approval to effect a merger, consolidation, assumption of deposit liabilities, other combining transaction with a nonaffiliated party, or a corporate reorganization with an affiliated party. The reporting form collects information on the basic legal and structural aspects of these transactions.

The applicant is required to publish a notice in a newspaper of general circulation in the community(ies) in which the head office of each of the banks to be a party to the merger, consolidation, or acquisition of assets or assumption of liabilities is located. The notice must be published on at least three occasions at appropriate intervals. The last publication of the notice shall appear at least 30 days after the first publication. The notice must state the name and address of each party to the proposal, and it must invite the public to submit written comments to the appropriate Federal Reserve Bank. Within seven days of publication of notice for the first time, the applicant shall submit its application to the appropriate Federal Reserve Bank for acceptance, along with a copy of the notice.

Legal authorization and confidentiality: The FR 2070 is authorized by section 18(c) of the Federal Deposit Insurance Act, which requires, in relevant part, that a SMB, when it is the acquiring, assuming, or resulting bank, obtain prior approval from the Board before merging or consolidating with another insured depository institution, or assuming liability to pay any deposits made in any other depository institution.[1]

The obligation to respond is required to obtain a benefit. Individual respondents may request that information submitted to the Board through the FR 2070 be kept confidential. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on a case-by-case basis. To the extent a respondent submits nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, the respondent may request confidential treatment pursuant to exemption 4 of the Freedom of Information Act (FOIA).[2] To the extent a respondent submits personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy, the respondent may request confidential treatment pursuant to exemption 6 of the FOIA.[3] To the extent a respondent submits information related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a financial supervisory agency, the respondent may request confidential treatment pursuant to exemption 8 of the FOIA.[4] The entity should separately designate any such information as ''confidential commercial information'' or ''confidential financial information'' as appropriate, and the Board will treat such designated information as confidential to the extent permitted by law, including the FOIA. Consultation outside the agency: An interagency working group responsible for reviewing this collection, comprised of representatives from the Board, OCC, and FDIC, collaborated on confirming that there were no substantive changes needed to this form for this clearance cycle.

Board of Governors of the Federal Reserve System, December 17, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–28328 Filed 12–22–20; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 1828(c). The Board also has the authority to require reports from state member banks (12 U.S.C. 248(a) and 324).

[2] 5 U.S.C. 552(b)(4).

[3] 5 U.S.C. 552(b)(6).

[4] 5 U.S.C. 552(b)(8).

FEDERAL TRADE COMMISSION

[File No. 192 3126]

Ascension Data & Analytics, LLC; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 22, 2021.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write ''Ascension Data & Analytics, LLC; File No. 192 3126'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jarad Brown (202–326–2927), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 22, 2021. Write ''Ascension Data & Analytics, LLC; File No. 192 3126'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of the public health emergency in response to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Ascension Data & Analytics, LLC; File No. 192 3126'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the *https://www.regulations.gov* website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing the proposed settlement. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 22, 2021. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Ascension Data & Analytics, LLC (''Respondent''). The proposed consent order (''Proposed Order'') has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission again will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's Proposed Order.

Respondent is a Delaware company with its principal place of business in Texas. Respondent provides data, analytics, and technology services to other companies in its corporate family

and their service providers relating to residential mortgages.

In early 2017, as part of work for a related company, Respondent hired a vendor to conduct Optical Character Recognition on a set of documents pertaining to 37,000 residential mortgages. The documents contained the personal information of 60,593 consumers. The type of personal information included names, dates of birth, Social Security numbers, loan information, credit and debit account numbers, drivers' license numbers, and credit files. Before providing the documents to the vendor, Respondent did not take steps to make sure the vendor was capable of protecting the personal information in the documents. Furthermore, Respondent did not require the vendor by contract to protect the documents or the consumer information contained therein.

From January 2018 to January 2019, the vendor inadvertently exposed the information from the mortgage documents online, by misconfiguring a cloud server and storage location containing information from the documents. As a result, anyone who could figure out the web address of the server or storage location could view and download the contents. The server and storage location were accessed by fifty-two unauthorized computers during the year they were exposed.

The Commission's proposed one-count complaint alleges that Respondent violated the Standards for Safeguarding Customer Information Rule (''Safeguards Rule'') of the Gramm-Leach-Bliley Act (''GLB Act''). The Safeguards Rule requires financial institutions, which includes companies like Respondent, to implement a comprehensive information security program that contains certain elements.

The proposed complaint alleges that Respondent violated the Safeguards Rule by failing to include two of the required elements in its information security program. First, the proposed complaint alleges, Respondent did not oversee service providers, by failing to take reasonable steps to choose service providers capable of safeguarding personal information, and failing to require those service providers by contract to maintain the safeguards. Second, the proposed complaint alleges, Respondent failed to identify risks to the security of personal information, and assess whether any safeguards it had in place were sufficient. Respondent did not satisfy this element of the Safeguards Rule because it failed to consider risks related to many service providers, and did not conduct risk assessments before September 2017.

The Proposed Order contains provisions designed to prevent Respondent from engaging in the same or similar acts or practices in the future. Part I of the Proposed Order prohibits Respondent from violating the Safeguards Rule.

Part II of the Proposed Order requires Respondent to establish and implement, and thereafter maintain, a comprehensive data security program that protects the security of Covered Information, the definition of which is modeled off the definitions of the Safeguards Rule. Part III of the Proposed Order requires Respondent to obtain initial and biennial data security assessments for ten years. Part IV of the Proposed Order requires Respondent to disclose all material facts to the assessor and prohibits Respondent from misrepresenting any fact material to the assessments required by Part III. Part V of the Proposed Order requires Respondent to submit an annual certification from a senior corporate manager (or senior officer responsible for its data security program) that Respondent has implemented the requirements of the Order and is not aware of any material noncompliance that has not been corrected or disclosed to the Commission.

Part VI of the Proposed Order requires Respondent to notify the Commission any time it is required to make a notification to a state or local government that personal information has been breached or disclosed. Parts VII through X of the Proposed Order are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring Respondent to provide information or documents necessary for the Commission to monitor compliance. Part XI states that the Proposed Order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the Proposed Order. It is not intended to constitute an official interpretation of the complaint or Proposed Order, or to modify in any way the Proposed Order's terms.

By direction of the Commission, Commissioner Chopra dissenting, Commissioner Slaughter not participating.

April J. Tabor,

Acting Secretary.

Statement of Commissioner Noah Joshua Phillips Regarding Ascension Data & Analytics, LLC

The Commission today announced our most recent settlement resolving an alleged violation of the Gramm-Leach-Bliley Safeguards Rule (''Rule''), a critical facet of the Commission's data privacy and security enforcement program. According to the complaint, Ascension Data & Analytics (''Ascension'') violated the Rule by failing to vet properly and oversee a provider of optical character recognition (OCR) services, and by failing to conduct appropriate risk assessments. This settlement requires Ascension to implement a comprehensive data security program including annual third-party assessments.

I write to address several points in Commissioner Chopra's dissenting statement. Commissioner Chopra dissents because he believes the Commission should name Rocktop Partners, a company in the same corporate family as Ascension, as a respondent. Commissioner Chopra points to corporate affiliation and certain overlaps in management and facilities between the two firms, and other entities as well. It is not clear under what legal theory—whether veil piercing, common enterprise, or the like—he would name other defendants; but, without more, the facts alleged do not support doing so.[1]

In terms of relief, Commissioner Chopra argues that Rocktop will dissolve Ascension and set up a new firm or transfer its functions, just to avoid its obligations under the settlement. This is the kind of conduct characteristic of boiler rooms and other frauds. It is not clear to me why Rocktop—an entity regulated by the Securities and Exchange Commission—would dissolve and reconstitute an affiliate for the sole purpose of failing to oversee vendors, or otherwise evading this order.[2]

[1] For example, Commissioner Chopra cites no facts to suggest that corporate formalities were not observed, that Ascension is under-capitalized, or that corporate form was abused to inoculate Rocktop from liability (mind the reader, for Ascension's failure to oversee a vendor) to justify piercing the corporate veil. Courts generally take a dim view of piercing the corporate veil without a substantial basis to do so. *See, e.g., Trinity Indus., Inc.* v. *Greenlease Holding Co.,* 903 F.3d 333, 365 (3d Cir. 2018) (''the corporate veil may be pierced only in extraordinary circumstances, such as when the corporate form would otherwise be misused to accomplish certain wrongful purposes'') (internal citations and quotations omitted). And for good reason: The ability to make investments without risk of liability is foundational to the American legal and economic system.

[2] Commissioner Chopra cites *FTC* v. *Wyndham Worldwide Corp.,* No. 2:13–cv–01887 (ES), 2014 WL 2812049, at *8 (D.N.J. June 23, 2014), for the proposition that companies other than frauds may reorganize in an effort to avoid responsibilities under FTC orders. Of course that is true, but that does not mean that every entity in a corporate family can or should be bound by every FTC order. And, certainly, that is not what the court—considering a motion to dismiss—held in that case.

Commissioner Chopra also would have the Commission allege that Ascension's conduct was unfair. In the Gramm-Leach-Bliley (GLB) Act, Congress gave us a specialized data security statute, and the Safeguards Rule, promulgated pursuant to that Act, establishes liability under the facts alleged in this case.[3] We should use that authority, and here we are. I do not see what an additional allegation of unfairness would achieve—certainly, no change in the remedy, and nothing better for consumers. What is more, when pleading that lax data security was unfair under Section 5, we need evidence to satisfy the unfairness test; that gets into thornier questions of whether the oversight failure here can constitute unfairness. Thanks to GLB, we need not answer that.

Commissioner Chopra claims that Ascension is being favored because, in the Commission's 2014 case against *GMR Transcription Services,* it pleaded an unfairness count. He attributes the difference in treatment to the small size of the respondent in that case. GMR was not a financial services firm, however, so the Commission could not have alleged a violation of the GLB Safeguards Rule in that case; and the respondent in this case, Ascension, is also a small company. It is not at all unusual for the Commission to charge a violation of the Safeguards Rule without an accompanying unfairness count.[4]

This is a strong case and a good result. I commend Staff for its thoughtful and energetic efforts to use the authority at our disposal to protect American consumers.

Dissenting Statement of Commissioner Rohit Chopra Regarding Ascension Data & Analytics, LLC [Redacted]

Summary

- After an egregious data breach involving extremely sensitive financial information, the Commission has struck a settlement that provides no help for victims and does little to deter.
- It appears Ascension Data & Analytics is really just an offshoot of a large investment fund, and the Commission's proposed order fails to bind the appropriate parties.
- To achieve meaningful results, the Commission must reevaluate its enforcement strategy when it comes to safeguarding consumer financial information by working collaboratively with other regulators and applying its unfairness authority in an even-handed manner.

Americans have been burned by the mortgage industry before—not just by slipshod practices that maximize profits at the expense of responsible stewardship, but also by slippery accountability when things go wrong. Regulators got lost in a labyrinth of shell companies and subsidiaries, and too many who profited escaped unscathed, leaving families in ruin.

To achieve the dream of homeownership, Americans typically have to fork over a boatload of personal data to mortgage lenders, like our Social Security numbers, our driver's license numbers, our pay stubs, and more. This is the norm when you borrow to buy a home. The lender then transfers this data onward through the financial system, with banks, servicers, mortgage funds, investment vehicles—and their vendors—all gaining access. This data, in the wrong hands, is valuable intelligence not only for identity thieves but also for nation states, leading to threats to our financial and national security. That's why federal law ensures that financial institutions have safeguards in place to secure this highly sensitive data.

After a data breach of highly sensitive data from mortgage applications, the FTC launched an investigation into Ascension Data & Analytics. Ascension worked on behalf of its sister companies, such as investment funds to analyze mortgages. Ascension also hired other vendors to help. Even though Ascension was required under the law to guard consumer financial data, in fact, they were using third parties with shoddy security, as alleged in the complaint. Given the breadth and sensitivity of the data compromised in this breach, an individual consumer would probably prefer to be affected by the Equifax breach than this one, if forced to make a choice.

In my view, the Commission's proposed resolution of this investigation suffers from three key flaws: It fails to hold all of the right parties accountable. It fails to charge unfair conduct as unfair. And it fails to redress consumers or deter other firms from engaging in similar misconduct.

Ascension, Rocktop Partners, and Corporate Musical Chairs

Ascension is not really an independent company.[1] It's in the same corporate family as Rocktop Partners,[2] a multi-billion dollar private equity fund that buys up defective mortgages, such as those with title disputes.[3] Ascension's President, Brett Benson, is also Managing Director of Rocktop Partners.[4] Its office sits on the same floor as Rocktop Partners at 701 Highlander Boulevard in Arlington, Texas.[5] When the Ascension breach hit the news, it was Rocktop's General Counsel, Sandy Campbell, who confirmed the key details of the incident.[6] It is unclear whether Ascension has any clients other than Rocktop Partners or others in its corporate family.[7] This is a common arrangement in finance, since it allows fund managers to profit when they can bill their investors for services.

Further, Rocktop's Managing Director and Chief Financial Officer, Jonathan Bray, is also the sole person (''manager'' or ''member'') listed on the LLC forms for a firm called Reidpin LLC.[8] Langhorne Reid and Jason Pinson (''Reid'' and ''Pinson'') are cofounders of Rocktop.[9] Unsurprisingly, Reidpin LLC is located at the same address as Ascension and Rocktop.[10] It is therefore clear that Ascension is anything but arms-length from Rocktop. Rocktop's corporate structure confirms this conclusion:

Figure 1: [Redacted]

The FTC has charged Ascension Data & Analytics—but not any other parties in the broader Rocktop family—with violating the Safeguards Rule by failing to police its agents processing personal data. I agree that Ascension violated the law, but I am concerned that the proposed settlement will do little to prevent future failures. In addition, our complaint and the Analysis to Aid

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[3] 15 U.S.C. 6801 *et seq;* 16 CFR part 314. The limits of applying Section 5 to data security cases are precisely why the Commission, on a bipartisan basis, seeks data security legislation from Congress.

[4] *See, e.g., TaxSlayer, LLC,* No. C–4626 (Nov. 8, 2017), *https://www.ftc.gov/enforcement/cases-proceedings/162-3063/taxslayer; James B. Nutter & Co.,* No. C–4258 (June 16, 2009), *https://www.ftc.gov/enforcement/casesproceedings/072-3108/james-b-nutter-company-corporation-matter; United States* v. *American United Mortgage Co.,* No. 07–cv–7064 (N.D. Ill.), *https://www.ftc.gov/enforcement/cases-proceedings/062-3103/american-united-mortgagecompany-united-states-america-ftc.* I am unaware of any case where we alleged a failure to oversee as a violation of both GLB and Section 5, as Commissioner Chopra would have us do here.

[1] My office has endeavored to cite public sources showing a portion of the web of companies involving Ascension, Rocktop, and Reidpin LLC.

[2] Zack Whittaker, *Millions of bank loan and mortgage documents have leaked online,* TechCrunch (Jan. 23, 2019), *https://techcrunch.com/2019/01/23/financial-files/.*

[3] Rocktop Partners, *https://rocktoppartners.com/* (last visited on Oct. 2, 2020).

[4] *Id.*

[5] *Id.,* Compl., In the Matter of Ascension Data & Analytics, LLC, Fed. Trade Comm'n File No. 1923126.

[6] *Supra* note 2.

[7] *Id.*

[8] Reidpin, LLC, Application to Register a Foreign Limited Liability Company (LLC) (Nov. 17, 2020) *https://businesssearch.sos.ca.gov/Document/RetrievePDF?Id=201816410221-24379676.*

[9] *Supra* note 3.

[10] *Supra* note 8.

Public Comment would be strengthened with critical information about the Rocktop corporate structure.[11]

The FTC's order binds only one company: Ascension. The company that actually appears to manage more than $7 billion worth of Americans' mortgages—Rocktop—is not being required to change a single thing about its practices.[12] And while Ascension will be required to clean up its act, nothing is stopping the controllers of Rocktop from creating a ''new'' analytics firm staffed with exactly the same executives, or even transferring the functions within their corporate family, but without any obligations under the FTC's order. This would be economically rational. The Commission does not cite any sworn testimony or other evidence to show why they believe the controllers of Ascension would act irrationally.

Commissioner Phillips argues that this is a concern in cases involving ''boiler rooms and other frauds.'' I respectfully disagree. When the FTC charged Wyndham in 2012 with lax data security practice, it named not only the parent corporation but also three subsidiaries, alleging that they operated with common control, shared offices, overlapping staff, and as part of a maze of interrelated companies. Defending these charges against dismissal, the Commission argued that ''[i]f the Court were to enter an order against only [the subsidiary], Wyndham would be able to transfer responsibility for data security to another Wyndham entity[,]'' allowing the company to sidestep its obligations under any order.[13] The court agreed, specifically rejecting the view that only ''shell companies designed to perpetrate fraud'' can face charges.[14]

The FTC should not be allowing companies to evade accountability through a game of corporate musical chairs. An effective order would bind not only Ascension, but also all of the parties liable under the law. While one of these parties may be outside the jurisdiction of the FTC's Safeguards Rule, there is no question that they are bound by the FTC Act's prohibition on unfair practices.

Unfair Conduct Is Unlawful, Regardless of Size

The FTC has declined to include a charge of violating the FTC's prohibition on unfair practices. This represents a departure from previous cases involving similar misconduct, and raises questions as to whether the FTC is engaging in disparate treatment based on business size and type, rather than on facts and evidence.

In 2014, the FTC charged Ajay Prasad, Shreekant Srivastava, and their company, GMR Transcription Services, with violating the FTC Act's prohibition on unfair practices when it failed to ensure its vendors protected sensitive data. As detailed in the Commission's complaint, GMR failed to ensure that their vendors implemented reasonable security measures, and failed to prevent one vendor from storing sensitive files in plain text. The complaint does not allege that malicious actors attacked the vendor's systems, nor does it allege that GMR's failure to oversee the vendor directly led to the improper data disclosure, but nevertheless charges both the firm and its owners with engaging in unfair business practices by failing to employ reasonable security measures.[15]

If GMR faced this scrutiny, why wouldn't Ascension? The FTC's complaint alleged that GMR's lax policies created a vulnerability that was exploited at least once, and the FTC's complaint in this matter details some of the consequences of this catastrophic breach, which involved dozens of actors, mainly from overseas, including those with IP addresses in China and Russia. They were able to access more than 60,000 Americans' sensitive financial information. Furthermore, in failing to prevent this mass theft, Ascension disregarded its own risk management policies, failing to take ''any of the steps described in its own policy to evaluate [its vendors'] security practices.'' [16]

Taken together, the allegations against Ascension leave little doubt that the company's practices were unfair, causing far more unavoidable injury than GMR, without any apparent benefit to consumers or competition.[17] When the Commission settled with GMR, the law was exactly the same. The only thing that changed is the five members of the Commission.

My colleague suggests there are questions about whether Ascension's practices were unfair, but the Commission's complaint details how elementary the missteps were that led to this breach. A reasonable person would expect if these problems could have been prevented simply by Ascension following its own vendor management policies. Ascension could have also heeded the FTC's 2015 business guidance, which warns firms to ''[m]ake sure service providers implement reasonable security measures.'' [18]

My colleague also cites instances where the Commission has charged a firm with violating the FTC's Safeguards Rule without also including charges of unfair practices. However, these cases do not involve conduct related to inadequate service provider oversight, which is the core allegation at issue with Rocktop and Ascension.

We must apply more evenhanded enforcement to ensure that large businesses and investment firms are not getting less scrutiny than small businesses. The Commission's failure to charge Ascension and its affiliates with an unfairness violation is not only inconsistent with prior practice but also undermines our ability to hold the company accountable for its failures.

Rethinking Remedies

The most effective way to address serious data breaches like this one is to compensate the victims, penalize the wrongdoers, and insist on changes to the responsible company's practices. Unfortunately, the Commission's proposed order misses the mark on identifying the responsible company, while doing nothing to compensate victims or penalize those responsible for this catastrophic breach. I am therefore not confident that the remedies proposed in today's order will deter other companies from engaging in the same slipshod practices.

We could have done more. I recognize that consumers harm can be difficult to estimate in these cases, and that the Commission lacks civil penalty authority for offenses like this one. But that problem can be solved. The FTC is not the only enforcer in this space—dozens of state attorneys general and financial regulators can enforce a nearly identical unfairness authority under

[11] Commissioner Phillips points to the fact that Rocktop Partners may be a registered investment fund under the securities laws, but does not discuss the other entities within the corporate family and in any related mortgage vehicles that are not.

[12] *Supra* note 3.

[13] *Fed. Trade Comm'n* v. *Wyndham et al.,* 2013 WL 11116791 (D.N.J. May 20, 2013).

[14] *Fed. Trade Comm'n.* v. *Wyndham Worldwide Corp.,* 2014 WL 2812049, at *7 (D.N.J. June 23, 2014).

[15] Compl., *In the Matter of GMR Transcription Services, Inc.,* Fed. Trade Comm'n File No. 1223095 (Aug. 21, 2014), *https://wwwftc.gov/system/files/documents/cases/140821gmrcmpt.pdf.*

[16] Compl., *In the Matter of Ascension Data & Analytics, LLC,* Fed. Trade Comm'n File No. 1923126.

[17] *See* 15 U.S.C. 45n, defining as unfair those practices that cause or are likely to cause substantial injury that is not reasonably avoidable, and is not outweighed by benefits to consumers or competition.

[18] Start With Security, A Guide For Business, Lessons Learned From FTCc Cases, Fed. Trade Comm'n (Jun. 2015), *https://www.ftc.gov/system/files/documents/plain-language/pdf0205-startwithsecurity.pdf.*

federal law that is backed up with strong tools to both seek redress and penalties. By partnering with a state enforcer, the Commission can dramatically improve its data security actions—ensuring that there is compensation for victims and consequences for wrongdoing.[19]

Unfortunately, the FTC almost never invites state regulators, particularly state banking regulators with significant expertise, to join our investigations and enforcement actions to obtain additional relief when it comes to data protection. This must change.

Conclusion

We should all be unconvinced that chasing after dangerous data breaches and resolving them without any redress or penalties is an effective strategy. Making matters worse, holding a ''company'' accountable that is really just an extension of a financial firm might allow our order to be completely ignored. After this settlement, Ascension could ''fold,'' and the Rocktop family of companies can reconstitute it, escaping any obligations under the order.[20]

The FTC is currently considering changes to its rule on safeguarding consumer financial information.[21] But we also need to rethink our enforcement strategy. Our go-it-alone strategy is doing nothing for breach victims and little to deter, and our two-track approach to unfairness is penalizing small companies while giving a pass to financial firms like Rocktop. For these reasons, I respectfully dissent.

[FR Doc. 2020–28407 Filed 12–22–20; 8:45 am]

BILLING CODE 6750–01–P

[19] In addition to having unfairness jurisdiction, many state enforcers have their own versions of the Safeguards Rule. *See, e.g., Industry Guidance Re: Standards for Safeguarding Customer Information and Regulation 173,* New York State Dep't of Fin. Serv., *https://www.dfs ny.gov/insurance/ogco2002/rg204021.htm.*

[20] For context, public information indicates that there are seven companies with interrelated officers or agents currently active, including ''Reidpin LLC,'' ''Reidpin, LLC,'' ''Reidpin Investments, LLC,'' Reidpin Rocktop 1, LLC,'' ''Reidpin Rocktop III, LLC,'' ''Reidpin Rocktop IV, LLC,'' ''Reidpin Rocktop V, LLC'' founded in 2011, 2014, 2015, 2016, two in 2017, and one in 2018. There are two other entities with these characteristics which appear to have folded. *https://opencorporates.com/companies?q=REIDPIN%2C+LLC.*

[21] Fed. Trade Comm'n., Standards on Safeguarding Customer Information, 84 FR 13158 (Apr. 4, 2019), *https://wwwfederalregister.gov/documents/2019/04/04/2019-04981/standards-for-safeguarding-customer-information.*

FEDERAL TRADE COMMISSION

[File No. 192 3140]

SkyMed International, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement; Request for Comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 22, 2021.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write ''SkyMed International, Inc.; File No. 192 3140'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Miles Plant (202–326–2526), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 22, 2021. Write ''SkyMed International, Inc.; File No. 192 3140'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of the public health emergency in response to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''SkyMed International, Inc.; File No. 192 3140'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas,

patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the *https://www.regulations.gov* website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing the proposed settlement. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 22, 2021. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a consent order from SkyMed International, Inc., also doing business as SkyMed Travel and Car Rental Pro (''SkyMed''). The proposed consent order (''Proposed Order'') has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission again will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's Proposed Order.

SkyMed is a Nevada corporation with its principal place of business in Arizona. SkyMed provides emergency travel membership plans that cover travel and medical evacuation services for members who sustain serious illnesses or injuries during travel in certain geographic areas. SkyMed has thousands of members. In applying for a membership, a consumer provides his or her name, date of birth, sex, home address, email address, phone number, emergency contact information, passport number, payment card information, a list of prescribed medications and medical conditions, and a list of all hospitalizations in the previous six months.

The Commission's proposed three-count complaint alleges that SkyMed violated Section 5(a) of the Federal Trade Commission Act by engaging in both unfair and deceptive acts or practices.

First, the proposed complaint alleges that SkyMed engaged in a number of unreasonable security practices that led to the exposure of a cloud database containing approximately 130,000 membership records with consumers' personal information stored in plain text. Specifically, the proposed complaint alleges that SkyMed:

- Failed to develop, implement, or maintain written organizational information security standards, policies, procedures, or practices;
- failed to provide adequate guidance or training for employees or contractors regarding information security and safeguarding consumers' personal information;
- stored consumers' personal information on SkyMed's network and databases in plain text, without reasonable data access controls or authentication protections;
- failed to assess the risks to the personal information stored on its network and databases, such as by conducting periodic risk assessments or performing vulnerability and penetration testing of the network and databases;
- failed to have a policy, procedure, or practice for inventorying and deleting consumers' personal information stored on SkyMed's network that is no longer necessary; and
- failed to use data loss prevention tools to regularly monitor for unauthorized attempts to transfer or exfiltrate consumers' personal information outside of SkyMed's network boundaries.

The proposed complaint alleges SkyMed could have addressed each of these failures by implementing readily available and relatively low-cost security measures. The proposed complaint alleges that SkyMed's failures caused or are likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers themselves. Such practice constitutes an unfair act or practice under Section 5 of the FTC Act.

Second, the proposed complaint alleges that SkyMed engaged in a deceptive act when it notified current and former members about the database exposure. In an email to customers, SkyMed represented that it had investigated the incident and learned that no consumer health information had been exposed in the incident, and that no one had misused the information. In reality, SkyMed did not examine the information stored in the cloud database, identify the consumers placed at risk by the exposure, or look for evidence of unauthorized access to the database. Rather, it merely identified the database and deleted it.

Third, the proposed complaint alleges that SkyMed engaged in a deceptive practice by displaying a seal on every page of its website that attested to its purported compliance with the Health Insurance Portability and Accountability Act, a statute that sets forth privacy and information security protections for health data. SkyMed's display of the seal signaled to consumers that a government agency or other third party had determined that SkyMed's information practices met HIPAA's requirements. The truth is that no government agency or other third party reviewed SkyMed's information practices for compliance with HIPAA, let alone determined that the practices met the requirements of HIPAA.

The Proposed Order contains injunctive relief addressing the alleged unfair and deceptive conduct.

Part I prohibits SkyMed from making false or deceptive statements regarding: (1) The extent to which it is a member of, complies with, is endorsed by, or otherwise participates in any privacy or security program sponsored by a government or third party; (2) the extent of any data security incident involving consumers' personal information; (3) the extent of any investigation, and the results thereof, relating to a data security incident; (4) the extent to which SkyMed collects, maintains, uses, discloses, deletes, or permits or denies access to consumers' personal information; and (5) the extent to which SkyMed otherwise protects the privacy, security, availability, confidentiality, or integrity of consumers' personal information.

Part II requires that SkyMed provide notice to all consumers that it previously emailed concerning the database exposure that their personal information, including potentially their health information, may have been

exposed in the incident. Part III requires SkyMed to establish and implement, and thereafter maintain, a comprehensive information security program that protects the security, confidentiality, and integrity of consumers' personal information.

Part IV requires SkyMed to obtain initial and biennial data security assessments for twenty years. Part V of the Proposed Order requires SkyMed to disclose all material facts to the assessor and prohibits SkyMed from misrepresenting any fact material to the assessments required by Part IV.

Part VI requires SkyMed to submit an annual certification from a senior corporate manager (or senior officer responsible for its information security program) that SkyMed has implemented the requirements of the Order and is not aware of any material noncompliance that has not been corrected or disclosed to the Commission. Part VII requires SkyMed to notify the Commission any time (1) it is required to make a notification to a federal, state, or local government that personal information has been breached or disclosed, or (2) individually identifiable health information from or about a consumer was, or is reasonably believed to have been, accessed, acquired, or publicly exposed without authorization.

Parts VIII through XI are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring SkyMed to provide information or documents necessary for the Commission to monitor compliance. Part XII states that the Proposed Order will remain in effect for twenty years, with certain exceptions.

The purpose of this analysis is to aid public comment on the Proposed Order. It is not intended to constitute an official interpretation of the complaint or Proposed Order, or to modify in any way the Proposed Order's terms.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2020–28262 Filed 12–22–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Advisory Committee on Breast Cancer in Young Women (ACBCYW)

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is seeking nominations for membership on the ACBCYW. The ACBCYW consists of 15 experts in fields associated with breast cancer, disease prevention, early detection, diagnosis, public health, social marketing, genetic screening and counseling, treatment, rehabilitation, palliative care, and survivorship in young women, or in related disciplines with a specific focus on young women.

DATES: Nominations for membership on the ACBCYW must be received no later than March 12, 2021. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to Jeremy McCallister, c/o ACBCYW Secretariat, Centers for Disease Control and Prevention, 3719 North Peachtree Road, Building 100 Chamblee, Georgia 30341, or emailed (recommended) to *acbcyw@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Jeremy McCallister, Designated Federal Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway NE, Mailstop F–76, Atlanta, Georgia 30341, Telephone: 404–639–7989; Email: *acbcyw@cdc.gov.*

SUPPLEMENTARY INFORMATION: Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based on expertise in the fields of breast health, breast cancer, disease prevention and risk reduction, survivorship (including metastatic breast cancer), hereditary breast and ovarian cancer (HBOC), or in related disciplines with a specific focus on young women. Persons with personal experience with early onset breast cancer are also eligible to apply. This includes but may not be limited to breast cancer survivors <45 years of age and caregivers of said persons. Federal employees will not be considered for membership. Members may be invited to serve up to four-year terms. Election of members is based on candidates' qualifications to contribute to the accomplishment of ACBCYW objectives (*https://www.cdc.gov/faca/committees/acbcyw.html*).

The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for ACBCYW membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in November 2021, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address)
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. (Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA, etc.).

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–28380 Filed 12–22–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board). This meeting is open to the public, limited only by the space available. The audio conference line has 150 ports for callers. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference (information below).

DATES: The meeting will be held on February 24, 2021, from 10:30 a.m. to 4:00 p.m. EST. Written comments must be received on or before February 17, 2021.

ADDRESSES: You may submit comments by mail to: Sherri Diana, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226.

Meeting Information: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701.

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Officer, NIOSH, CDC, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226, Telephone: (513) 533–6800, Toll Free 1(800) CDC–INFO, Email: *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and rechartered under Executive Order 13889 on March 22, 2020, and will terminate on March 22, 2022.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Considered: The agenda will include discussions on: Savannah River Site; Work Group and Subcommittee Reports; Update on the Status of SEC Petitions; and plans for the April 2021 Advisory Board Meeting. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–28378 Filed 12–22–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH), Subcommittee for Procedure Reviews (SPR), National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Subcommittee for Procedure Reviews (SPR) of the Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board). This meeting is open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcomed to listen to the meeting by joining the audio conference (information below). The audio conference line has 150 ports for callers.

DATES: The meeting will be held on February 18, 2021, from 10:30 a.m. to 3:30 p.m., EST. Written comments must be received on or before February 11, 2021.

ADDRESSES: You may submit comments by mail to: Sherri Diana, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226.

Meeting Information: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701.

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Officer, NIOSH, CDC, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226, Telephone: (513) 533–6800, Toll Free 1(800)CDC–INFO, Email: *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include

providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and rechartered under Executive Order 13889 on March 22, 2020, and will terminate on March 22, 2022.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. SPR is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor (Oak Ridge Associated Universities—ORAU).

Matters to be Considered: The agenda will include discussions on the following dose reconstruction procedures: (a) Procedures associated specifically with the following sites: Savannah River Site, Grand Junction Operations Office, Bridgeport Brass Company, General Steel Industries; (b) procedures associated with Atomic Weapons Employers generally; and, (c) general procedures for dose reconstructions. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–28377 Filed 12–22–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH), Subcommittee on Dose Reconstruction Review (SDRR), National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Subcommittee for Dose Reconstruction Review Subcommittee (SDRR) of the Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board). This meeting is open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcomed to listen to the meeting by joining the audio conference (information below). The audio conference line has 150 ports for callers.

DATES: The meeting will be held on February 25, 2021, from 10:30 a.m. to 2:30 p.m. EST. Written comments must be received on or before February 18, 2021.

ADDRESSES: You may submit comments by mail to: Sherri Diana, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226.

Meeting Information: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701.

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Officer, NIOSH, CDC, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226, Telephone: (513) 533–6800, Toll Free 1(800)CDC–INFO, Email: *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and rechartered under Executive Order 13889 on March 22, 2020, and will terminate on March 22, 2022.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. SDRR was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters to be considered: The agenda will include discussions on the following dose reconstruction program quality management and assurance activities: Dose reconstruction cases under review from Set 28, possibly

including cases involving, Oak Ridge Gaseous Diffusion Plant (K25), Y–12 Plant, and Savannah River Site (SRS) facilities; Dose reconstruction cases under review from Sets 18 and 21, possibly including cases involving, Uranium Mill in Monticello and GE Vallecitos; and Tracking of decision points requiring professional judgement (time permitting). Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–28379 Filed 12–22–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–40B, CMS–R–285, CMS–10142 and CMS–10123/10124]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by January 22, 2021.

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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Application for Enrollment in Medicare the Medical Insurance Program; *Use:* Section 1836 of the Act, and regulations at 42 CFR 407.10, provide the eligibility requirements for enrollment in Part B. Section 407.11 lists the CMS–40B as the application to be used by individuals who wish to apply for Part B if they already have initial entitlement to premium-free Part A. Under the regulations, individuals may also enroll in Medicare Part B by signing a statement requesting Part B, if eligible for enrollment at that time. Individuals use the standardized Form CMS–40B to request enrollment.

The CMS–40B provides the necessary information to determine eligibility and to process the beneficiary's request for enrollment for Medicare Part B coverage. This form is only used for enrollment by beneficiaries who already have Part A, but not Part B. Form CMS–40B is completed by the person with Medicare or occasionally by an SSA representative using information provided by the Medicare enrollee during an in-person interview. The form is owned by CMS, but not completed by CMS staff. SSA processes Medicare enrollments on behalf of CMS. *Form Number:* CMS–40B (OMB control number: 0938–1230); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 400,000; *Total Annual Responses:* 400,000; *Total Annual Hours:* 100,000. (For policy questions regarding this collection contact Carla Patterson at 410–786–1000.)

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Request for Retirement Benefit Information; *Use:* Section 1818(d)(5) of the Social Security Act (the Act) provides that certain former State and local government employees (and their current or former spouses) may have the Part A premium reduced to zero.

Form CMS–R–285, ''Request for Retirement Benefit Information,'' is used to obtain information regarding whether a beneficiary currently purchasing Medicare premium Part A coverage, is receiving retirement payments based on State or local government employment, how long the claimant worked for the State or local government employer, and whether the former employer or pension plan is subsidizing the individual's Part A premium.

Form CMS–R–285 provides the necessary information regarding the prior state or local government employment to process the individual's request for premium Part A reduction based on their employment by a state or local government.

The form is completed by the state or local government employer on behalf of the individual seeking the Medicare premium reduction. The SSA—CMS'

agent for processing Medicare enrollments and premium amount determinations will use this information to help determine whether a beneficiary meets the requirements for reduction of the Part A premium. The form is owned by CMS but not completed by CMS staff. *Form Number:* CMS–R–285 (OMB control number: 0938–0769); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 500; *Total Annual Responses:* 500; *Total Annual Hours:* 125. (For policy questions regarding this collection contact Carla Patterson at 410–786–1000.)

3. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* This collection dates back to 2005. Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), and implementing regulations at 42 CFR, Medicare Advantage organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing ''bid'' for each plan offered to Medicare beneficiaries for approval by the Centers for Medicare & Medicaid Services (CMS). MAOs and PDPs use the Bid Pricing Tool (BPT) software to develop their actuarial pricing bid. The competitive bidding process defined by the ''The Medicare Prescription Drug, Improvement, and Modernization Act'' (MMA) applies to both the MA and Part D programs. It is an annual process that encompasses the release of the MA rate book in April, the bid's that plans submit to CMS in June, and the release of the Part D and RPPO benchmarks, which typically occurs in August. *Form Number:* CMS–10142 (OMB control number: 0938–0944); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 555; *Total Annual Responses:* 4,995; *Total Annual Hours:* 149,850. (For policy questions regarding this collection contact Rachel Shevland at 410–786–3026.)

4. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Fast Track Appeals Notices: NOMNC/DENC; *Use:* The purpose of the NOMNC is to help a beneficiary/enrollee decide whether to pursue a fast appeal by a Quality Improvement Organization (QIO) and how to file that request. Consistent with §§ 405.1200 and 422.624, SNFs, HHAs, CORFs, and hospices must provide notice to all beneficiaries/enrollees whose Medicare-covered services are ending, no later than two days in advance of the proposed termination of service. This information is conveyed to the beneficiary/enrollee via the NOMNC.

If a beneficiary/enrollee appeals the termination decision, the beneficiary/enrollee and the QIO, consistent with §§ 405.1200(b) and 405.1202(f) for Original Medicare, and §§ 422.624(b) and 422.626(e)(1)–(5) for Medicare health plans, will receive a detailed explanation of the reasons services should end. This detailed explanation is provided to the beneficiary/enrollee using the DENC, the second notice included in this renewal package. *Form Number:* CMS–10123/10124 (OMB control number: 0938–0953); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 24,915; *Total Annual Responses:* 5,314,194; *Total Annual Hours:* 1,142,749. (For policy questions regarding this collection contact Janet Miller at *Janet.Miller@cms.hhs.gov.*)

Dated: December 18, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–28369 Filed 12–22–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10549]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by January 22, 2021.

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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Generic Clearance: Questionnaire Testing and

Methodological Research for the Medicare Current Beneficiary Survey (MCBS); *Use:* The current generic clearance for MCBS Questionnaire Testing and Methodological Research encompasses development and testing of MCBS questionnaires, instrumentation, and data collection protocols, as well as a mechanism for conducting methodological experiments. The current clearance includes conducting field tests and experiments, including split ballot experiments, within the MCBS production environment, and conducting usability tests. The purpose of this OMB clearance package is to revise the current clearance to expand the methods to allow for field tests outside of MCBS production Field tests conducted within production do not incur any additional burden on respondents whereas tests conducted outside production must account for additional respondent burden. The MCBS is a continuous, multipurpose survey of a nationally representative sample of aged, disabled, and institutionalized Medicare beneficiaries. The MCBS, which is sponsored by the Centers for Medicare & Medicaid Services (CMS), is the only comprehensive source of information on the health status, health care use and expenditures, health insurance coverage, and socioeconomic and demographic characteristics of the entire spectrum of Medicare beneficiaries. The core of the MCBS is a series of interviews with a stratified random sample of the Medicare population, including aged and disabled enrollees, residing in the community or in institutions. Questions are asked about enrollees' patterns of health care use, charges, insurance coverage, and payments over time. Respondents are asked about their sources of health care coverage and payment, their demographic characteristics, their health and work history, and their family living circumstances. In addition to collecting information through the core questionnaire, the MCBS collects information on special topics. *Form Number:* CMS–10549 (OMB control number: 0938–1275); *Frequency:* Occasionally; *Affected Public:* Individuals or Households; *Number of Respondents:* 11,655; *Total Annual Responses:* 11,655; *Total Annual Hours:* 3,947. (For policy questions regarding this collection, contact William Long at 410–786–7927.)

Dated: December 17, 2020.

William N. Parham III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–28224 Filed 12–22–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0155]

Agency Information Collection Activities; Proposed Collection; Comment Request; Veterinary Feed Directive

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on veterinary feed directive regulation.

DATES: Submit either electronic or written comments on the collection of information by February 22, 2021.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 22, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 22, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2010–N–0155 for ''Veterinary Feed Directive.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management

Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Veterinary Feed Directive

OMB Control Number 0910–0363—Extension

Section 504 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 354) establishes a regulatory category for certain new animal drugs called veterinary feed directive (VFD) drugs. The VFD regulation is set forth at § 558.6 (21 CFR 558.6). VFD drugs are new animal drugs, intended for use in or on animal feed, which are limited to use under the professional supervision of a licensed veterinarian in the course of the veterinarian's professional practice (§ 558.6(b)(6)). An animal feed containing a VFD drug or a combination VFD drug may be fed to animals only by or upon a lawful VFD issued by a licensed veterinarian (§ 558.6(a)(1)).

Veterinarians issue three copies of the VFD: One for their own records, one for their client, and one to the client's VFD feed distributor (§ 558.6(a)(4) and (b)(8) and (9)). The VFD includes information about the number and species of animals to receive feed containing one or more of the VFD drugs (§ 558.6(b)(3)), along with other information required under § 558.6. All distributors of medicated feed containing VFD drugs must notify FDA of their intent to distribute such feed and must maintain records of the receipt and distribution of all medicated feeds containing VFD drugs.

The VFD regulation ensures the protection of public health while enabling animal producers to obtain and use needed drugs as efficiently and cost effectively as possible. The VFD regulation is tailored to the unique circumstances relating to the distribution and use of animal feeds containing a VFD drug.

We will use the information collected to assess compliance with the VFD regulation. The required recordkeeping and third-party disclosures provide assurance that the medicated feeds will be safe and effective for their labeled conditions of use and that edible products from treated animals will be free of unsafe drug residues.

A. Reporting Requirements

Description of Respondents: VFD Feed Distributors and VFD Drug Sponsors.

A distributor of animal feed containing a VFD drug must notify FDA prior to the first time it distributes the VFD feed (§ 558.6(c)(5)). This notification is required one time per distributor and must include the information set forth in § 558.6(c)(5). In addition, a distributor must notify FDA within 30 days of any change in ownership, business name, or business address (§ 558.6(c)(6)). Additional reporting burdens for current VFD drug sponsors are approved under OMB control numbers 0910–0032 (New Animal Drug Application) and 0910–0669 (Abbreviated New Animal Drug Applications).

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section/activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
558.6(c)(5) requires a distributor to notify FDA prior to the first time it distributes a VFD feed.	188	1	188	0.125 (7 minutes)	24
558.6(c)(6) requires a distributor to notify FDA within 30 days of any change in ownership, business name, or business address.	192	1	192	0.125 (7 minutes)	24
Total					48

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

B. Recordkeeping Requirements

Description of Respondents: VFD Feed Distributors, Food Animal Veterinarians, and Clients (Food Animal Producers).

As stated previously, veterinarians issue three copies of the VFD: one for their own records, one for their client, and one to the client's VFD feed distributor. All involved parties (veterinarian, distributor, and client) must retain a copy of the VFD for 2 years (§ 558.6(a)(4)). In addition, VFD feed distributors must also keep receipt and distribution records of VFD feeds they manufacture and make them available for inspection by FDA for 2 years (§ 558.6(c)(3)). If a distributor manufactures the VFD feed, the distributor must also keep VFD manufacturing records for 1 year in accordance with 21 CFR part 225 and such records must be made available for inspection and copying by FDA upon request (§ 558.6(c)(4)). These record requirements are currently approved under OMB control number 0910–0152, ''Current Good Manufacturing Practice Regulations for Medicated Feed. '' Distributors may distribute VFD feeds to another distributor only if the originating distributor (consignor) first obtains a written acknowledgment letter from the receiving distributor (consignee) before the feed is shipped. Such letters, like VFDs, are also subject to a 2-year record retention requirement (§ 558.6(c)(8)).

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section/activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
558.6(a)(4); required recordkeeping by veterinarians and producers.	13,050	114.9	1,500,000	0.0167 (1 minute)	25,050
558.6(a)(4), (c)(3), (4), and (8); required recordkeeping by distributors.	9,635	545.1	5,252,038	0.0167 (1 minute)	87,709
Total					112,759

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

C. Third-Party Disclosure Requirements

Description of Respondents: VFD Drug Sponsors, Food Animal Veterinarians, VFD Feed Distributors, and Clients.

FDA regulation requires that veterinarians include the information specified at § 558.6(b)(3) through (5) on the VFD. Additional requirements relating to the VFD are specified at § 558.6(b)(7) through (9). A distributor may only distribute a VFD feed to another distributor for further distribution if the originating distributor (consignor) first obtains a written acknowledgment letter from the receiving distributor (consignee) before the feed is shipped (§ 558.6(c)(8)).

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section/activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
558.6(b)(3)–(5) and (b)(7)–(9); required disclosures when a veterinarian issues a VFD.	3,050	246	750,000	0.125 (7 minutes)	93,750
558.6(c)(8); required disclosure (acknowledgment letter) from one distributor to another.	1,000	5	5,000	0.125 (7 minutes)	625
Total					94,375

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The VFD regulation also contains several labeling provisions that are exempt from OMB review and approval under the PRA because they are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)) and therefore do not constitute a ''collection of information'' under the PRA (44 U.S.C. 3501, *et seq.*). All labeling and advertising for VFD drugs, combination VFD drugs, and feeds containing VFD drugs or combination VFD drugs must prominently and conspicuously display the following cautionary statement: ''Caution: Federal law restricts medicated feed containing this veterinary feed directive (VFD) drug to use by or on the order of a licensed veterinarian'' (§ 558.6(a)(6)). In addition, the veterinarian must ensure that the following statement is included on the VFD (§ 558.6(b)(3)(xiii)): ''Use of feed containing this veterinary feed directive (VFD) drug in a manner other than as directed on the labeling (extralabel use) is not permitted. ''

The veterinarian may restrict VFD authorization to only include the VFD drug(s) cited on the VFD or such authorization may be expanded to allow the use of the cited VFD drug(s) along with one or more over-the-counter animal drugs in an approved, conditionally approved, or indexed combination VFD drug (§ 558.6(b)(6)). The veterinarian must affirm his or her intent regarding combination VFD drugs by including one of the following statements on the VFD:

1. ''This VFD only authorizes the use of the VFD drug(s) cited in this order and is not intended to authorize the use of such drug(s) in combination with any other animal drugs'' (§ 558.6(b)(6)(i)).

2. ''This VFD authorizes the use of the VFD drug(s) cited in this order in the following FDA-approved, conditionally approved, or indexed combination(s) in medicated feed that contains the VFD drug(s) as a component. '' (List specific approved, conditionally approved, or indexed combination medicated feeds following this statement.) (§ 558.6(b)(6)(ii)).

3. ''This VFD authorizes the use of the VFD drug(s) cited in this order in any FDA-approved, conditionally approved, or indexed combination(s) in medicated feed that contains the VFD drug(s) as a component'' (§ 558.6(b)(6)(iii)).

These labeling statements are not subject to review by OMB because, as stated previously, they are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)) and therefore do not constitute a ''collection of information'' under the PRA (44 U.S.C. 3501, *et seq.*).

Based on a review of the information collection since our last request for OMB approval, there has been a significant increase in the number of VFD distributors due to changes to the VFD regulations that were implemented in 2017. Since implementation, the number of approved VFD drugs has increased.

Dated: December 17, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–28353 Filed 12–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0386]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Orphan Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by January 22, 2021.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0167. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Orphan Drugs

OMB Control Number 0910–0167—Revision

This information collection supports FDA regulations implementing sections 525, 526, 527, and 528 of the Federal Food, Drug and Cosmetic Act (FD&C Act) (21 U.S.C. 360aa, 360bb, 360cc, and 360dd), as well as related guidance. Sections 525, 526, 527, and 528 of the FD&C Act pertain to the development of drugs for rare diseases or conditions, including biological products and antibiotics, otherwise known or referred to as ''Orphan Drugs.'' Specifically, section 525 of the FD&C Act requires written recommendations on studies required for approval of a marketing application for a drug for a rare disease or condition. The information collection in 21 CFR 316.10, 316.12, and 316.14 is approved under OMB control numbers 0910–0001 and 0910–0014. Section 526 of the FD&C Act provides for designation of drugs as orphan drugs when certain conditions are met, section 527 provides conditions under which a sponsor of an approved orphan drug enjoys exclusive FDA marketing approval for that drug for the orphan indication for a period of 7 years, and, finally, section 528 is intended to encourage sponsors to make investigational orphan drugs available for treatment of persons in need on an open protocol basis before the drug has been approved for general marketing. Open protocols may permit patients who are not part of the formal clinical investigation to obtain treatment where adequate supplies exist and no alternative effective therapy is available.

We have issued regulations in part 316 (21 CFR part 316) to implement the Orphan Drug provisions of the FD&C Act and to set forth procedures and requirements related to requesting recommendations for investigations of drugs for rare diseases or conditions, requesting designation of a drug for a rare disease or condition, or requesting exclusive approval for a drug for a rare disease or condition. To assist respondents and to be consistent with § 316.50, our Office of Orphan Products Development (OOPD) maintains and makes publicly available guidance documents that apply to the Orphan Drug provisions of the FD&C Act and regulations in part 316. The list is maintained on the internet and guidance documents are issued in accordance with our Good Guidance Practice regulations in 21 CFR 10.115, which provide for public comment at any time.

Accordingly, we are revising the information collection to include Agency guidance. The document entitled ''Meetings with the Office of Orphan Products Development: Guidance for Industry, Researchers, Patient Groups, and Food and Drug Administration Staff'' provides recommendations to industry, researchers, patient groups, and other stakeholders interested in requesting a meeting, including a teleconference, with OOPD on issues related to orphan drug designation requests, humanitarian use device designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related topics of concern. It is also intended to assist OOPD staff in addressing such meeting requests. This guidance describes procedures for requesting, preparing, scheduling, conducting, and documenting such meetings and discusses background information we recommend be included in such requests. Information collection attendant to recommendations in the guidance are currently approved under OMB control number 0910–0787; however, for efficiency of Agency operations, we are consolidating it into this related information collection. The guidance is available at *https://www.fda.gov/media/92815/download*.

The FDA Orphan Drug Designation Request Form (Form FDA 4035) is intended to benefit sponsors who desire to seek orphan designation of drugs intended for rare diseases or conditions from only FDA. The form is a simplified

method for sponsors to provide only the information required by § 316.20 for FDA to make a decision.

During this public health emergency associated with the COVID–19 pandemic, the OOPD is providing sponsors with increased flexibility for submission of orphan drug designation requests and related submissions (amendments, annual reports, etc.). During this public health emergency, orphan drug designation, humanitarian use device designation, and rare pediatric disease designation requests and submissions may be submitted electronically by email to the OOPD. When transmitting information to the Orphan Drug Designation Program via email, please utilize the mailbox *orphan@fda.hhs.gov*. We recommend using the automated read receipt feature to avoid having to call to verify receipt of the email. We also strongly encourage sponsors and others who plan to email information to FDA that is considered to be private, sensitive, proprietary, or commercial confidential to send it from an FDA-secured email address, which is provided by FDA, so the transmission is encrypted. The OOPD will assume that the addresses of emails received or email addresses provided as a point of contact are FDA secure when responding to those email addresses.

In the **Federal Register** of October 2, 2020 (85 FR 62306), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Content and format of a request for designation; request for verification of status; amendment to designation	534	1.25	668	135	90,180
§§ 316.20, 316.21, 316.26 (Form FDA 4035)	534	1.25	668	32	21,376
§ 316.22; Notifications of changes in agents	132	1	132	2	264
§ 316.24(a); Deficiency letters and granting orphan-drug designation	20	1	20	2	40
§ 316.27; Submissions to change ownership of orphan-drug designation	104	1	104	5	520
§ 316.30; Annual reports	744	1	744	3	2,232
§ 316.36; Assurance of the availability of sufficient quantities of the orphan drug; holder's consent for the approval of other marketing applications for the same drug	1	3	3	15	45
Guidance Recommendations: Meeting requests to OOPD and related submission packages	2,508	1	2,508	3.595	9,016
Total					123,673

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on our evaluation, we have adjusted the currently approved burden estimate we attribute to information collection activities associated with our Orphan Drug program to reflect an increase in submissions. This notice corrects the mathematical error published in the 60-day notice, which indicated that the total burden was 123,623.

Dated: December 17, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–28349 Filed 12–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–2267]

Endo Pharmaceuticals, Inc.; Withdrawal of Approval of a New Drug Application for OPANA (Oxymorphone Hydrochloride) Extended-Release Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug application (NDA) for OPANA (oxymorphone hydrochloride) extended-release (ER) tablets (NDA 201655), held by Endo Pharmaceuticals, Inc., 1400 Atwater Dr., Malvern, PA 19355 (Endo). Endo requested that the approval of this application be withdrawn and has waived its opportunity for a hearing.

DATES: Withdrawal of approval is applicable December 23, 2020.

FOR FURTHER INFORMATION CONTACT: Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137.

SUPPLEMENTARY INFORMATION: On June 22, 2006, FDA approved NDA 021610 for OPANA ER (oxymorphone hydrochloride). On December 9, 2011, FDA approved a new formulation of OPANA ER (oxymorphone hydrochloride) tablets, 5 milligrams (mg), 7.5 mg, 10 mg, 15 mg, 20 mg, 30 mg, and 40 mg, under NDA 201655 (''reformulated OPANA ER'') for the management of pain severe enough to require daily, around-the-clock, long-term opioid treatment and for which alternative treatment options are inadequate. Over the course of 2011 and 2012, Endo removed the original formulation from the market.

Reformulated OPANA ER was intended by the sponsor to be resistant to physical and chemical manipulation for abuse by snorting or injecting. Although the reformulated product met the regulatory standards for approval, FDA determined that the data did not show that product could be expected to

meaningfully reduce abuse and declined the company's request to include labeling describing potentially abuse-deterrent properties for OPANA ER.

Based on postmarketing data, FDA later observed that there was a significant shift in the route of abuse from nasal to injection following the product's reformulation. Injection abuse of reformulated OPANA ER has been associated with a serious outbreak of HIV and hepatitis C, as well as cases of a serious blood disorder (thrombotic microangiopathy). On June 8, 2017, FDA requested that Endo remove reformulated OPANA ER from the market based on its concern that the benefits of the drug may no longer outweigh its risks due to the public health consequences of abuse (see *https://www.fda.gov/news-events/press-announcements/fda-requests-removal-opana-er-risks-related-abuse*). On July 6, 2017, Endo announced it would voluntarily remove reformulated OPANA ER from the market.

On October 3, 2017, Endo requested withdrawal of NDA 201655 for reformulated OPANA ER under § 314.150(d) (21 CFR 314.150(d)) and waived its opportunity for a hearing. For the reasons discussed above, and pursuant to the applicant's request, approval of NDA 201655 for reformulated OPANA ER (oxymorphone hydrochloride) extended-release tablets, and all amendments and supplements thereto, is withdrawn under § 314.150(d). Distribution of reformulated OPANA ER into interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a) and 331(d)).

Dated: December 16, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–28283 Filed 12–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–2272]

Hospira, Inc., et al.; Withdrawal of Approval of 27 New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of 27 new drug applications (NDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of January 22, 2021.

FOR FURTHER INFORMATION CONTACT: Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137.

SUPPLEMENTARY INFORMATION: The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
NDA 008809	M.V.I.-12 Adult (ascorbic acid, biotin, cyanocobalamin, dexpanthenol, ergocalciferol, folic acid, niacinamide, pyridoxine hydrochloride (HCl), riboflavin 5'-phosphate sodium, thiamine HCl, vitamin A, and vitamin E) Injection, 10 milligrams (mg)/milliliters (mL), 0.006 mg/mL, 0.5 micrograms (mcg)/mL, 1.5 mg/mL, 20 International Units (IU)/mL, 0.04 mg/mL, 4 mg/mL, 0.4 mg/mL, 0.36 mg/mL, 0.3 mg/mL, 330 Units/mL, and 1 IU/mL; and 20 mg/mL, 0.006 mg/mL, 0.05 mcg/mL, 1.5 mg/mL, 0.0005 mg/mL, 0.06 mg/mL, 4 mg/mL, 0.6 mg/mL, 0.36 mg/mL, 0.6 mg/mL, 0.1 mg/mL, and 1 mg/mL.	
	M.V.I.-12 Adult (ascorbic acid, biotin, cyanocobalamin, dexpanthenol, ergocalciferol, folic acid, niacinamide, pyridoxine HCl, riboflavin, thiamine HCl, vitamin A, and vitamin E) Injection, 20 mg/mL, 0.006 mg/mL, 0.5 mcg/mL, 1.5 mg/mL, 20 IU/mL, 0.6 mg/mL, 4 mg/mL, 0.4 mg/mL, 0.36 mg/mL, 0.6 mg/mL, 330 Units/mL, and 1 IU/mL..	Hospira, Inc., 275 North Field Dr., Lake Forest, IL 60045.
NDA 017673	Aminosyn (amino acids) Injection, 5% (5 grams (g)/100 mL), 7% (7 g/100 mL), 7% (pH6) (7 g/100 mL), 8.5% (8.5 g/100 mL), 8.5% (pH6) (8.5 g/100 mL), 10% (10 g/100 mL), and 10% (pH6) (10 g/100 mL).	
	Aminosyn 8.5% With Electrolytes (amino acids, magnesium chloride, potassium chloride, sodium chloride, and sodium phosphate dibasic) Injection, 8.5% (8.5 g/100mL), 102 mg/100 mL, 487 mg/100 mL, 28 mg/100 mL, and 425 mg/100 mL..	
	Aminosyn 8.5% With Electrolytes (amino acids, magnesium chloride, potassium phosphate dibasic, and sodium chloride) Injection, 8.5% (8.5 g/100 mL), 102 mg/100 mL, 522 mg/100 mL, and 410 mg/100 mL..	ICU Medical, Inc., 600 North Field Dr., Lake Forest, IL 60045.
NDA 017735	Modicon 28 (ethinyl estradiol and norethindrone) Tablets, 0.035 mg/0.5 mg	Janssen Pharmaceuticals, Inc., 1125 Trenton-Harbourton Rd., Titusville, NJ 08560.
NDA 017743	Brevicon 28-Day (ethinyl estradiol and norethindrone) Tablets, 0.035 mg/0.5 mg.	Allergan Sales, LLC, 5 Giralda Farms, Madison, NJ 07940.
NDA 017789	Aminosyn 3.5% (amino acids) Injection, 3.5% (3.5 g/100 mL).	
	Aminosyn 3.5% M (amino acids, magnesium acetate, phosphoric acid, potassium acetate, and sodium chloride) Injection, 3.5% (3.5 g/100 mL), 21 mg/100 mL, 40 mg/100 mL, 128 mg/100 mL, and 234 mg/100 mL..	
	Aminosyn 3.5% M (amino acids, magnesium acetate, potassium acetate, and sodium chloride) Injection, 3.5% (3.5 g/100 mL), 21 mg/100 mL, 128 mg/100 mL, and 234 mg/100 mL..	

Application No.	Drug	Applicant
	Aminosyn 7% With Electrolytes (amino acids, magnesium chloride, potassium phosphate dibasic, and sodium chloride) Injection, 7% (7 g/100 mL), 102 mg/100 mL, 410 mg/100 mL, and 522 mg/100 mL..	ICU Medical, Inc.
NDA 018069	Vansil (oxamniquine) Capsules, 250 mg	Pfizer, Inc., 235 East 42nd St., New York, NY 10017.
NDA 018081	Depakene (valproic acid) Capsules, 250 mg	AbbVie, Inc., 1 North Waukegan Rd., North Chicago, IL 60064.
NDA 018281	Tegretol (carbamazepine) Chewable Tablets, 100 mg	Novartis Pharmaceuticals Corp., 1 Health Plaza, East Hanover, NJ 07936.
NDA 018429	Aminosyn-RF 5.2% (amino acids) Injection, 5.2% (5.2 g/100 mL).	ICU Medical, Inc.
NDA 018704	Lopressor (metoprolol tartrate) Injection, 1 mg/mL	Novartis Pharmaceuticals Corp.
NDA 018876	Potassium Chloride 5 milliequivalent (mEq) in Dextrose 5% and Sodium Chloride 0.3% in Plastic Container (dextrose, potassium chloride, and sodium chloride) Injection, 5 g/100 mL, 74.5 mg/100 mL, and 300 mg/100 mL.	
	Potassium Chloride 5 mEq in Dextrose 5% and Sodium Chloride 0.3% in Plastic Container (dextrose, potassium chloride, and sodium chloride) Injection, 5 g/100 mL, 149 mg/100 mL, and 300 mg/100 mL..	
	Potassium Chloride 10 mEq in Dextrose 5% and Sodium Chloride 0.3% in Plastic Container (dextrose, potassium chloride, and sodium chloride) Injection, 5 g/100 mL, 74.5 mg/100 mL, and 300 mg/mL..	
	Potassium Chloride 10 mEq in Dextrose 5% and Sodium Chloride 0.3% in Plastic Container (dextrose, potassium chloride, and sodium chloride) Injection, 5 g/100 mL, 149 mg/100 mL, and 300 mg/mL..	
	Potassium Chloride 15 mEq in Dextrose 5% and Sodium Chloride 0.3% in Plastic Container (dextrose, potassium chloride, and sodium chloride) Injection, 5 g/100 mL, 224 mg/100 mL, and 300 mg/100 mL..	
	Potassium Chloride 20 mEq in Dextrose 5% and Sodium Chloride 0.3% in Plastic Container (dextrose, potassium chloride, and sodium chloride) Injection, 5 g/100 mL, 298 mg/100 mL, and 300 mg/100 mL..	
	Potassium Chloride 20 mEq in Dextrose 5% in Sodium Chloride 0.3% in Plastic Container (dextrose, potassium chloride, and sodium chloride) Injection, 5 g/100 mL, 149 mg/100 mL, and 300 mg/100 mL..	
	Potassium Chloride 30 mEq in Dextrose 5% and Sodium Chloride 0.3% in Plastic Container (dextrose, potassium chloride, and sodium chloride) Injection, 5 g/100 mL, 224 mg/100 mL, and 300 mg/100 mL..	
	Potassium Chloride 40 mEq in Dextrose 5% and Sodium Chloride 0.3% in Plastic Container (dextrose, potassium chloride, and sodium chloride) Injection, 5 g/100 mL, 298 mg/100 mL, and 300 mg/100 mL..	Do.
NDA 018985	Ortho Novum 7/7/7 (ethinyl estradiol and norethindrone) (White) Tablets, 0.035 mg ethinyl estradiol and 0.5 mg norethindrone, (Light Peach) Tablets, 0.035 mg ethinyl estradiol and 0.75 mg norethindrone, (Peach) Tablets, 0.035 mg ethinyl estradiol and 1 mg norethindrone.	Janssen Pharmaceuticals, Inc.
NDA 019029	Metronidazole Tablets, 250 mg	LNK International, Inc., 145 Ricefield Lane, Hauppauge, NY 11788.
NDA 019374	Aminosyn-HBC 7% (amino acids) Injection, 7% (7 g/100 mL).	ICU Medical, Inc.
NDA 019435	Nix (permethrin) Topical Lotion, 1%	GlaxoSmithKline Consumer Healthcare Holdings (US) LLC, 184 Liberty Corner Rd., suite 2000, Warren, NJ 07059.
NDA 019437	Aminosyn II M (amino acids, magnesium chloride, potassium chloride, sodium chloride, and sodium phosphate dibasic heptahydrate) Injection, 3.5% (3.5 g/100 mL), 30 mg/100 mL, 97 mg/100 mL, 120 mg/100 mL, and 49 mg/100 mL.	
	Aminosyn II With Electrolytes (amino acids, magnesium chloride, potassium chloride, potassium phosphate dibasic, and sodium chloride) Injection, 7% (7 g/100 mL), 102 mg/100 mL, 45 mg/100 mL, 522 mg/100 mL, and 410 mg/100 mL; 8.5% (8.5 g/100 mL), 102 mg/100 mL, 45 mg/100 mL, 522 mg/100 mL, and 410 mg/100 mL; and 10% (10 g/100 mL), 102 mg/100 mL, 45 mg/100 mL, 522 mg/100 mL, and 410 mg/100 mL..	
	Aminosyn II With Electrolytes (amino acids, magnesium chloride, potassium chloride, sodium chloride, and sodium phosphate dibasic) Injection, 8.5% (8.5 g/100 mL), 102 mg/100 mL, 492 mg/100 mL, 60 mg/100 mL, and 425 mg/100 mL..	Do.
NDA 019438	Aminosyn II 3.5% (amino acids) Injection, 3.5% (3.5 g/100 mL).	
	Aminosyn II 5% (amino acids) Injection, 5% (5 g/100 mL).	
	Aminosyn II 7% (amino acids) Injection, 7% (7 g/100 mL)..	
	Aminosyn II 8.5% (amino acids) Injection, 8.5% (8.5 g/100 mL)..	
	Aminosyn II 10% (amino acids) Injection, 10% (10 g/100 mL).	Do.
NDA 019653	Ortho-Cyclen-21 (ethinyl estradiol and norgestimate) Oral-21 Tablets, 0.035 mg/0.250 mg.	
	Ortho Cyclen-28 (ethinyl estradiol and norgestimate) Oral-28 Tablets, 0.035 mg/0.25 mg..	Janssen Pharmaceuticals, Inc.
NDA 019894	Dextrose 50% in Plastic Container (dextrose) Injection, 50 g/100 mL	ICU Medical, Inc.

Application No.	Drug	Applicant
NDA 019916	Morphine Sulfate Injection, 1 mg/mL and 5 mg/mL	Do.
NDA 020593	Depacon (valproate sodium) Injection, Equivalent to (EQ) 100 mg base/mL	AbbVie, Inc.
NDA 020634	Levaquin (levofloxacin) Tablets, 250 mg, 500 mg, and 750 mg	Janssen Pharmaceuticals, Inc.
NDA 021241	Ortho Tri-Cyclen Lo (ethinyl estradiol and norgestimate) Oral-28 (White) Tablets, 0.025 mg ethinyl estradiol and 0.18 mg norgestimate; (Light Blue) Tablets, 0.025 mg ethinyl estradiol and 0.215 mg norgestimate; (Dark Blue) Tablets, 0.025 mg ethinyl estradiol and 0.250 mg norgestimate.	Do.
NDA 206544	MorphaBond ER (morphine sulfate) Extended-Release Tablets, 15 mg, 30 mg, 60 mg, and 100 mg.	Daiichi Sankyo, Inc., 211 Mount Airy Rd., Basking Ridge, NJ 07920.
NDA 208399	Varubi (rolapitant HCl) Injectable Emulsion, EQ 166.5 mg base/92.5 mL (EQ 1.8 mg base/mL).	TerSera Therapeutics LLC, 520 Lake Cook Rd., suite 500, Deerfield, IL 60015.
NDA 209203	Duzallo (allopurinol and lesinurad) Tablets, 200 mg/200 mg and 300 mg/200 mg.	Ironwood Pharmaceuticals, Inc., 100 Summer St., suite 2300, Boston, MA 02110.
NDA 210895	Welchol (colesevelam HCl) Chewable Bars, 3.75 g	Daiichi Sankyo, Inc.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of January 22, 2021. Approval of each entire application is withdrawn, including any strengths and dosage forms inadvertently missing from the table. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on January 22, 2021 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: December 16, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–28346 Filed 12–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Extension of Designation of Scarce Materials or Threatened Materials Subject to COVID–19 Hoarding Prevention Measures; Correction of Extension Date

AGENCY: Office of the Secretary (OS), DHHS.

ACTION: Correction.

SUMMARY: This document updates the July 30, 2020, **Federal Register** Notice entitled ''Extension of Designation of Scarce Materials or Threatened Materials Subject to COVID–19 Hoarding Prevention Measures,'' by revising the last sentence in the ''Summary'' section.

FOR FURTHER INFORMATION CONTACT: Paige Ezernack, Office of the Assistant Secretary for Preparedness and Response, Office of Strategy, Policy, Planning, and Requirements, Suite 5440—O'Neill House Office Building, 200 C Street SW, Washington, DC 20201, (202) 260–0365.

SUPPLEMENTARY INFORMATION:

I. Correction of Errors

In FR Doc. 2020–16458 of July 30, 2020 (85 FR 45895–45897), make the following corrections:

On page 48596, first full column, **SUMMARY** section, change second to last sentence to ''This notice, issued on July 23, 2020, extends the March 25 Designation Notice to January 19, 2021.'' The expiration date, January 19, 2021 is not 120 days from the date of issuance so remove that reference.

Wilma Robinson,

Deputy Executive Secretary, Department of Health and Human Services.

[FR Doc. 2020–28374 Filed 12–22–20; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public via NIH videocast. The URL link to this meeting is *https://videocast.nih.gov/watch=38984.*

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: January 27, 2021.

Open: 10:00 a.m. to 1:05 p.m.

Agenda: Report of the Director, NIDCR

Place: National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Room 662 Bethesda, MD 20892, (Virtual Meeting).

Closed: 1:20 p.m. to 2:00 p.m.

Agenda: Grant applications.

Place: National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Room 662 Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Alicia J. Dombroski, Ph.D., Director, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Room 662, Bethesda, MD 20892, 301–594–4805, *adombroski@nidcr.nih.gov.*

Any interested person may file written comments with the committee no later than 15 days after the meeting by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 17, 2020.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–28354 Filed 12–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships in Digestive Diseases and Nutrition.

Date: February 11–12, 2021.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Room 7011, Bethesda, MD 20892 (Video Meeting).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.go.v*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 18, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–28350 Filed 12–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with a short public comment period at the end. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: September 14–15, 2021.

Closed: September 14, 2021, 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Virtual Meeting).

Open: September 15, 2021, 8:00 a.m. to 1:00 p.m.

Agenda: Call to order and report from the Director; Discussion of future meeting dates; Consideration of minutes of last meeting; Reports from Task Force on Minority Aging Research, Working Group on Program; Council Speaker; Program Highlights.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kenneth Santora, Ph.D., Director, Office of Extramural Activities, National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *ksantora@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/about/naca,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 18, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–28397 Filed 12–22–20; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Epidemiology, Prevention and Behavior Research Review Subcommittee.

Date: March 1–2, 2021.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Anna Ghambaryan, M.D., Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2120, MSC 6902, Bethesda, MD 20892, 301–443–4032, *anna.ghambaryan@nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Biomedical Research Review Subcommittee.

Date: March 9, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Philippe Marmillot, Ph.D., Scientific Review Officer, Extramural Project Review Branch, National Institutes of Health,

National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2118, MSC 6902, Bethesda, MD 20892, 301–443–2861, *marmillotp@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: December 17, 2020.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–28358 Filed 12–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Hearing Health Care (RFA).

Date: January 19, 2021.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, (301) 496–8683, *singhs@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Clinical Research Center Application (P50) Review.

Date: January 21, 2021.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, (301) 496–8683, *yangshi@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Voice, Speech and Language Application Review.

Date: February 5, 2021.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, (301) 496–8683, *yangshi@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Hearing and Balance Application Review.

Date: February 18–19, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Boulevard, Room 8339, MSC 9670, Bethesda, MD 20892–8401, (301) 496–8683, *el6r@nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD P50 Review.

Date: March 4, 2021.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIH/NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, (301) 496–8683, *katherine.shim@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 18, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–28398 Filed 12–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP–1A: SBIR Contract Review.

Date: February 12, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850, 240–276–5856, *nadeem.khan@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–6: Research Answers to NCI Provocative Questions.

Date: February 16, 2021.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Shree Ram Singh, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20817, 240–672–6175, *singhshr@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–9: NCI Clinical and Translational R21 and Omnibus R03 Review.

Date: February 18–19, 2021.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove. 9609 Medical Center Drive, Room 7W640, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Saejeong J. Kim, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W640, Rockville, Maryland 20850, 240–276–7684, *saejeong.kim@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Outstanding Investigator Award.

Date: February 22–23, 2021.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W522, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Michael B. Small, Ph.D., Chief, Program and Review Extramural Staff Training Office, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W522, Rockville, Maryland 20850, 240–276–6438, *smallm@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP–4: SBIR Contract Review.

Date: February 22, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W412, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Ivan Ding, M.D., Health Scientist Administrator, Program and Review Extramural Staff Training Office, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W412, Rockville, Maryland 20850, 240–276–6444, *dingi@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP–5A: SBIR Contract Review.

Date: February 23, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W412, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Ivan Ding, M.D., Health Scientist Administrator, Program and Review Extramural Staff Training Office, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W412, Rockville, Maryland 20850, 240–276–6444, *dingi@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP–5B: SBIR Contract Review.

Date: February 24, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W412, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Ivan Ding, M.D., Health Scientist Administrator, Program and Review Extramural Staff Training Office, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W412, Rockville, Maryland 20850, 240–276–6444, *dingi@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP–1B: SBIR Contract Review.

Date: February 25, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W260, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W260, Rockville, Maryland 20850, 240–276–5856, *nadeem.khan@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–4: NCI Clinical and Translational R21 and Omnibus R03 Review.

Date: March 4–5, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W254, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Eduardo Emilio Chufan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W254, Rockville, Maryland 20850, 240–276–7975, *chufanee@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–1: NCI Clinical and Translational R21 and Omnibus R03 Review.

Date: March 4, 2021.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Zhiqiang Zou, M.D., Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W242, Rockville, Maryland 20850, 240–276–6372, *zouzhiq@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Research Projects in Cancer Systems Biology.

Date: March 5, 2021.

Time: 10:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Byeong-Chel Lee, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850, 240–276–7755, *byeong-chel.lee@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Small-Cell Lung Cancer Consortium (U01): Therapeutic Development and Mechanisms of Resistance.

Date: March 10, 2021.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Byeong-Chel Lee, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850, 240–276–7755, *byeong-chel.lee@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–8: NCI Clinical and Translational R21 and Omnibus R03 Review.

Date: March 11–12, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W242, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Zhiqiang Zou, M.D., Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W242, Rockville, Maryland 20850, 240–276–6372, *zouzhiq@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–7: Research Answers to NCI Provocative Questions (PQ7).

Date: March 19, 2021.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W640, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Saejeong J. Kim, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W640, Rockville, Maryland 20850, 240–276–7684, *saejeong.kim@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Integrating Biospecimen Science Approaches into Clinical Assay Development (U01).

Date: March 26, 2021.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W624, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Tushar Deb, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W624, Rockville, Maryland 20850, 240–276–6132, *tushar.deb@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 17, 2020.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–28357 Filed 12–22–20; 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 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: Center for Scientific Review Special Emphasis Panel; Bioengineering Sciences and Technologies: AREA/REAP Review.

Date: January 28, 2021.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 17, 2020.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–28276 Filed 12–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with a short public comment period at the end. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: May 11–12, 2021.

Closed: May 11, 2021, 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892 (Virtual Meeting).

Open: May 12, 2021, 8:00 a.m. to 12:45 p.m.

Agenda: Call to order and report from the Director; Discussion of future meeting dates; Consideration of minutes of last meeting; Reports from Task Force on Minority Aging Research, Working Group on Program; Council Speaker; Program Highlights.

Place: National Institute on Aging, Building 31, C Wing 6th Floor Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kenneth Santora, Ph.D., Director, Office of Extramural Activities, National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *ksantora@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/about/naca,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 18, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–28396 Filed 12–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meeting will be open to the public as indicated below, with a short public comment period at the end. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: January 27–28, 2021.

Open: January 27, 2021, 10:00 a.m. to 1:15 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Closed: January 28, 2021, 1:25 p.m. to 1:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Karl F. Malik, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Kidney, Urologic and Hematologic Diseases Subcommittee.

Date: January 27–28, 2021.

Open: January 28, 2021, 10:00 a.m. to 11:30 a.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Closed: January 28, 2021, 11:45 a.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Karl F. Malik, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 7329, MSC, 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Digestive Diseases and Nutrition Subcommittee.

Date: January 27–28, 2021.

Open: January 28, 2021, 10:00 a.m. to 11:30 a.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Closed: January 28, 2021, 11:45 a.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Karl F. Malik, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757 *malikk@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Diabetes, Endocrinology and Metabolic Diseases Subcommittee.

Date: January 27–28, 2021.

Open: January 28, 2021, 10:00 a.m. to 11:30 a.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health Two Democracy Plaza, 6707 Democracy Boulevard Bethesda, MD 20892 (Virtual Meeting).

Closed: January 28, 2021, 11:45 a.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Two Democracy Plaza, 6707 Democracy Boulevard Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Karl F. Malik, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 18, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–28399 Filed 12–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Neurological Sciences Training Initial Review Group NST–1; Subcommittee NST–1; Review of Applications for Clinician Scientist Mentored K Awards.

Date: January 25–26, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3204, MSC 9529, Rockville, MD 20852, (301) 496–0660, *benzingw@mail.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Research Opportunities Using Invasive Neural Recording and Stimulating Technologies in the Human Brain (U01 Clinical Trial Required).

Date: February 5, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Tatiana Pasternak, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, (301) 496–9223, *tatiana.pasternak@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Review of Applications for DSPAN F99/K00 Awards.

Date: February 8–9, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3204, MSC 9529, Rockville, MD 20852, (301) 496–0660, *benzingw@mail.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders A Neurological Science and Disorders A.

Date: February 18–19, 2021.

Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, (301) 402–0288, *natalia.strunnikova@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 17, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–28360 Filed 12–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel; Review of the Centers of Biomedical Research Excellence (COBRE) Phase II.
Date: February 26, 2021.
Time: 9:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, Room 3AN12, 45 Center Drive, Bethesda, MD 20892, (Video Meeting).
Contact Person: Sonia Ortiz-Miranda, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, (301) 402–9448, *sonia.ortiz-miranda@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 18, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–28355 Filed 12–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.
Date: January 19–22, 2021.
Time: January 19, 2021, 3:00 p.m. to 5:40 p.m.
Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.
Place: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive Bethesda, MD 20892, (Virtual Meeting).
Time: January 21, 2021, 10:00 a.m. to 6:25 p.m.
Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.
Place: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive Bethesda, MD 20892, (Virtual Meeting).
Time: January 22, 2021, 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.
Place: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Jennifer E Mehren, Ph.D., Scientific Advisor, Division of Intramural Research Programs, National Institute of Mental Health, NIH, 35A Convent Drive, Room GE 412, Bethesda, MD 20892–3747, 301–496–3501, *mehrenj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: December 17, 2020.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–28356 Filed 12–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA DK20–003: Liver Cirrhosis Clinical Center Network.
Date: February 11–12, 2021.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).
Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: _December 18, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–28351 Filed 12–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0622]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0084

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: 1625–0084, Audit Reports under the Internation Safety Management Code; without change. 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 January 22, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2020–0622. 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–2020–0622], and must be received by January 22, 2021.

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: 1625–0084.

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 64506, October 13, 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: Audit Reports under the International Safety Management Code.

OMB Control Number: 1625–0084.

Summary: This information helps to determine whether U.S. vessels, subject to SOLAS 74, engaged in international trade, are in compliance with that treaty. Organizations recognized by the Coast Guard conduct ongoing audits of vessels' and companies' safety management systems.

Need: Title 46 U.S.C. 3203 authorizes the Coast Guard to prescribe regulations regarding safety management systems. Title 33 CFR part 96 contains the rules for those systems and hence the safe operation of vessels.

Forms: None.

Respondents: Owners and operators of vessels, and organizations authorized to issue ISM Code certificates for the United States.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 10,221 hours to 15,512 hours a year due to an

increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: December 17, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–28332 Filed 12–22–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0621]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0081

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: 1625–0081, Alternate Compliance Program; without change.

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 January 22, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2020–0621. 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–2020–0621], and must be received by January 22, 2021.

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: 1625–0081.

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 64509, October 13, 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: Alternate Complance Program.

OMB Control Number: 1625–0081.

Summary: This information is used by the Coast Guard to assess vessels participating in the voluntary Alternate Compliance Program (ACP) before issuance of a Certificate of Inspection.

Need: Sections 3306 and 3316 of 46 U.S.C. authorize the Coast Guard to establish vessel inspection regulations and inspection alternatives. Part 8 of 46 CFR contains the Coast Guard regulations for recognizing classification societies and enrollment of U.S.-flag vessels in ACP.

Forms: None.

Respondents: Owners and operators of U.S.-flag inspected vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 174 hours to 198 hours a year due to an increase in

the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: December 17, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–28333 Filed 12–22–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 20–19]

Country of Origin Marking of Products from the West Bank and Gaza

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document notifies the public that, for country of origin marking purposes, imported goods produced in the West Bank, specifically in Area C under the Israeli-Palestinian Interim Agreement (the Oslo Accords), signed on September 28, 1995, and the area known as ''H2'' under the Israeli-Palestinian Protocol Concerning Redeployment in Hebron and Related Documents (the Hebron Protocol), signed January 17, 1997, must be marked to indicate their origin as ''Israel,'' ''Product of Israel,'' or ''Made in Israel.'' Goods produced in the West Bank, specifically in Areas A and B under the Oslo Accords and the area known as ''H1'' under the 1997 Hebron Protocol, must be marked to indicate their origin as ''West Bank,'' ''Product of West Bank,'' or ''Made in West Bank.'' Goods produced in Gaza must be marked to indicate their origin as ''Gaza,'' ''Product of Gaza,'' ''Made in Gaza,'' ''Gaza Strip,'' ''Product of Gaza Strip,'' or ''Made in Gaza Strip.'' Imported goods from any of these territorial areas must not include ''West Bank/Gaza,'' ''West Bank/Gaza Strip,'' ''West Bank and Gaza,'' or words of similar meaning.

DATES: The position set forth in this document is applicable as of December 23, 2020. A transition period will be granted for importers to implement marking consistent with this notice. Products from the West Bank or Gaza, when entered or withdrawn from warehouse for consumption into the United States after March 23, 2021, must be marked in accordance with the position set forth in this notice, for purposes of 19 U.S.C. 1304.

FOR FURTHER INFORMATION CONTACT: For legal matters, contact Yuliya A. Gulis, Chief, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, (202) 325–0042 or *yuliya.a.gulis@cbp.dhs.gov.* For policy matters, contact Margaret Gray, Chief, Trade Agreements Branch, Office of Trade, (202) 253–0927 or *FTA@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background on Guidance from the Department of State

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Failure to mark an article in accordance with the requirements of 19 U.S.C. 1304 shall result in the levy of a duty of ten percent *ad valorem.* Part 134 of title 19 of the Code of Federal Regulations (19 CFR part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

In Treasury Decision (T.D.) 95–25, published in the **Federal Register** on April 6, 1995 (60 FR 17607), the U.S. Customs Service (U.S. Customs and Border Protection's predecessor agency) discussed the proper country of origin marking for imported goods produced in the West Bank or Gaza Strip. Prior to the issuance of T.D. 95–25, the U.S. Customs Service had taken the position that, in order for the country of origin marking of a good which was produced in the West Bank or Gaza Strip to be considered acceptable, the word ''Israel'' must appear in the marking designation. However, by letter dated October 24, 1994, the Department of State advised the Department of the Treasury that, in view of certain developments, principally the Israeli-Palestine Liberation Organization (PLO) Declaration of Principles on Interim Self-Government Arrangements (the DOP), signed on September 13, 1993, the primary purpose of 19 U.S.C. 1304 would be best served if goods produced in the West Bank or Gaza Strip were permitted to be marked ''West Bank'' or ''Gaza Strip.'' Accordingly, the U.S. Customs Service notified the public in T.D. 95–25 that, unless excepted from marking, goods produced in the West Bank or Gaza Strip shall be marked as ''West Bank,'' ''Gaza,'' or ''Gaza Strip'' in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR part 134, and shall not contain the words ''Israel,'' ''Made in Israel,'' ''Occupied Territories-Israel,'' or words of similar meaning.

Subsequently, by letter dated January 13, 1997, the Department of State advised the Department of the Treasury that the Palestinian Authority asked that the United States accept the country of origin marking ''West Bank/Gaza'' so as to reaffirm the territorial unity of the two areas. The Department of State further advised that it considers the West Bank and Gaza Strip to be one area for political, economic, legal and other purposes. Accordingly, the Department of State requested that the U.S. Customs Service accept the country of origin markings ''West Bank/Gaza'' and ''West Bank and Gaza'' for products from those areas, and that the U.S. Customs Service continue to accept the markings ''West Bank,'' ''Gaza,'' and ''Gaza Strip.'' Based upon this advice, the U.S. Customs Service notified the public in T.D. 97–16, published in the **Federal Register** on March 14, 1997 (62 FR 12269), that acceptable country of origin markings for imported goods produced in the West Bank or Gaza Strip included the following: ''West Bank/Gaza,'' ''West Bank/Gaza Strip,'' ''West Bank and Gaza,'' ''West Bank and Gaza Strip,'' ''West Bank,'' ''Gaza,'' and ''Gaza Strip.''

By letter dated December 1, 2020, the Department of State has now advised U.S. Customs and Border Protection (CBP) that there has been no further transfer of relevant authorities from Israel to the Palestinian Authority since issuance of the earlier guidance and Israel continues to exercise relevant authorities in areas of the West Bank. The Department of State further advised that it recognizes that Israel has disengaged from Gaza and that Gaza and the West Bank are politically and administratively separate and should be treated accordingly. In light of these developments, and consistent with the purposes of 19 U.S.C. 1304 of providing important information to U.S. purchasers, the Department of State recommends that the country of origin marking requirements for goods produced in the West Bank or Gaza be updated as set forth below in Section C of this notice.

B. Reliance upon Guidance From the Department of State

In the past, CBP (formerly the U.S. Customs Service) has relied upon guidance received from the Department of State in making determinations

regarding the ''country of origin'' of a good for marking purposes. As described in detail in Section A, the U.S. Customs Service relied on advice from the Department of State in issuing Treasury Decisions 95–25 and 97–16 pertaining to the country of origin marking of imported goods produced in the West Bank or Gaza. Accordingly, and consistent with prior decisions, CBP is relying upon advice from the Department of State for purposes of defining the term ''country'' within the meaning of 19 CFR 134.1(a).

C. New Guidance from the Department of State and Transition Period

Pursuant to the recent guidance from the Department of State, this document notifies the public that, for purposes of 19 U.S.C. 1304, the acceptable country of origin markings for imported goods produced in the territorial areas known as the West Bank or Gaza Strip consist of the following:

- Goods produced in the territorial areas of the West Bank where Israel continues to exercise relevant authorities—specifically Area C under the Oslo Accords and the area known as ''H2'' which is under Israeli administrative control consistent with the 1997 Hebron protocol—must be marked as ''Israel,'' ''Product of Israel,'' or ''Made in Israel.''
- Goods produced in Areas A and B under the Oslo Accords, which are under the civilian oversight of the Palestinian Authority for these purposes, along with the area known as ''H1'' from the 1997 Hebron Protocol, must be marked as ''West Bank,'' ''Product of West Bank,'' or ''Made in West Bank.''
- Goods produced in Gaza must be marked as ''Gaza,'' ''Product of Gaza,'' ''Made in Gaza,'' ''Gaza Strip,'' ''Product of Gaza Strip,'' or ''Made in Gaza Strip.''
- Goods from any of these territorial areas must not be marked in conjunctive form, such as ''West Bank/Gaza,'' ''West Bank/Gaza Strip,'' ''West Bank and Gaza,'' or words of similar meaning.

Given commercial realities, affected parties may need a transition period to implement marking consistent with the position announced in this notice. Therefore, unless excepted from marking, goods produced in the territorial areas known as the West Bank or Gaza Strip, which are entered or withdrawn from warehouse for consumption into the United States after March 23, 2021, must be marked in accordance with the position set forth above, for purposes of 19 U.S.C. 1304.

Dated: December 18, 2020.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2020–28547 Filed 12–22–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0016]

Meeting To Implement Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Announcement of meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) held a series of meetings remotely via web conference to implement the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic.

DATES: The first meeting took place on Monday, December 14, 2020, from 2 to 4 p.m. Eastern Time (ET). The second meeting took place on Wednesday, December 16, 2020, from 2 to 4 p.m. ET. The third meeting took place on Friday, December 18, 2020, from 11 a.m. to 1 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Robert Glenn, Office of Business, Industry, Infrastructure Integration, via email at *OB3I@fema.dhs.gov* or via phone at (202) 212–1666.

SUPPLEMENTARY INFORMATION: Notice of these meetings is provided as required by section 708(h)(8) of the Defense Production Act (DPA), 50 U.S.C. 4558(h)(8), and consistent with 44 CFR part 332.

The DPA authorizes the making of ''voluntary agreements and plans of action'' with, among others, representatives of industry and business to help provide for the national defense.[1] The President's authority to facilitate voluntary agreements was delegated to the Secretary of Homeland Security with respect to responding to the spread of COVID–19 within the United States in Executive Order 13911.[2] The Secretary of Homeland Security has further delegated this authority to the FEMA Administrator.[3]

On August 17, 2020, after the appropriate consultations with the Attorney General and the Chairman of the Federal Trade Commission, FEMA completed and published in the **Federal Register** a ''Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic'' (Voluntary Agreement).[4] Unless terminated prior to that date, the Voluntary Agreement is effective until August 17, 2025, and may be extended subject to additional approval by the Attorney General after consultation with the Chairman of the Federal Trade Commission. The Agreement may be used to prepare for or respond to any pandemic, including COVID–19, during that time.

On December 7, 2020, the first plan of action under the Voluntary Agreement—the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Personal Protective Equipment (PPE) to Respond to COVID–19 (Plan of Action)—was finalized.[5] The Plan of Action established the Personal Protective Equipment Sub-Committee to Define COVID–19 PPE Requirements (Sub-Committee).

The meetings covered by this notice were held by the Sub-Committee to implement the Voluntary Agreement. The meetings were chaired by the FEMA Administrator or his delegate, and attended by the Attorney General or his delegate and the Chairman of the Federal Trade Commission or his delegate. In implementing the Voluntary Agreement, FEMA adheres to all procedural requirements of 50 U.S.C. 4558 and 44 CFR part 332.

Meeting Objectives: The objectives of the meetings were to:

(1) Establish priorities for COVID–19 PPE under the Voluntary Agreement;

(2) Identify the first tasks that should be completed under the Plan of Action;

(3) Identify information gaps and areas that merit sharing (from both FEMA to private sector and vice versa); and

[1] 50 U.S.C. 4558(c)(1).

[2] 85 FR 18403 (Apr. 1, 2020).

[3] DHS Delegation 09052, Rev. 00.1 (Apr. 1, 2020); DHS Delegation Number 09052 Rev. 00 (Jan. 3, 2017).

[4] 85 FR 50035 (Aug. 17, 2020). The Attorney General, in consultation with the Chairman of the Federal Trade Commission, made the required finding that the purpose of the voluntary agreement may not reasonably be achieved through an agreement having less anticompetitive effects or without any voluntary agreement and published the finding in the **Federal Register** on the same day. 85 FR 50049 (Aug. 17, 2020).

[5] *See* 85 FR 78869 (Dec. 7, 2020). *See also* 85 FR 79020 (Dec. 8, 2020).

(4) Identify additional Participants that should be a part of the Voluntary Agreement and Plan of Action.

Meetings Closed to the Public: By default, the DPA requires meetings held to implement a voluntary agreement or plan of action be open to the public.[6] However, attendance may be limited if the Sponsor[7] of the voluntary agreement finds that the matter to be discussed at a meeting falls within the purview of matters described in 5 U.S.C. 552b(c). The Sponsor of the Voluntary Agreement, the FEMA Administrator, found that these meetings to implement the Voluntary Agreement involved matters which fell within the purview of matters described in 5 U.S.C. 552b(c) and were therefore closed to the public.[8]

Specifically, the meetings to implement the Voluntary Agreement could have required participants to disclose trade secrets or commercial or financial information that is privileged or confidential. Disclosure of such information allows for meetings to be closed pursuant to 5 U.S.C. 552b(c)(4). In addition, the success of the Voluntary Agreement depends wholly on the willing and enthusiastic participation of private sector participants. Failure to close these meetings could have had a strong chilling effect on participation by the private sector and caused a substantial risk that sensitive information would be prematurely released to the public, resulting in participants withdrawing their support from the Voluntary Agreement and thus significantly frustrating the implementation of the Voluntary Agreement. Frustration of an agency's objective due to premature disclosure of information allows for the closure of a meeting to pursuant to 5 U.S.C. 552b(c)(9)(B).

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–28373 Filed 12–22–20; 8:45 am]

BILLING CODE 9111–19–P

[6] *See* 50 U.S.C. 4558(h)(7).

[7] ''[T]he individual designated by the President in subsection (c)(2) [of section 708 of the DPA] to administer the voluntary agreement, or plan of action.'' 50 U.S.C. 4558(h)(7).

[8] Under 50 U.S.C. 4558(h)(8), the Sponsor generally must publish in the **Federal Register** prior notice of any meeting held to carry out a voluntary agreement or plan of action. However, when the Sponsor finds that the matters to be discussed at such meeting fall within the purview of matters described in 5 U.S.C. 552b(c), notice of the meeting may instead be published in the **Federal Register** within ten days of the date of the meeting. *See* 50 U.S.C. 4558(h)(8).

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Extension From OMB of One Current Public Collection of Information: Airport Security

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0002, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR will describe the nature of the information collection and its expected burden. TSA airport security programs require airport operators to submit certain information to TSA, as well as to maintain and update records to ensure compliance with security provisions.

DATES: Send your comments by February 22, 2021.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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 OMB control number. The ICR documentation will be made available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

OMB Control Number 1652–0002; Airport Security Part 1542. The information collection is used to determine compliance with 49 CFR part 1542[1] and to ensure passenger safety and security by monitoring airport operator security procedures. The information collection and other recordkeeping requirements that currently fall under this OMB control number are associated with an airport operator's compliance with TSA's regulatory requirements, including the following: (1) Development of an Airport Security Program (ASP) and submission to TSA; (2) submission of ASP amendments to TSA when applicable; (3) collection of data necessary to complete a fingerprint-based criminal history records check (CHRC) for those individuals with unescorted access authority to a Security Identification Display Area (SIDA), and those with authority to authorize others to have unescorted access authority to a SIDA; (4) submission to TSA of identifying information about individuals to whom the airport operator has issued identification media, such as name, address, and country of birth, in order for TSA to conduct a Security Threat Assessment (STA); and (5) information collection and recordkeeping requirements associated with airport operator compliance with Security Directives (SDs) issued pursuant to the regulation as well as compliance with alternative measures to the requirements in these SDs. This regulation also requires covered airport operators to make their security programs and

[1] In July 2016, OMB approved TSA's request to revise OMB Control Number 1652–0002, by including in it the recordkeeping requirements under OMB Control Number 1652–0006, Employment Standards, which also applies to 49 CFR part 1542. This action combined two previously-approved ICRs into this single request to simplify TSA collections, increase transparency, and reduce duplication.

associated records available for inspection and copying by TSA to verify compliance with transportation security regulations.

TSA will continue to collect information to determine airport operator compliance with other requirements of 49 CFR part 1542. TSA estimates that there will be approximately 438 airport operator respondents to the information collection requirements described above, with a total annual burden estimate of approximately 1,893,351 hours.

Dated: December 17, 2020.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2020–28287 Filed 12–22–20; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0123]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Provisional Unlawful Presence Waiver of Inadmissibility

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

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until February 22, 2021.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0123 in the body of the letter, the agency name and Docket ID USCIS–2012–0003. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2012–0003. USCIS is limiting communications for this Notice as a result of USCIS' COVID–19 response actions.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2012–0003 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Provisional Unlawful Presence Waiver of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–601A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Section 212(a)(9)(B)(i)(I) and (II) of the Immigration and Nationality Act (INA or the Act) provides for the inadmissibility of certain individuals who have accrued unlawful presence in the United States. There is also a waiver provision incorporated into section 212(a)(9)(B)(v) of the Act, which allows the Secretary of Homeland Security to exercise discretion to waive the unlawful presence grounds of inadmissibility on a case by case basis. The information collected from an applicant on an Application for Provisional Unlawful Presence Waiver of Inadmissibility, Form I–601A, is necessary for U.S. Citizenship and Immigration Services (USCIS) to determine not only whether the applicant meets the requirements to participate in the streamlined waiver process provided by regulation, but also whether the applicant is eligible to receive the provisional unlawful presence waiver.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–601A is 63,000 and the estimated hour burden per response is 1.5 hours. The estimated total number of respondents for the collection of biometrics is 63,000 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 168,210 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual

cost burden associated with this collection of information is $3,413,812.

Dated: December 18, 2020.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–28420 Filed 12–22–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0014]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Declaration of Financial Support

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

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until January 22, 2021.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0072. All submissions received must include the OMB Control Number 1615–0014 in the body of the letter, the agency name and Docket ID USCIS–2006–0072.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on September 29, 2020, at 85 FR 61021, allowing for a 60-day public comment period. USCIS did receive one comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0072 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Declaration of Financial Support.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–134; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. U.S. Citizenship and Immigration Services (USCIS) and consular officers of the Department of State (DOS) use Form I–134 to determine whether, at the time of the beneficiary's application, petition, or request for certain immigration benefits, an alien has sufficient financial support to pay for expenses for the duration of their temporary stay in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–134 is 2,500 and the estimated hour burden per response is 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 5,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $10,625.

Dated: December 18, 2020.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–28427 Filed 12–22–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0095]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Notice of Appeal or Motion

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

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until February 22, 2021.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0095 in the body of the letter, the agency name and Docket ID USCIS–2008–0027. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2008–0027. USCIS is limiting communications for this Notice as a result of USCIS' COVID–19 response actions.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2008–0027 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Appeal or Motion.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–290B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–290B standardizes requests for appeals and motions and ensures that the basic information required to adjudicate appeals and motions is provided by applicants and petitioners, or their attorneys or representatives. USCIS uses the data collected on Form I–290B to determine whether an applicant or petitioner is eligible to file an appeal or motion, whether the requirements of an appeal or motion have been met, and whether the applicant or petitioner is eligible for the requested immigration benefit. Form I–290B can also be filed with ICE by schools appealing decisions on Form I–17 filings for certification to ICE's Student and Exchange Visitor Program (SEVP).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–290B is 28,000 and the estimated hour burden per response is 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 42,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $8,652,000.

Dated: December 18, 2020.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–28418 Filed 12–22–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0151]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection; USCIS Tip Form

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

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for

review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until January 22, 2021.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2019–0001. All submissions received must include the OMB Control Number 1615–0151 in the body of the letter, the agency name and Docket ID USCIS–2019–0001.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on August 26, 2020, at 85 FR 52625, allowing for a 60-day public comment period. USCIS did receive one comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2019–0001 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* USCIS Tip Form.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1530; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Primary: Individuals or households. The USCIS Tip Form will facilitate the collection of information from the public regarding credible and relevant claims of immigration benefit fraud impacting both open adjudications as well as previously approved benefit requests where the benefit remains valid.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–1530 is 55,000 and the estimated hour burden per response is .166 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 9,130 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* There is no public burden cost associated with this collection. The collection is submitted via online form and there are no other requirements to submit.

Dated: December 18, 2020.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–28426 Filed 12–22–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0030]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection; Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act

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

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until January 22, 2021.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2008–0012. All submissions received must include the OMB Control Number 1615–0030 in the body of the letter, the agency name and Docket ID USCIS–2008–0012.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division,

Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on August 26, 2020, at 85 FR 52623, allowing for a 60-day public comment period. USCIS did not receive comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0012 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–612; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Primary: Individuals or households. This information collection is necessary and may be submitted only by an alien who believes that compliance with foreign residence requirements would impose exceptional hardship on his or her spouse or child who is a citizen of the United States, or a lawful permanent resident; or that returning to the country of his or her nationality or last permanent residence would subject him or her to persecution on account of race, religion, or political opinion. Certain aliens admitted to the United States as exchange visitors are subject to the foreign residence requirements of section 212(e) of the Immigration and Nationality Act (the Act). Section 212(e) of the Act also provides for a waiver of the foreign residence requirements in certain instances.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–612 is 7,200 and the estimated hour burden per response is .333 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,398 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $882,000.

Dated: December 18, 2020.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–28423 Filed 12–22–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0072]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Suspension of Deportation or Special Rule Cancellation of Removal

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

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information or new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until February 22, 2021.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0072 in the body of the letter, the agency name and Docket ID USCIS–2008–0077. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2008–0077. USCIS is limiting communications for this Notice as a result of USCIS' COVID–19 response actions.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not

accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2008–0077 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Sec. 203 of Pub. L. 105–100).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–881; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data collected on the Form I–881 is used by Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) asylum officers, EOIR immigration judges, and Board of Immigration Appeals board members. The Form I–881 is used to determine eligibility for suspension of deportation or special rule cancellation of removal under Section 203 of NACARA. The form serves the purpose of standardizing requests for the benefits and ensuring that basic information required for assessing eligibility is provided by the applicants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–881 is 520 and the estimated hour burden per response is 12 hours; the estimated total number of respondents for the information collection Biometrics is 858 and the estimated hour burden per response is 1.17 hours..

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 7,244 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $258,505.

Dated: December 18, 2020.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–28421 Filed 12–22–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6237–N–03]

Notice of a Federal Advisory Committee Meeting Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of Federal Advisory Committee Meetings: Manufactured Housing Consensus Committee (MHCC, Committee).

SUMMARY: This notice sets forth the schedule and proposed agenda for a special meeting of the Manufactured Housing Consensus Committee, to be held via teleconference and webinar. The meeting is open to the public. The agenda for the meeting provides an opportunity for citizens to comment on the business before the MHCC.

DATES: The MHCC Special Meeting will be held on January 7, 2021, 10:00 a.m. to 4:00 p.m. Eastern Standard Time (EST). The teleconference number is: 301–715–8592 or 646–558–8656 and the Meeting ID is: 91922949559. To access the webinar, use the following link: *https://zoom.us/j/91922949559.*

FOR FURTHER INFORMATION CONTACT: Teresa B. Payne, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Room 9166, Washington, DC 20410, telephone 202–402–2698 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2) through implementing regulations at 41 CFR 102–3.150. The MHCC was established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403(a)(3), as amended by the Manufactured Housing Improvement Act of 2000, (Pub. L. 106–569, Sec. 601, *et seq.*). According to 42 U.S.C. 5403, as amended, the purposes of the MHCC are to:

- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;
- Provide periodic recommendations to the Secretary to adopt, revise, and

interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b); and

• Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation.

The MHCC is deemed an advisory committee not composed of Federal employees.

Public Comment: Citizens wishing to make comments on the business of the MHCC must register in advance by contacting the Administering Organization (AO), Home Innovation Research Labs; Attention: Kevin Kauffman, 400 Prince Georges Blvd., Upper Marlboro, MD 20774, or email to *mhcc@homeinnovation.com,* or call 888–602–4663. With advance registration, members of the public will have an opportunity to provide written comments relative to agenda topics for the Committee's consideration. All written comments must be provided to *mhcc@homeinnovation.com.* Written comments must be provided no later than December 30, 2020. Please note, written comments submitted will not be read during the meeting but will be provided to the MHCC members prior to the meeting. The MHCC will also provide an opportunity for oral public comments on specific matters before the MHCC at each meeting. The total amount of time for oral comments will be 30 minutes, in two 15-minute periods, with each commenter limited to two minutes, if necessary, to ensure pertinent Committee business is completed and all public comments can be expressed. The Committee will not respond to individual written or oral statements; however, it will take all public comments into account in its deliberations. The MHCC strives to accommodate citizen comments to the extent possible within the time constraints of the meeting agenda.

Tentative Agenda for MHCC Teleconference

Thursday, January 7, 2021—10 a.m. to 4 p.m. EST

I. Call to Order—MHCC Chair & Designated Federal Officer (DFO), Roll Call (AO)
II. Opening Remarks—MHCC Chair & DFO
  A. Introductions
  i. HUD Staff
  ii. Guests
  B. Administrative Announcements—DFO & AO
III. Approval of draft minutes from October 29–31, 2019 MHCC meeting
IV. Public Comment Period—15 minutes
V. Discussion on Advance Notice of Proposed Rulemaking on Minimum Payments to the States.
VI. Lunch from 12:30 p.m. to 1:30 p.m.
VII. Continued Discussion on ANPR
VIII. Public Comment Period—15 minutes
IX. Wrap Up—DFO & AO
X. Adjourn

Dana T. Wade,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2020–28597 Filed 12–22–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2020–N108; FX3ES11130300000–201–FF03E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Review for the Northern Long-Eared Bat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of review; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating a 5-year status review under the Endangered Species Act of 1973, as amended, for the northern long-eared bat (*Myotis septentrionalis*). A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information that has become available since the last review for the species to determine whether the listed species should be delisted or reclassified.

DATES: To ensure consideration, please send your written information by February 22, 2021. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Please submit information by one of the following methods:

• *Email: TwinCities@fws.gov.*

• *U.S. mail:* USFWS, 4101 American Boulevard East, Bloomington, MN 55425.

FOR FURTHER INFORMATION CONTACT: Jill Utrup, 952–252–0092. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We are initiating a 5-year status review under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), for the northern long-eared bat (*Myotis septentrionalis*). A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information that has become available since the last review for the species.

Why do we conduct 5-year reviews?

Under the ESA, we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year reviews, go to *http://www.fws.gov/endangered/what-we-do/recovery-overview.html*, scroll down to ''Learn More about 5-Year Reviews,'' and click on our factsheet.

What information do we consider in our review?

A 5-year review considers the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the ESA); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

New information will be considered in the 5-year review and ongoing recovery programs for the species.

What species is under review?

This notice announces our active 5-year status review for the northern long-eared bat.

Common name	Scientific name	Taxonomic group	Listing status	Where listed	Final listing rule (**Federal Register** citation and publication date)
Northern long-eared bat	*Myotis septentrionalis* ...	Mammal ...	T	U.S.A. (AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY); Canada (AB, BC, LB, MB, NB, NF, NS, NT, ON, PE, QC, SK, YT).	80 FR 17973; April 2, 2015.[1]

Request for Information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See What Information Do We Consider in Our Review? for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Public Availability of Submissions

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.

Authority

We publish this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2020–28415 Filed 12–22–20; 8:45 am]

BILLING CODE 4333–15–P

[1] A court remanded the final rule to the Service for a new listing determination consistent with the court's order. *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d (D.D.C. 2020). The ruling did not invalidate the final rule or change the threatened status of the northern long-eared bat.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[20XL.LLIDI00000.L71220000.EO0000. LVTFDX814600.241A;4500150180]

Notice of Intent To Prepare an Environmental Impact Statement for the Husky 1 North Dry Ridge Phosphate Mine and Notice of Cancellation of Environmental Impact Statement Preparation for the Nu-West Mining Husky 1-North Dry Ridge Phosphate Mine Project

AGENCY: Bureau of Land Management, Interior; U.S. Forest Service, Department of Agriculture.

ACTION: Notice of intent to prepare an Environmental Impact Statement and notice to terminate preparation of Another Environmental Impact Statement.

SUMMARY: The Bureau of Land Management (BLM) and Forest Service will consider approving the Husky 1 North Dry Ridge phosphate Mine and Reclamation Plan (MRP) on Federal Phosphate Leases, lease modifications, and Special Use Authorizations for ancillary facilities located off-lease on National Forest System lands. Previous plans submitted by Nu-West Mining (doing business as Agrium Conda Phosphate Operations) for the mining property are no longer being considered for approval. The former Notice of Intent published in 2012 (77 FR 46107) is cancelled and preparation of the Environmental Impact Statement (DOI–BLM–ID–I020–2012–0047–EIS) is terminated.

DATES: The BLM and Forest Service request comments concerning the scope of the analysis and identification of relevant information, studies and analyses. All comments must be received by January 22, 2021. The draft Environmental Impact Statement is scheduled for May 2021 and the final Environmental Impact Statement is scheduled for November 2021, with BLM and Forest Service Records of Decision in February 2022. The BLM will announce dates of scoping meetings at least 15 days in advance of the meeting on the BLM National ePlanning website—*https://go.usa.gov/x7HSJ.* Scoping meetings will be held online.

ADDRESSES: Send written comments to: Husky 1 North Dry Ridge Mine EIS, C/O Tetra Tech, 2525 Palmer Street, Suite 2, Missoula, MT 59808. Send comments via email to *BLM_ID_Husky1NDR_EIS@blm.gov.* Submit comments online at the website *https://go.usa.gov/x7HSJ.*

FOR FURTHER INFORMATION CONTACT: Wes Gilmer, BLM Pocatello Field Office, (208) 478–6369 or *wgilmer@blm.gov.* Persons who use a telecommunication device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Documents pertinent to this proposal may be examined at the Pocatello Field Office, address 4350 Cliffs Drive, Pocatello, ID 83204; information is also available at the BLM's website at *https://go.usa.gov/x7HSJ.*

SUPPLEMENTARY INFORMATION:

Purpose and Need for the Proposed Action

Itafos Conda LLC is proposing to exercise mining rights that the Unites States has previously granted in Federal phosphate leases that it currently holds or controls. The company has developed and submitted an MRP for the Husky 1 North Dry Ridge Phosphate Mine. The purpose is for the BLM and Forest

Service to evaluate and respond to the plan submitted for the recovery of phosphate ore and to modify leases, in accordance with the Mineral Leasing Act of 1920 as amended. As the surface management agency, the Forest Service will provide the BLM with formal recommendations on the BLM's action to modify the lease (43 CFR 3503.20), evaluate and respond to the MRP, and issue Special Use Authorizations for the portion of operations that would occur on National Forest System (NFS) lands outside lease boundaries (36 CFR 251.50). Itafos Conda LLC has the exclusive right and privilege to recover phosphate from their leases, including the exploration, mining, and disposal of the phosphate or phosphate rock. The U.S Army Corps of Engineers (USACE) purpose as a cooperating agency in preparation of an Environmental Impact Statement, is to evaluate and consider the MRP relative to a permit decision under Section 404 of the Clean Water Act. The need for the Husky 1/North Dry Ridge Project is to develop the phosphate resource, using an economically viable method, in accordance with Federal laws and regulations governing Federal mineral leases, and to allow Itafos Conda LLC to exercise its right to develop the leases and ensure economically viable and continuous phosphate operations that are in compliance with established requirements. Ultimately, the project would supply phosphate ore to the plant in Soda Springs, ID.

Preliminary Proposed Action and Alternatives

The proposed action includes two open phosphate mining pits—the North Dry Ridge and Husky 1—in portions of the existing North Dry Ridge, Husky 1, and Maybe Canyon Mine leases, and proposed lease modifications. Mining would proceed in phases with overburden first placed in existing South Maybe Canyon pits, followed by backfilling the Husky 1 and North Dry Ridge pits as room is made available. A portion of the Husky 1 pit overburden would also be used to construct a permanent external overburden stockpile for use in reclamation and to buttress mine features such as the relocation of the upper portions of Maybe Creek.

Additional mine facilities include growth media stockpiles, temporary overburden storage areas, water management features, dust suppression and water supply wells, haul roads, equipment staging areas, fuel storage areas, train loading facility (tipple), ore stockpiles, and the shop and office area. The existing offices and shop facilities at the Dry Valley Mine would be used as the main base for Project operations. The Dry Valley yard area would be used for fuel storage tanks, an equipment parking/hot start line, and a laydown yard.

Ore would be transported via haul roads from the mine pit areas to an ore stockpile and tipple, then loaded onto railcars and transported by existing rail line to Soda Springs. The proposed action includes closing a portion of an existing NFS Road (#134) for the duration of mining and reclamation. It also proposes that the Blackfoot River Road be used as the primary means for the public to access Diamond Creek Valley and Dry Valley. The mine would encompass approximately 2,096 acres of Federal land, including existing Federal phosphate leases (1,504 acres), proposed lease enlargement modifications (479 acres), and Forest Service Special Use Authorizations (113 acres), and an additional 9 acres of private land. Mining operations would disturb approximately 1,145 acres of which approximately 1,122 acres, or 98 percent, would be reclaimed. The remaining 2 percent consists of some residual pit walls exposed in the partially backfilled pit area and haul roads that would be partially reclaimed to allow for continued access necessary for maintenance and monitoring activities.

To reduce environmental impacts, the MRP emphasizes the backfilling of mine pits and covering with earth, and in some locations compacted clay, to minimize the release of contaminants to ensure that water quality meets the Idaho Ground Water Quality Rule and other established requirements. Portions of Maybe Creek and Stewart Creek may be realigned to ensure the creeks do not encounter selenium materials or backfill and transport contaminants offsite. Suitable soil or other growth media would be salvaged from disturbed areas for use in reclamation. Concurrent mine reclamation would include backfilling pits as mining progresses, grading slopes, capping overburden disposal areas and backfilled pits, reestablishing drainages, spreading growth media, stabilizing surfaces, promoting revegetation, and testing and treatment for any remaining contaminants. Facilities and equipment would be removed at closure. Environmental monitoring would be performed to ensure impacts do not exceed those authorized. Mining would occur for approximately 15 years, followed by approximately one year of final reclamation.

A complete evaluation of the project consistency with the Caribou National Forest Revised Forest Plan may indicate the need for project-specific Forest Plan amendments. In addition to the No Action (not approving the MRP, lease modifications, or Special Use Authorizations) and the Proposed Action, possible alternatives may include: Changing the type or location of cap and cover materials or permanent drainage, modifying the mining area to avoid the Inventoried Roadless Area, eliminating the permanent overburden stockpiles, avoiding closure of the Stewart Canyon Road to recreation during mining, avoiding the lease modifications, avoiding the need for special use permits, or avoiding or modifying the realignment of Maybe and Stewart creeks. Other alternatives may be identified from scoping comments or through analysis.

Summary of Expected Impacts

The BLM expects mining and hauling operations to change groundwater and surface water quantity and quality within regulatory limits; remove and change the structure and composition of vegetation including species important to Native American tribes; disturb wetlands and riparian habitat; modify wildlife and fish habitat; temporarily reduce areas available for recreation (including hunting and camping) until reclamation is complete; change scenery; disturb soil; permanently remove mineral resources; create vehicle emissions and fugitive dust; extend economic activity such as employment and the continued operation of an elemental phosphorous plant; support businesses and generate tax revenue; and reduce livestock grazing.

Anticipated Permits and Authorizations

The BLM anticipates that the following permits and approvals will be required for the mine:

- BLM; MRP approval or modification of approved MRP; 43 CFR 3590.2(a), 3592.1(a)
- Forest Service; 36 CFR 228.5
- BLM; Lease Modification/Fringe Lease; 43 CFR 3510
- BLM; Right-of-way; 90 Statute 2776; 43 U.S. Code (U.S.C.) 1761
- BLM; Phosphate Use Permit; 43 CFR 3501.10, 43 CFR 3516
- Forest Service; Special Use Authorizations; 36 CFR 251
- Idaho Department of Environmental Quality; Point of Compliance under the Idaho Groundwater Quality Rule; IDAPA 58.01.11.401
- Idaho Department of Environmental Quality; Certification of Water Quality (Clean Water Act, Section 401); IDAPA

39–101 *et seq.;* Idaho Code Parts 39–3601 *et seq.*

- Idaho Department of Water Resources; Water Rights; Idaho Code Parts 42–201 *et seq.;* IDAPA 37.03.08, Water Appropriation Rules and 37.03.11 Conjunctive Management of Surface and Ground Water.
- Idaho Department of Environmental Quality; Stormwater Pollution Prevention Plan, Idaho Pollutant Discharge Elimination System; (IDAPA 58.01.25)
- USACE; Section 404 Permit—required if surface disturbance and placement of fill is more than 0.5 acres of wetlands and 500 feet of stream channels; Clean Water Act (Title 33 U.S.C. 1344, Section 404(a)).
- Idaho Department of Water Resources; Stream Channel Alteration Permit; IDAPA 42–3801
- Idaho Department of Environmental Quality; Air Quality Permit to Construct; IDAPA 58.01.01
- Idaho Department of Lands; Reclamation Plan approval and modification of approved Reclamation Plan; IDAPA 20.03.02.010, 20.03.02.120, and 20.03.02.140
- Caribou County; Conditional Use Permit for facilities within an approved land use; Caribou County Zoning Ordinance, Chapter 13

Schedule for the Decision-Making Process

The BLM anticipates a decision in February 2022; the Forest Service anticipates a decision on support facilities and the special use authorizations in February 2022; the U.S. Army Corps of Engineers anticipates a 404 permit decision in February 2022. Idaho Department of Environmental Quality anticipates a Point of Compliance in December 2021 and Idaho Department of Land anticipates a reclamation plan approval in 2022.

Public Scoping Process

This notice of intent initiates the scoping process, which guides the development of the Environmental Impact Statement. Scoping meetings will be virtual. An announcement about when and how to access the virtual meetings online will be posted on the BLM's project website.

The purpose of public scoping is to identify relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the environmental impact statement. The BLM and Forest Service will use and coordinate the NEPA public scoping to help fulfill the public involvement requirements under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM and Forest Service in identifying and evaluating impacts to such resources.

The BLM and Forest Service will conduct government-to-government consultation with Indian tribes in accordance with Executive Order 13175 and other policies. Agencies will give due consideration to Tribal concerns, including impacts on Indian trust assets and treaty rights and potential impacts to cultural resources.

The lead agencies invite Federal, State, and local agencies, along with Tribes and other stakeholders that may be interested in or affected by the proposed Husky 1 North Dry Ridge Mine to participate in scoping. Agencies with regulatory authority or special expertise, if eligible, may request or be requested by the BLM and Forest Service to participate in the development of the environmental analysis as a cooperating agency.

Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

BLM and Forest Service request assistance with identifying potential alternatives to the Proposed Action to be considered. As alternatives should resolve a problem with the Proposed Action, please indicate the purpose of the suggested alternative. The BLM and Forest Service also request that potential impacts that should be analyzed be identified. Impacts should be a result of the action; therefore, please identify the activity and the potential impact that should be analyzed. Information that reviewers have that would assist in the development of alternatives or analysis of resources issues is also helpful.

Lead and Cooperating Agencies

The BLM and Forest Service are joint lead agencies. U.S. Army Corps of Engineers, Idaho Department of Environmental Quality and Idaho Governor's Office of Energy and Minerals are cooperating agencies.

Decision Makers

Idaho Falls District Manager Mary D'Aversa is the BLM responsible official. Caribou-Targhee Forest Supervisor Mel Bolling is the Forest Service responsible official.

Nature of Decisions to Be Made

The BLM will decide, regarding approval of the MRP and appropriate mitigation measures, the proposed Federal Phosphate Lease modifications, and other appropriate land use authorizations for activities that take place on leased lands.

The Forest Service will decide on (1) recommendations to the BLM concerning surface management and mitigation on leased lands within the Caribou National Forest; (2) decisions on mine-related activities that occur off-lease on NFS lands (Special Use Authorization), and (3) whether to approve project-specific amendment(s) to the Forest Plan.

The USACE will decide whether to issue permit(s) under Section 404 of the Clean Water Act for placement of fill or dredge material into waters of the U.S. based on their determination of compliance with the EPA's 404(b)(1) Guidelines (40 CFR 230) including selection of the least environmentally damaging practicable alternative and the public interest review finding at 33 CFR 320.4(a).

Public Disclosure

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.

John F. Ruhs,

State Director, Bureau of Land Management, Idaho.

Mel Bolling,

Forest Supervisor, Caribou-Targhee National Forest.

[FR Doc. 2020–28242 Filed 12–22–20; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain UMTS and LTE Cellular*

Communication Modules and Products Containing the Same, DN 3514; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Koninklijke Philips N.V. (f/k/a Koninklijke Philips Electronics N.V).and Philips RS North America LLC (f/k/a Respironics, Inc.) on December 17, 2020. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain UMTS and LTE cellular communication modules and products containing the same. The complaint names as respondents: Thales DIS AIS USA, LLC (f/k/a Gemalto IOT LLC f/k/a Cinterion Wireless Modules NAFTA LLC) of Bellevue, WA; Thales DIS AIS Deutschland GmbH (f/k/a Gemalto M2M GmbH) of Germany; Thales USA, Inc. of Arlington, VA; Thales S.A. of France; Telit Wireless Solutions, Inc. of Durham, NC; Telit Communications PLC, of the United Kingdom; Quectel Wireless Solutions Co., Ltd. of China; CalAmp Corp. of Irvine, CA; Xirgo Technologies, LLC of Camarillo, CA; and Laird Connectivity, Inc. of Akron, OH. The complainant requests that the Commission issue a general exclusion order, a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3514'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Issued: December 18, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–28367 Filed 12–22–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the International Trade Commission has received a complaint entitled *Certain Integrated Circuits and Products Containing the Same, DN 3515;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Tela Innovations, Inc. on December 18, 2020. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuits and products containing the same. The complaint names as respondents: Acer, Inc. of China; Acer America Corporation of San Jose, CA; ASUSTek Computer Inc. of China; ASUS Computer International of Fremont, CA; Intel Corporation of Santa Clara, CA; Lenovo Group Ltd. of China; Lenovo (United States) Inc. of Morrisville, NC; Micro-Star International Co., Ltd. of China; and MSI Computer Corp. of City of Industry, CA . The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3515'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 18, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–28458 Filed 12–22–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[Docket No. 2020R–01]

Commerce in Explosives; 2020 Annual List of Explosive Materials

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); Department of Justice.

ACTION: Notice of list of explosive materials.

SUMMARY: This notice publishes the 2020 List of Explosive Materials, as required by law. The 2020 list is the same as the 2019 list published by ATF.

DATES: The list becomes effective December 22, 2020.

FOR FURTHER INFORMATION CONTACT: Marianna Mitchem, Chief; Firearms and Explosives Industry Division; Bureau of Alcohol, Tobacco, Firearms, and Explosives; United States Department of Justice; 99 New York Avenue NE, Washington, DC 20226; (202) 648–7120.

SUPPLEMENTARY INFORMATION: Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, the Department of Justice must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. 841 *et seq.* The list covers not only explosives, but also blasting agents and detonators, all of which are defined as ''explosive materials'' in 18 U.S.C. 841(c).

Each material listed, as well as all mixtures containing any of these materials, constitute ''explosive materials'' under 18 U.S.C. 841(c). Materials constituting blasting agents are marked by an asterisk. Explosive materials are listed alphabetically, and, where applicable, followed by their common names, chemical names, and/or synonyms in brackets. This list supersedes the List of Explosive Materials published in the **Federal Register** on January 2, 2020 (Docket No. 2019R–04, 85 FR 128).

The 2020 List of Explosive Materials is a comprehensive list, but is not all-inclusive. The definition of ''explosive materials'' includes ''[e]xplosives, blasting agents, water gels and detonators. Explosive materials, include, but are not limited to, all items in the 'List of Explosive Materials' provided for in § 555.23.'' 27 CFR 555.11. Accordingly, the fact that an explosive material is not on the annual list does not mean that it is not within coverage of the law if it otherwise meets the statutory definition of ''explosives'' in 18 U.S.C. 841. Subject to limited exceptions in 18 U.S.C. 845 and 27 CFR 555.141, only Federal explosives licensees and permittees may possess and use explosive materials, including those on the annual list.

Notice of the 2020 Annual List of Explosive Materials

Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, I hereby designate the following as ''explosive materials'' covered under 18 U.S.C. 841(c):

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
*Ammonium nitrate explosive mixtures (non-cap sensitive).
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate explosive mixtures (excluding ammonium perchlorate composite propellant (APCP)).
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].
Aromatic nitro-compound explosive mixtures.
Azide explosives.

B

Baranol.
Baratol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
Black powder substitutes.
*Blasting agents, nitro-carbo-nitrates, including non-cap sensitive slurry and water gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Bulk salutes.
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclonite [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.
Cyclotrimethylenetrinitramine [RDX].

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM [dipicramide; diaminohexanitrobiphenyl].
Dipicryl sulfide [hexanitrodiphenyl sulfide].
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNPA [2,2-dinitropropyl acrylate].
DNPD [dinitropentano nitrile].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA [ethylenedinitramine].
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
EGDN [ethylene glycol dinitrate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive liquids.
Explosive mixtures containing oxygen-releasing inorganic salts and hydrocarbons.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Explosive mixtures containing oxygen-releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen-releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen-releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive powders.

F

Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen [RDX].
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMTD [hexamethylenetriperoxidediamine].
HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate explosive mixtures.
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol [ethylene glycol dinitrate, EGDN].
Nitroguanidine explosives.
Nitronium perchlorate propellant mixtures.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrotriazolone [3-nitro-1,2,4-triazol-5-one].
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [plastic bonded explosives].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate explosives.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
Pyrotechnic fuses.
PYX [2,6-bis(picrylamino)] 3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Salutes (bulk).
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate explosive mixtures.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Squibs.
Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TATP [triacetonetriperoxide].

TEGDN [triethylene glycol dinitrate].
Tetranitrocarbazole.
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetrazole explosives.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzenesulfonic acid [picryl sulfonic acid].
Trinitrobenzoic acid.
Trinitrocresol.
Trinitrofluorenone.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthomonas hydrophilic colloid explosive mixture.

Regina Lombardo,

Deputy Director.

[FR Doc. 2020–28404 Filed 12–22–20; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Comprehensive Environmental Response, Compensation, and Liability Act

On December 17, 2020, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Alabama in the lawsuit entitled *United States* v. *Olin Corporation and BASF Corporation,* Civil Action No. 1:20-cv-00602. In the filed Complaint, the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), alleges that the Defendants are liable under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606 and 9607(a), for the response costs EPA incurred to respond to the releases and/or threatened releases of hazardous substances into the environment from a parcel of property where Operable Unit 2 of the Olin McIntosh Superfund Site is located at 1638 Industrial Road in McIntosh, Washington County, Alabama that the Defendant Olin Corporation owned and operated. The Consent Decree requires the Defendants to perform Remedial Design and Remedial Action (''RD/RA'') for Operable Unit 2, pay past response costs for Operable Unit 2 and pay future costs related to the work. Estimates for the Remedial Action are between $13,400,000 and $21,500,000.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Olin Corporation and BASF Corporation,* D.J. Ref. No. 90–11–3–11158. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $9.50 (25 cents per page reproduction cost), payable to the United States Treasury.

Lori Jonas,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2020–28410 Filed 12–22–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Toxic Substances Control Act

On December 17, 2020, the Department of Justice lodged a proposed consent decree with the United States District Court for the Northern District of Georgia in the lawsuit entitled *United States, the State of Utah, the State of Rhode Island and the Commonwealth of Massachusetts Executive Office of Workforce Development, Department of Labor Standards* v. *The Home Depot, U.S.A., Inc.,* Civil Action No. 1:20CV5112.

The United States, in conjunction with the State of Utah, the State of Rhode Island, and the Commonwealth of Massachusetts Executive Office of Workforce Development, Department of Labor Standards, filed this lawsuit under the Toxic Substances Control Act (TSCA) alleging violations of the Act's Renovation, Repair, and Painting (''RRP'') regulations, 40 CFR part 745, which address lead paint hazards at home renovations. The complaint alleges that Home Depot performed renovations through its retail stores at approximately 2000 homes covered by the RRP regulations without using EPA certified firms, among other allegations. The proposed consent decree requires Home Depot to institute a compliance program and pay a civil penalty of $20,750,000.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, the State of Utah, the State of Rhode Island and the Commonwealth of Massachusetts Executive Office of Workforce Development, Department of Labor Standards* v. *The Home Depot, U.S.A., Inc.,* D.J. Ref. No. 90–5–1–1–11854. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $22.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Patricia McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–28439 Filed 12–22–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Construction Scheduling Letter; Proposed Approval of Information Collection Requirements; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). The program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Federal Contract Compliance Programs (OFCCP) is soliciting comments concerning its proposal to obtain approval from the Office of Management and Budget (OMB) for the proposed information collection that covers OFCCP's construction scheduling letter. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice or by accessing it at *www.regulations.gov.*

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 22, 2021.

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

Electronic comments: The federal eRulemaking portal at *www.regulations.gov.* Follow the instructions found on that website for submitting comments.

Mail, Hand Delivery, Courier: Addressed to Tina T. Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. For faster submission, we encourage commenters to transmit their comment electronically via the *www.regulations.gov* website. Comments that are mailed to the address provided above must be postmarked before the close of the comment period. All submissions must include OFCCP's name for identification. Comments submitted in response to the notice, including any personal information provided, become a matter of public record and will be posted on *www.regulations.gov.* Comments will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Tina T. Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue NW, Washington, DC 20210. Telephone: (202) 693–0103 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers). Copies of this notice may be obtained in alternative formats (large print, braille, audio recording) upon request by calling the numbers listed above.

SUPPLEMENTARY INFORMATION:

I. Background

OFCCP administers and enforces three equal employment opportunity laws listed below.

- Executive Order 11246, as amended (E.O. 11246)
- Section 503 of the Rehabilitation Act of 1973, as amended (Section 503)
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA)

These authorities prohibit employment discrimination by covered federal contractors and subcontractors and require that they take affirmative action to provide equal employment opportunities regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. Additionally, federal contractors and subcontractors are prohibited from discriminating against applicants and employees for asking about, discussing, or sharing information about their pay or, in certain circumstances, the pay of their co-workers.

E.O. 11246 applies to federal contractors and subcontractors and to federally assisted construction contractors holding a government contract in excess of $10,000, or government contracts that have, or can reasonably be expected to have, an aggregate total value exceeding $10,000 in a 12-month period. E.O. 11246 also applies to government bills of lading, depositories of federal funds in any amount, and financial institutions that are issuing and paying agents for U.S. savings bonds. Section 503 prohibits employment discrimination against applicants and employees because of physical or mental disability and requires contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. Section 503 applies to federal contractors and subcontractors with contracts in excess of $15,000. VEVRAA requires contractors to take affirmative action to employ, and advance in employment, qualified protected veterans. VEVRAA applies to federal contractors and subcontractors with contracts of $150,000 or more.

This proposed information collection request (ICR) seeks to implement a construction scheduling letter for construction contractors to notify them that they have been selected for a compliance review. This way of scheduling construction contractors will be similar to the way OFCCP currently schedules supply and service contractors, and will provide certainty and consistency between the two types of compliance evaluations. Like supply and service evaluations, OFCCP will go to the contractor's establishment and work sites for an onsite review only if the agency needs to investigate further after reviewing the information

provided in response to the scheduling letter.

II. Review Focus

OFCCP is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the compliance assistance functions of the agency that support the agency's compliance mission, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

OFCCP seeks approval of this new information collection in order to carry out and enhance its responsibilities to enforce the nondiscrimination and affirmative action provisions of the three legal authorities it administers.

Type of Review: Regular.

Agency: Office of Federal Contract Compliance Programs.

Title: Construction Scheduling Letter.

OMB Number: 1250–New.

Agency Number: None.

Affected Public: Business or other for-profit entities.

Total Respondents: 500 construction contractors.

Total Annual Responses: 500 construction contractors.

Average Time per Response: 29 hours, direct federal construction contractors; 16 hours, federally assisted construction contractors.

Estimated Total Burden Hours: 11,900 hours.

Frequency: Upon selection for a compliance evaluation.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $4,358.

Tina Williams,

Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs.

[FR Doc. 2020–28266 Filed 12–22–20; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Alien Claims Activities Report

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 22, 2021.

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: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Section 1137(d) and (e) of the Social Security Act (SSA) authorize this information collection. This information collection permits DOL to comply with its responsibilities under the SSA to gather information from state agencies concerning alien claimant activities. The ETA 9016 report allows DOL to determine the number of aliens filing for unemployment insurance (UI), the number of benefit issues detected, and the numbers of denials resulting from use of the USCIS SAVE system. From these data, DOL can determine the extent to which state agencies use the system, and the overall effectiveness and cost efficiency of the USCIS SAVE verification system. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 12, 2020 (85 FR 28037).

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–ETA.

Title of Collection: Alien Claims Activities Report.

OMB Control Number: 1205–0268.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 212.

Total Estimated Annual Time Burden: 212 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: December 17, 2020.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2020–28264 Filed 12–22–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0033]

Standard on the Control of Hazardous Energy (Lockout/Tagout); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Standard on the Control of Hazardous Energy (Lockout/Tagout).

DATES: Comments must be submitted (postmarked, sent, or received) by February 22, 2021.

ADDRESSES:

Electronically: You may submit comments, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Regular mail, express delivery, hand (courier) delivery, and messenger service: When using these methods, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2011–0033, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. *Please note:* While OSHA's Docket Office is continuing to accept and process submissions by regular mail, due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to received submissions to the docket by hand, express mail, messenger, and courier service.

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (OSHA–2011–0033). Because of security-related procedures, submissions by regular mail may result in a significant delay in receipt. OSHA will place comments and requests to speak, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at (202) 693–2222 to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of a continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance process to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, the reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act, or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with a minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining said information (29 U.S.C. 657).

The Standard on the Control of Hazardous Energy (also referred to as the ''Lockout/Tagout Standard''), 29 CFR 1910.147, contains several information collection requirements, which are described below. The purpose of these requirements is to control the release of hazardous energy while workers service, maintain, or repair machines or equipment when activation, start up, or release of energy from an energy source is possible; proper control of hazardous energy prevents death or serious injury among these workers.

Energy Control Procedure (Paragraph (c)(4)(i))

With limited exception, employers must document the procedures used to isolate from its energy source and render inoperative, any machine or equipment prior to servicing, maintenance, or repair by workers. These procedures are necessary when activation, start up, or release of stored energy from the energy source is possible, and such release could cause injury to the workers.

Paragraph (c)(4)(ii) states that the required documentation must clearly and specifically outline the scope, purpose, authorization, rules, and techniques workers are to use to control hazardous energy, and the means to enforce compliance. The document must include at least the following elements: A specific statement regarding the use of the procedure; detailed procedural steps for shutting down, isolating, blocking, and securing machines or equipment to control hazardous energy; detailed procedural steps for placing, removing, and transferring lockout or tagout devices, including the responsibility for doing so; and requirements for testing a machine or equipment to determine and verify the effectiveness of lockout or tagout devices, as well as other energy control measures.

Protective Materials and Hardware (Paragraphs (c)(5)(ii)(D) and (c)(5)(iii))

Paragraph (c)(5)(ii)(D) requires that lockout and tagout devices indicate the identity of the employee applying it. Paragraph (c)(5)(iii) requires that tags warn against hazardous conditions if the machine or equipment is energized. In addition, the tag must include a legend such as one of the following: Do Not Start; Do Not Open; Do Not Close; Do Not Energize; Do Not Operate.

Periodic Inspection Certification Records (Paragraph (c)(6)(ii))

Under paragraph (c)(6)(i), employers are to conduct inspections of energy

control procedures at least annually. An authorized worker (other than an authorized worker using the energy control procedure that is the subject of the inspection) is to conduct the inspection and correct any deviations or inadequacies identified. For procedures involving either lockout or tagout, the inspection must include a review, between the inspector and each authorized worker, of that worker's responsibilities under the procedure; for procedures using tagout systems, the review also involves affected workers, and includes an assessment of the workers' knowledge of the training elements required for these systems. Paragraph (c)(6)(ii) requires employers to certify the inspection by documenting the date of the inspection and identifying the machine or equipment inspected, the workers included in the inspection, and the worker who performed the inspection.

Training Certification Records (Paragraph (c)(7)(iv))

Under paragraph (c)(7)(iv), employers are to certify that workers completed the required training, and that this training is up-to-date. The certification is to contain each worker's name and the training date. Written certification of the training assures the employer that workers receive the training specified by the standard.

Notification of Employees (Paragraph (c)(9))

This provision requires the employer or authorized worker to notify affected workers prior to applying, and after removing, a lockout or tagout device from a machine or equipment.

Off-Site Personnel (Contractors, etc.) (Paragraph (f)(2)(i))

When the on-site employer uses an off-site employer (*e.g.,* a contractor) to perform the activities covered by the scope and application of the standard, the two employers must inform each other regarding their respective lockout or tagout procedures.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply—for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting an adjustment decrease of 126,403.49 burden hours (from 2,749,315 hours to 2,622,911.51 hours). This decrease is the result of updated data showing a decrease in the number of affected high-impact establishments (from 292,825 to 290,560 establishments). In addition, OSHA is requesting an adjustment decrease of $102,032.08 in operation and maintenance costs (from $1,472,686.00 to $1,370,653.92) associated with the purchase of tags and ties by employers. This decrease is also a result of updated data showing a reduction of the number of high-impact establishments.

Type of Review: Extension of a currently approved collection.

Title: Standard on the Control of Hazardous Energy (Lockout/Tagout).

OMB Control Number: 1218–0150.

Affected Public: Business or other for-profits.

Number of Respondents: 773,209.

Frequency: Initially; Annually; On occasion.

Average Time per Response: Varies.

Estimated Number of Responses: 69,257,657.

Estimated Total Burden Hours: 2,622,911.51.

Estimated Cost (Operation and Maintenance): $1,370,653.92.

IV. Public Participation—Submission of Comments on This Notice and internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. *Please note:* While OSHA's Docket Office is continuing to accept and process submissions by regular mail, due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the docket by hand, express mail, messenger, and courier service. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0033). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments.

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on December 18, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–28372 Filed 12–22–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0034]

Subpart A (''General Provisions'') and Subpart B (''Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment''); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in Subpart A ''General Provisions'' and Subpart B ''Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment''.

DATES: Comments must be submitted (postmarked, sent, or received) by February 22, 2021.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0034, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. *Please note:* While OSHA's Docket Office is continuing to accept and process submissions by regular mail, due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the docket by hand, express mail, messenger, and courier service.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2011–0034) for the Information Collection Request (ICR). All comments, including any personal information you provide, such as social security numbers or date of birth, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at (202) 693–2222 to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The following is a description of the requirements in subparts A and B that pertain to the collection and retention of information.

One provision in subpart A contains paperwork requirements (§ 1915.7). Section 1915.7(b)(2) specifies that shipyard employers must maintain a roster of designated competent persons (for inspecting and testing spaces covered by subpart B), or a statement that a marine chemist will perform these inspections and tests. Section 1915.7(d) requires employers to ensure that competent persons, marine chemists, and certified industrial hygienists (CIHs) make a record of each inspection and test they conduct, post the record near the covered space while work is in progress, and retain the record for at least three months. In addition, employers must make the roster or statement, and the inspection and test records available for inspection by designated parties.

Subpart B consists of several standards governing entry into confined and enclosed spaces and other dangerous atmospheres in shipyard employment. These standards require that employers:

- Ensure that competent persons conduct inspections and atmospheric testing prior to workers entering a confined or enclosed space (§§ 1915.12(a)–(c));
- Warn workers not to enter hazardous spaces and other dangerous atmospheres (§§ 1915.12 (a)–(c) and 1915.16);
- Certify that workers who will be entering confined or enclosed spaces have been trained (§ 1915.12(d)(5));
- Establish and train shipyard rescue teams or arrange for outside rescue teams, and provide them with information on the hazards that they may encounter (§ 1915.12(e));
- Ensure that one person on each rescue team maintains a current first aid training certificate (§ 1915.12(e)(1)(iv));
- Exchange information regarding hazards, safety rules, and emergency procedures concerning confined and enclosed spaces, and atmospheres with other employers whose workers may enter these spaces and atmospheres (§ 1915.12(f));
- Ensure testing of spaces having contained bulk quantities of combustible or flammable liquids or gases, and toxic, corrosive, or irritating substances before cleaning and other cold work is started, and as necessary thereafter while the operations are ongoing (§§ 1915.13(b)(2) and (4));
- Post signs prohibiting ignition sources within or near a space that has contained bulk quantities of flammable

or combustible liquids or gases (§ 1915.13(b)(10));

• Ensure that confined and enclosed spaces and other dangerous atmospheres, and boundaries of spaces or pipelines are tested before workers perform hot work in these work areas (§ 1915.14(a)(1));

• Post warnings of testing conducted by competent persons and certificates of testing conducted by a Marine Chemist or Coast Guard authorized person in the immediate vicinity of the hot-work operation while the operation is in progress (§§ 1915.14(a) and (b)); and

• Retain certificates of testing on file for at least three months after completing the operation (§ 1915.14(a)(2)).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

• Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;

• The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the collection of information (paperwork) requirements mandated by Subpart A (''General Provisions'') and Subpart B (''Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment'') of 29 CFR part 1915. The agency is requesting an adjustment decrease of 19,246 burden hours (from 586,064 to 566,818 hours). The adjustment decrease is due to a decrease in the number of establishments affected by these standards.

The agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Subpart A (''General Provisions'') and Subpart B (''Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment'') (29 CFR part 1915).

OMB Control Number: 1218–0011.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local or Tribal Government.

Number of Respondents: 4,716.

Frequency of Responses: On occasion.

Total Responses: 3,555,305.

Average Time per Response: Various.

Estimated Total Burden Hours: 566,818.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. *Please note:* While OSHA's Docket Office is continuing to accept and process submissions by regular mail, due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the docket by hand, express mail, messenger, and courier service. All comments, attachments, and other material must identify the agency name and the OSHA docket number (Docket No. OSHA–2011–0034) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the agency can attach them to your comments. Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments.

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on December 18, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–28371 Filed 12–22–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0056]

Voluntary Protection Programs Information; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in Voluntary Protection Programs Information.

DATES: Comments must be submitted (postmarked, sent, or received) by February 22, 2021.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2011–0056, Occupational Safety and Health Administration, U.S. Department of

Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Please note: While OSHA's Docket Office is continuing to accept and process submissions by regular mail, due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to received submissions to the docket by hand, express mail, messenger, and courier service.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2011–0056) for the Information Collection Request (ICR). All comments, including any personal information you provide, such as social security numbers and date of birth, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the below phone number to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3506(c)(2)(A)]. This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The Voluntary Protection Programs (VPP) [47 FR 29025], adopted by OSHA, established the efficacy of cooperative action among government, industry, and labor to address employee safety and health issues and to expand employee protection. To qualify, employers must meet OSHA's safety and health management criteria which focus on comprehensive management programs and active employee involvement to prevent or control worksite safety and health hazards. Employers who qualify generally view OSHA standards as a minimum level of safety and health performance, and set their own more stringent standards, wherever necessary, to improve employee protection. Prospective VPP worksites must submit an application that includes:

- General applicant information (*e.g.,* site, corporate, and collective bargaining contact information).
- Injury and illness rate performance information (*i.e.,* number of employees and/or applicable contractors on-site, type of work performed and products produced, North American Industry Classification System (NAICS), and Recordable Injury and Illness Case Incidence Rate information.
- Safety and health management program information (*i.e.,* description of the applicant's safety and health management programs) including how the programs successfully addresses management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training OSHA uses this information to determine whether an applicant is ready for a VPP on-site evaluation and as a verification tool during VPP on-site evaluations. Without this information, OSHA would be unable to determine which sites are ready for VPP status.

Each current VPP applicant is also required to submit an annual evaluation which addresses how that applicant is continuing the adherence to programmatic requirements. In 2008, OSHA modified procedures for VPP applicants, OSHA on-site evaluation, and annual participant self-evaluation for applicants/participants subject to OSHA's Process Safety Management (PSM) Standard. Applicants that perform works that use or produce highly hazardous chemical exceeding specified limits covered under the PSM standard must submit responses to the PSM application supplement along with their VPP application.

Once in the VPP, the participant is required to submit an annual evaluation detailing the continued adherence to programmatic requirements. Applicants covered under the PSM standard are required to submit a PSM questionnaire a supplemental document as part of their annual submission. OSHA needs this information to ensure that the participant remains qualified to participate in the VPP between the on-site evaluations. Without this information, OSHA would be unable to determine whether applicants are maintaining excellent safety and health management programs during this interim period.

In 2009, with the publication of the **Federal Register** Notice (FRN), VPP revised the traditional focus on individual fixed worksites (site-based) by adding two new ways to participate: mobile workforce and corporate. A significant reorganization of the program helps clarify the multiple participation options now available.

Employees of VPP participants may apply to participate in the Special Government Employee (SGE) Program. The SGE Program offers private and public sector safety and health professionals and other qualified participants the opportunity to exchange ideas, gain new perspectives, and grow professionally while serving as full-fledged team members on OSHA's VPP on-site evaluations. In that capacity, SGEs may review company documents, assist with worksite walkthroughs, interview employees, and assist in preparing VPP on-site evaluation reports. Potential SGEs must submit an application that includes:

- SGE Eligibility Information Sheet (*i.e.,* applicant's name, professional credentials, site/corporate contact information, etc.);
- Current Resume;
- Optional Application for Federal Employment OF–612; and
- Confidential Financial Disclosure Report (OGE Form 450).

OSHA uses the SGE Eligibility Information Sheet to ensure that the potential SGE works at a VPP site and meets the minimum eligibility qualifications. The resume is required to provide a detailed description of their current duties and responsibilities as they relate to safety and health and the implementation of an effective safety and health management program. The OGE Form 450 is used to ensure that SGEs do not participate on on-site evaluations at VPP sites where they have a financial interest.

OSHA Challenge is designed to reach and guide employers and companies in all major industry groups who are strongly committed to improving their safety and health management programs and possibly pursuing recognition in the VPP. The Challenge Administrators application is used to: (1) Conduct a preliminary analysis of the applicant's knowledge of safety and health management programs; and (2) make a determination regarding the applicant's qualifications to become a Challenge Administrator. Once a Challenge Administrator is approved, the Administrator will review each challenge candidate's application/annual submissions to ensure that all necessary information is provided, prior to forwarding to OSHA's National Office for acceptance and analysis.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of the agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting an adjustment decrease of 363 burden hours from 90,863 to 90,500 hours. The decrease is primarily due to the lack of Challenge participation, and lack of training of new SGE applicants and re-approval training of existing SGEs due to the negative impact of the COVID–19 imposed on all OSHA Cooperative Programs.

Type of Review: Extension of a currently approved collection.

Title: Voluntary Protection Programs Information.

OMB Control Number: 1218–0239.

Affected Public: Business or other for-profits.

Number of Respondents: 4,052.

Total Respondents: 3,601.

Frequency: Various.

Estimated Total Total Burden Hours: 90,500.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. *Please note:* While OSHA's Docket Office is continuing to accept and process submissions by regular mail, due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the docket by hand, express mail, messenger, and courier service. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0056). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available through the website, and for assistance in using the internet to locate docket submissions. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on December 17, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–28330 Filed 12–22–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Proposed Extension of Existing Collection; Agreement and Undertaking (OWCP–1)

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Agreement and Undertaking.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by February 22, 2021.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of responses, and estimated total burden, may be obtained for free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Program, Division of Coal Mine Workers' Compensation, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Black Lung Benefits Act (30 U.S.C. 901 *et. seq.*) and its implementing regulations necessitate this information collection. The OWCP–1 form is executed by the self-insurer who agrees to abide by the Department's rules and authorizes the Secretary, in the event of default, to file suit to secure payment from a bond underwriter or, in the case of a Federal Reserve account, to sell the securities for the same purpose. This information collection is currently approved for use through April 30, 2021. 30 U.S.C. 933 and 20 CFR 726.110 authorize this information collection.

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 under the PRA 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 Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1240–0039.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OWCP.

Type of Review: Extension.

Title of Collection: Agreement and Undertaking.

Form: Agreement and Undertaking, OWCP–1.

OMB Control Number: 1240–0039.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 17.

Frequency: As requested.

Total Estimated Annual Responses: 17.

Estimated Average Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 4.25 hours.

Total Estimated Annual Other Cost Burden: $97.45.

Authority: 30 U.S.C. 933 and 20 CFR 726.110.

Anjanette Suggs,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2020–28331 Filed 12–22–20; 8:45 am]

BILLING CODE 4510–CK–P

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: Collections Assessment for Preservation Program

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB Review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. This notice proposes the clearance of the *Collections Assessment for Preservation Program Notice of Funding Opportunity.*

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **FOR FURTHER INFORMATION CONTACT** section below on or before January 18, 2021.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Institute of Museum and Library Services'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget,

Room 10235, Washington, DC 20503, or call (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Christopher J. Reich, Chief Administrator, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North, SW, Suite 4000, Washington DC 20024–2135. Mr. Reich can be reached by telephone at 202–653–4685 or by email at *creich@imls.gov.*

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

Current Actions: The purpose of this collection is to administer the Collections Assessment for Preservation Program, a special initiative of the National Leadership Grants for Museums program. The goal of the special initiative is to provide an affordable and accessible program for small to midsize museums to help them plan for the conservation of the collections entrusted to them by the public for preservation. Through this program, IMLS aims to (1) increase the capacity of museums to understand the conservation needs of their collections and the building environments in which they are housed; (2) strengthen the knowledge of museum personnel about the care and conservation of collections; and (3) position museums to plan strategically for the long-term care and conservation of their collections. The Collections Assessment for Preservation Program is being offered as a special initiative with funding from the National Leadership Grants for Museums program.

This action is to seek clearance of the ''Collections Assessment for Preservation Program.'' The 60-Day Notice was published in the **Federal Register** on September 21, 2020 (FR vol. 85, No. 183, pgs. 59333–59334). There was one public comment.

Agency: Institute of Museum and Library Services.

Title: Collections Assessment for Preservation Program.

OMB Control Number: 3137–0103.

Agency Number: 3137.

Affected Public: Museums, colleges and universities, and organizations or associations that engage in activities designed to advance the wellbeing of museums and the museum profession.

Total Number of Respondents: 9.

Frequency of Response: One Time.

Estimated Average Burden per Response: 40 Hours.

Total Burden Hours: 360.

Total Annualized Capital/Startup Costs: n/a.

Total Annual Cost Burden: $1,137.20.

Total Annual Federal Costs: $1,961.55.

Dated: December 16, 2020.

Kim Miller,

Senior Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2020–28040 Filed 12–22–20; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of December 21, 28, 2020, January 4, 11, 18, 25, 2021.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of December 21, 2020

10:30 a.m. Affirmation Session (Public Meeting) (Tentative)

a. Oklo Power LLC. (Aurora Reactor)—Emergency Petition to Immediately Revoke or Suspend Docketing Notice and Hearing Notice for Combined License Application by Oklo Power, LLC and Request for Clarification That Nuclear Energy Innovation and Modernization Act [(NEIMA)] Does Not Mandate or Authorize Disregard of NRC Procedural Requirements for New Reactor License Applicants (Tentative).

b. Southern Nuclear Operating Co., Inc. (Vogtle Electric Generating Plant, Unit 3); Appeal of LBP–20–8 (Tentative); (Contact: Denise McGovern: 301–415–0681).

Additional Information:

By a vote of 5–0 on December 18, 2020, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and 10 CFR 9.107 that the above referenced Affirmation Session be held with less than one week notice to the public. The meeting will be held on December 22, 2020. Due to COVID–19, there will be no physical public attendance. The public is invited to attend the Commission's meeting live via teleconference. Details for joining the teleconference in listen only mode can be found at *https://www.nrc.gov/pmns/mtg.*

Week of December 28, 2020—Tentative

There are no meetings scheduled for the week of December 28, 2020.

Week of January 4, 2021—Tentative

There are no meetings scheduled for the week of January 4, 2021.

Week of January 11, 2021—Tentative

There are no meetings scheduled for the week of January 11, 2021.

Week of January 18, 2021—Tentative

There are no meetings scheduled for the week of January 18, 2021.

Week of January 25, 2021—Tentative

There are no meetings scheduled for the week of January 25, 2021.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: December 21, 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–28550 Filed 12–21–20; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0093]

Consolidated Guidance About Materials Licenses: Guidance About Administrative Licensing Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Revision 1 to NUREG–1556, Volume 20, ''Consolidated Guidance About Materials Licenses: Guidance About Administrative Licensing Procedures.'' NUREG–1556, Volume 20 has been revised to include information on updated NRC materials policies and procedures, NRC's internal safety culture, security of radioactive materials, protection of sensitive information, and changes in regulatory policies and practices consistent with current regulations. This volume is intended for use by NRC staff and management.

DATES: NUREG1556, Volume 20, Revision 1, was published on November 2020.

ADDRESSES: Please refer to Docket ID NRC 2018–0093 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–2018–0093. Address questions about Docket IDs 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.* NUREG–1556, Volume 20, Revision 1, is located in ADAMS under Accession Number ML20318A384. This document is also available on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/v20.*
- *Attention:* 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: Anthony McMurtray, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2746; email: *Anthony.McMurtray@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC issued a revision to NUREG–1556, Volume 20, to provide guidance to NRC staff and management on various materials licensing processes and procedures. The purpose of this notice is to notify the public that the NUREG–1556 volume listed in this notice was issued as a final report.

II. Additional Information

The NRC published a notice of the availability of the draft report for comment version of NUREG–1556, Volume 20, Revision 1, in the **Federal Register** on September 12, 2018 (83 FR 46198), with a public comment period ending October 15, 2018. No public comments were received for NUREG–1556, Volume 20, Revision 1.

III. Congressional Review Act

The NRC determined that this NUREG volume is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

Dated: December 17, 2020.

For the Nuclear Regulatory Commission.

Kevin Williams,

Director, Division of Materials Safety, Security, State and Tribal Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–28302 Filed 12–22–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0193]

Information Collection: Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities.''

DATES: Submit comments by February 22, 2021. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0193. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0193 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0193. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0193 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at

http://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 supporting statement is available in ADAMS under Accession No. ML20318A043.

• *Attention:* 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.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2020–0193 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* ''Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities'' (Title 10 of the *Code of Federal Regulations* (10 CFR) Part 62).

2. *OMB approval number:* 3150–0143.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* On occasion.

6. *Who will be required or asked to respond:* Any low-level waste generator or governor of a State on behalf of generators seeking emergency access to an operating low-level waste disposal facility or an exemption from the requirements in 10 CFR part 62.

7. *The estimated number of annual responses:* 2.

8. *The estimated number of annual respondents:* 1.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 233.

10. *Abstract:* 10 CFR part 62 sets out the information that must be provided to the NRC by any low-level waste generator or governor of a State on behalf of generators seeking emergency access to an operating low-level waste disposal facility. The information is required to allow the NRC to determine if denial of disposal constitutes a serious and immediate threat to public health and safety or common defense and security. Part 62 of 10 CFR also provides that the Commission may grant an exemption from the requirements in this part upon application of an interested person or upon its own initiative.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: December 18, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–28365 Filed 12–22–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0126]

Information Collection: Solicitation of Non-Power Reactor Operator Licensing Examination Data

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Solicitation of Non-Power Reactor Operator Licensing Examination Data.''

DATES: Submit comments by January 22, 2021. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0126 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0126. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0126 on this website.

• *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 supporting statement and Non-Power Operator Licensing email are available in ADAMS under Accession Nos. ML20279A703 and ML20178A335.

• *Attention:* 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.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov*.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2020–0126 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Solicitation of Non-Power Reactor Operator Licensing Examination Data.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on September 11, 2020, 85 FR 56278.

1. *The title of the information collection:* Solicitation of Non-Power Reactor Operator Licensing Examination Data.

2. *OMB approval number:* 3150–0235.

3. *Type of submission:* Extension.

4. *The form number if applicable:* N/A.

5. *How often the collection is required or requested:* Annually.

6. *Who will be required or asked to respond:* All holders of operating licenses for non-power reactors under the provision of part 50 of title 10 of the *Code of Federal Regulations,* ''Domestic Licensing of Production and Utilization Facilities,'' except those that have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

7. *The estimated number of annual responses:* 31.

8. *The estimated number of annual respondents:* 31.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 31.

10. *Abstract:* The NRC annually request all non-power reactor licensees and applicants for an operating license to voluntarily send to the NRC: (1) Their projected number of candidates for initial operator licensing examinations and (2) the estimated dates of the examinations. This information is used to plan budgets and resources in regard to operator examination scheduling in order to meet the needs of the non-power nuclear community.

Dated: December 18, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–28366 Filed 12–22–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0270]

Order To Transport Logistics International Suspending Exports of Certain Source Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order to Transport Logistics International (TLI) suspending its authority to export certain source material to the United Kingdom (U.K.). This suspension is required due to the U.K.'s exit from the European Atomic Energy Community (EURATOM). Exports of EURATOM-obligated and Canadian-obligated source material to the U.K. are currently not authorized.

DATES: This Order is effective on January 1, 2021.

ADDRESSES: Please refer to Docket ID NRC–2020–0270 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–2020–0270. 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.

• Attention: 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: Lauren Mayros, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9088, email: *Lauren.Mayros@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The United States engages in significant nuclear cooperation with other nations, including the authorized distribution of source material, pursuant to the terms of an Agreement for Cooperation in Peaceful Uses of Nuclear Energy (123 Agreement). TLI currently holds a specific license, XSOU8839/01, authorizing the export of source material to several countries including the U.K. TLI's export license was issued under the legal framework of a 123 Agreement between the U.S. and EURATOM.

On December 31, 2020, the U.K. will exit from EURATOM, and on January 1, 2021, a 123 Agreement between the U.S. and the U.K. will enter into force. The U.S. Government has already made arrangements with the Government of the U.K. for this transition to occur on January 1, 2021 for all NRC-licensed exports to the U.K. However, beginning on January 1, 2021, the NRC is currently unable to authorize the export of EURATOM-obligated and Canadian-obligated material from the U.S. to the U.K., until pre-approval to retransfer such material to the U.K. is received from EURATOM or the Canadian government, respectively.

This suspension is required as an operation of law and only applies to exports of EURATOM-obligated or Canadian-obligated source material to the U.K. The NRC is reproducing the text of the Order as an attachment to this **Federal Register** notice.

Dated: December 17, 2020.

For the Nuclear Regulatory Commission.

Nader L. Mamish,

Director, Office of International Programs.

Attachment—Order Suspending Export Licenses

ORDER MODIFYING LICENSE TO SUSPEND CERTAIN EXPORTS TO THE UNITED KINGDOM

(EFFECTIVE January 1, 2021)

I

Transport Logistics International (''TLI'' or ''the licensee'') holds a specific license (XSOU8839/01) issued by the U.S. Nuclear Regulatory Commission (NRC) pursuant to Sections 62 and 127 of the Atomic Energy Act of 1954, as amended (AEA) and 10 CFR part 110. This specific license authorizes the export of source material to Germany, the Netherlands, and the United Kingdom (U.K.), under the terms of an Agreement for Cooperation in Peaceful Uses of Nuclear Energy (123 Agreement) between the United States (U.S.) and the European Atomic Energy Community (EURATOM).

II

On December 31, 2020, the formal transition period marking the U.K.'s exit from the European Union (EU) will end. On this date, the U.K. will also exit from EURATOM. On January 1, 2021, the U.S./U.K.123 Agreement will enter into force. At that time, TLI's export license XSOU8839/01 will authorize exports to Germany and the Netherlands under the legal framework of the U.S./EURATOM 123 agreement and will authorize exports to the U.K. under the legal framework of the U.S./U.K. 123 Agreement. After the U.K. exits EURATOM, the NRC is prohibited from authorizing any exports of EURATOM-obligated material from the U.S. to the U.K. until EURATOM, pursuant to the U.S./EURATOM 123 agreement, provides its pre-approval to retransfer EURATOM-obligated material from the U.S. to the U.K. The NRC is likewise prohibited from authorizing any exports of Canadian-obligated material from the U.S. to the U.K. until the Government of Canada, pursuant to the U.S./Canada 123 Agreement, provides its pre-approval to retransfer Canadian-obligated material to the U.K.

The United States Government has already made arrangements with the Government of the U.K. for the transition from the U.S./EURATOM 123 Agreement to the U.S./U.K. 123 Agreement to automatically occur on January 1, 2021, for all NRC-approved export licenses to the U.K. However, the U.S. Government cannot authorize the export of EURATOM-obligated or Canadian-obligated material from the U.S. to the U.K. without pre-approval for retransfer from EURATOM or the Canadian government, respectively. Therefore, beginning on January 1, 2021, TLI will no longer be authorized to export EURATOM-obligated and Canadian-obligated material to the U.K. under license XSOU8839/01 until such prior approval is received.

III

Accordingly, pursuant to Sections 62, 64, 123, 127, 161b, 161i, 183, and 186 of the AEA, and 10 CFR 110.50(a)(1) and (2) and 110.52, *it is hereby ordered, effective* January 1, 2021, *that license* XSOU8839/01 *is modified as follows:*

A. The licensee's authorization to export EURATOM-obligated material to the U.K. is suspended, and such exports are prohibited, until the licensee receives notice from the NRC that the United States Government has obtained EURATOM's pre-approval, pursuant to the U.S./EURATOM 123 Agreement, to retransfer EURATOM-obligated material to the U.K. When the licensee receives such notice from the NRC, this provision of the Order will expire without any further action by the NRC.

B. The licensee's authorization to export Canadian-obligated material to the U.K. is suspended, and such exports are prohibited, until the licensee receives notice from the NRC that the United States Government has obtained Canada's pre-approval, pursuant to the U.S./Canada 123 Agreement, to retransfer Canadian-obligated material to the U.K. When the licensee receives such notice from the NRC, this provision of the Order will expire without any further action by the NRC.

The NRC finds that this action is required by operation of law and the common defense and security. Therefore, in accordance with 10 CFR 110.52(c), the licensee need not be afforded an opportunity to reply and be heard prior to issuance of this Order.

Dated at Rockville, Maryland this 17th day of December 2020.

For the Nuclear Regulatory Commission.

Nader L. Mamish,

Director Office of International Programs.

[FR Doc. 2020–28265 Filed 12–22–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

682nd Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on February 3–6, 2021. As part of the coordinated government response to combat the COVID–19 public health emergency, the Committee will conduct virtual meetings. The public will be able to participate in any open sessions via 1–866–822–3032, pass code 8272423#.

Wednesday, February 3, 2021

9:30 a.m.–9:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

9:35 a.m.–11:00 a.m.: Interaction with the Navy (Closed)—[**NOTE:** Pursuant to 5 U.S.C. 552b(c)(1), this interaction may protect information that is (A) specifically authorized under criteria

established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order.] [**NOTE:** Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

11:00 a.m.–1:30 p.m.: Draft Final DG–1363 (Proposed Revision 4 to Regulatory Guide 1.105), ''*Setpoints for Safety -Related Instrumentation*'' (Open)—The Committee will have presentations and discussion with representatives from the NRC staff regarding the subject topic.

2:30 p.m.–5:00 p.m.: GEH Topical Report, NEDO–33911, Revision 0,''*BWRX–300 Containment Performance*'' (Open/Closed)—The Committee will have presentations and discussion with representatives from the NRC staff and GE-Hitachi regarding the subject topic. [**NOTE:** Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

5:00 p.m.—6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**NOTE:** Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

Thursday, February 4, 2021

9:30 a.m.–1:00 p.m.: IDHEAS–G: An Integrated Human Events Analysis System—General Methodology (Open)—The Committee will have presentations and discussion with representatives from the NRC staff regarding the subject topic.

2:00 p.m.–3:30 p.m.: Advanced Reactor Computer Codes Volumes 4 and 5 (Open)—The Committee will have presentations and discussion with representatives from the NRC staff regarding the subject topic.

3:30 p.m.–5:30 p.m.: Post-Halden Plans (Open)—The Committee will have presentations and discussion with representatives from the NRC staff regarding the subject topic.

5:30 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

Friday, February 5, 2021

9:30 a.m.–11:30 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations/Preparation of Reports (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings, and/or proceed to preparation of reports as determined by the Chairman. [**NOTE:** Pursuant to 5 U.S.C. 552b(c)(2) and (6), a portion of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.] [**NOTE:** Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

11:30 a.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**NOTE:** Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

Saturday, February 6, 2021

9:30 a.m.–2:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**NOTE:** Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on June 13, 2019 (84 FR 27662). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff and the Designated Federal Officer (DFO) (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

An electronic copy of each presentation should be emailed to the Cognizant ACRS Staff at least one day before meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's Agencywide Documents Access and Management System (ADAMS) which is accessible from the NRC website at *https://www.nrc.gov/reading-rm/adams.html* or *https://www.nrc.gov/reading-rm/doc-collections/#ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Thomas Dashiell, ACRS Audio Visual Technician (301–415–7907), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: December 17, 2020.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2020–28285 Filed 12–22–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8907; NRC–2019–0026]

United Nuclear Corporation Church Rock Project

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental impact statement; extension of comment period.

SUMMARY: On November 13, 2020, the U.S. Nuclear Regulatory Commission (NRC) issued for public comment a draft Environmental Impact Statement (EIS) for United Nuclear Corporation's (UNC) license amendment request. The UNC is requesting authorization to amend its license (SUA–1475) to excavate approximately 1 million cubic yards

(CY) of mine waste from the Northeast Church Rock Mine Site and dispose of it at the existing mill site in McKinley County, New Mexico. The comment period was originally scheduled to close on December 28, 2020. The NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments. The NRC plans to hold a public meeting in the future to promote full understanding of the contemplated action and facilitate public comment.

DATES: The due date of comments requested in the document published November 13, 2020 (85 FR 72706) is extended. Comments should be filed no later than February 26, 2021. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0026. Address questions about Docket IDs 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.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, ATTN: Program Management, Announcements and Editing Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

- *Email comments to: UNC-ChurchRockEIS.resource@nrc.gov.*

- *Leave a voicemail at:* 888–672–3425.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ashley Waldron, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7317; email: *Ashley.Waldron@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0026 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this action by the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0026.

- *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.*

- *Attention:* 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.

- *Project web page:* Information related to the UNC Church Rock project can be accessed on the NRC's project web page at: *https://www.nrc.gov/info-finder/decommissioning/uranium/united-nuclear-corporation-unc-.html.*

- *Public Libraries:* A copy of the draft EIS can be accessed at the following public library:
  - Octavia Fellin Public Library Gallup, NM 87301

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2019–0026 in your comment submission. Written comments may be submitted during the draft EIS comment period as described in the **ADDRESSES** section of the document.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *https://www.regulations.gov* and enters all comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission because the NRC does not routinely edit comment submissions before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

On November 13, 2020 (85 FR 72706), the NRC issued for public comment the draft EIS for UNC license amendment to excavate approximately 1 million CY of mine waste from the Northeast Church Rock Mine Site and dispose of it at the existing mill site in McKinley County, New Mexico.

The draft EIS for UNC's license amendment application includes the preliminary analysis that evaluates the environmental impacts of the proposed action and alternatives to the proposed action. After comparing the impacts of the proposed action to the No-Action alternative, the NRC staff, in accordance with the requirements in part 51 of title 10 of the *Code of Federal Regulations,* preliminarily recommends the proposed action, which would authorize UNC to transfer and dispose Northeast Church Rock mine waste on top of the UNC tailings impoundment. This recommendation is based on (i) the license application request, which includes the Environmental Report and supplemental documents and the licensee's responses to the NRC staff's requests for additional information; (ii) consultation with Federal, State, Tribal, and local agencies and input from other stakeholders; and (iii) independent NRC staff review as documented in the assessments summarized in this EIS.

The public comment period was originally scheduled to close on December 28, 2020. The NRC has decided to extend the public comment until February 26, 2021 to allow more time for members of the public to submit their comments. Comments of Federal, State, and local agencies, Indian Tribes or other interested persons will be made available for public inspection when received.

Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: *https://www.nrc.gov/public-involve/public-meetings/index.cfm.*

Dated: December 17, 2020.

For the Nuclear Regulatory Commission.

Jessie M. Quintero,

Chief, Environmental Review Materials Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2020–28290 Filed 12–22–20; 8:45 am]

BILLING CODE 7590–01–P

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Amended Columbia River Basin Fish and Wildlife Program

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Notice of final action.

SUMMARY: Pursuant to Section 4(h) of the Northwest Power Act, the Council has amended its 2014 Columbia River Basin Fish and Wildlife Program by adding a 2020 Addendum to that 2014 Program.

ADDRESSES: The 2020 Addendum to the 2014 Program is available for review on the Council's website at *https://www.nwcouncil.org/reports/2014-columbia-river-basin-fish-and-wildlife-program.* The amendment process web page, which includes links to the recommendations, comments, and all other documents and steps in the amendment process may be found at *https://www.nwcouncil.org/fw/program/2020addendum.*

FOR FURTHER INFORMATION CONTACT: John Shurts, General Counsel, (503) 222–5161, *jshurts@nwcouncil.org.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 4(h) of the Northwest Power Act, in May 2018 the Council requested in writing that state and federal fish and wildlife agencies, the region's Indian tribes, and other interested parties submit written recommendations for amendments to the Council's 2014 Columbia River Basin Fish and Wildlife Program. In the call for recommendations, the Council recognized the accomplishments of the program over the past 36 years; noted several regional developments that have been influenced by and may, in turn, influence the Council's program; and identified the opportunity presented during this amendment process to concentrate on specific program areas that would allow the program to progress in implementation and reporting on program performance. The Council received 51 sets of recommendations by the December 13, 2018 deadline. The Council then sought and received public comment on the recommendations as required by Section 4(h)(4) of the Act.

Based on the recommendations, comments and other information, the Council proposed to amend the program by adding an addendum to the current version of the program rather than by wholesale amendments to the program. Thus, in July 2019, the Council released a draft 2020 Addendum to the 2014 Program for public review and comment. The Council took formal public comment on the draft 2020 Program Addendum through October 18, 2019. The Council received 114 written comments, including comments from seven state fish and wildlife agencies and other state and state-supported agencies; 13 Columbia Basin Tribes and tribal organizations; four federal fish and wildlife and other federal agencies; four Bonneville customers, other utilities and utility organizations, other river users and user groups; nine environmental and fishing groups and similar non-governmental organizations; and hundreds of individuals. During this comment period, the Council also held eight public hearings, one large-group technical consultation relating to the topics in Part I of the draft Addendum, and engaged in a number of consultations, particularly with state and federal fish and wildlife agencies and tribes, individually and in groups.

One set of comments particularly from state fish and wildlife agencies and Indian tribes asked the Council not to adopt Part I of the 2020 Addendum, concerning Program Performance, on the Council's expected schedule, that is, by January 2020, and instead engage in further collaborative efforts on the topics covered in that part. The Council made a formal decision at its regular monthly meeting in December 2019 to extend the time for acting on the recommendations relevant to Program Performance and finalizing Part I of the 2020 Addendum.

The Council then proceeded on schedule to finalize Part II of the 2020 Addendum on Program Implementation at its regular January 2020 Council meeting. The Council completed the process with regard to Part II of the 2020 Addendum by adopting in March 2020 as part of the program a document containing findings on relevant program amendment recommendations and responses to comments.

With regard to Part I of the 2020 Addendum, the Council engaged in a further public process, including hosting eight workshops from January through April 2020. The discussions at the workshops addressed technical comments received on the draft, as well as some of the policy issues that had been identified during the previous public comment period. Following the workshops, the Council revised its draft of Part I of the 2020 Addendum and released the revised draft for public review and comment in May 2020. Public comment of the revised draft of Part I concluded on June 22, 2020. The Council received twenty-two sets of comments on the revised draft of Part I from state and state supported agencies, tribes and tribal organizations, one federal agency, environmental groups, one customer group, and a few individuals. The Council also held a public hearing via webinar and teleconference on June 15, 2020 that was advertised in Idaho, Montana, Washington and Oregon.

The Council then adopted the final version of Part I of the 2020 Addendum at its regularly scheduled August 2020 meeting, completing the Council's work on the text of the 2020 Addendum. The Council completed the program amendment process by adopting, at its regularly scheduled meeting in October 2020, as part of the program a document containing findings on program amendment recommendations and responses to comments relevant to Part I. Following the adoption of Part I by the Council, the Council knit together into one final document the pieces of the 2020 Addendum.

The Council decided on final program amendments after consideration of the original program amendment recommendations, supporting documents and information that came with the recommendations, comments offered on the recommendations, comments submitted on the original draft program addendum as well as information and comments received by the Council during the extended workshop and public review of draft Part I and then on the revised draft of Part I, and other views and information obtained through public comment and discussions with state and federal fish and wildlife agencies, tribes, Bonneville, other federal agencies, Bonneville customers, and others.

Authority: (Authority: 16 U.S.C. 839 *et seq.*)

John Shurts,

General Counsel.

[FR Doc. 2020–28428 Filed 12–22–20; 8:45 am]

BILLING CODE P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021–49 and CP2021–51]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 29, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

1. *Docket No(s).:* MC2021–49 and CP2021–51; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 183 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 17, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory Stanton; *Comments Due:* December 29, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–28432 Filed 12–22–20; 8:45 am]

BILLING CODE 7710–FW–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:* December 23, 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 December 9, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express Contract 86 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–43, CP2021–44.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–28445 Filed 12–22–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Parcel Select 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:* December 23, 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 December 7, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Parcel Select Contract 44 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–42, CP2021–43.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–28444 Filed 12–22–20; 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:* December 23, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 183 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–49, CP2021–51.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–28450 Filed 12–22–20; 8:45 am]

BILLING CODE 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:* December 23, 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 December 7, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 181 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–41, CP2021–42.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–28443 Filed 12–22–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 23, 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 December 11, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail, First-Class Package Service, and Parcel Select Service Contract 2 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–45, CP2021–46.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–28447 Filed 12–22–20; 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:* December 23, 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 December 14, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 182 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–46, CP2021–48.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–28448 Filed 12–22–20; 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:* December 23, 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 December 18, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 685 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–50, CP2021–52.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–28451 Filed 12–22–20; 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:* December 23, 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 December 16, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 684 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–48, CP2021–50.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–28449 Filed 12–22–20; 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:* December 23, 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 December 11, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 683 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–44, CP2021–45.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–28446 Filed 12–22–20; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–625, OMB Control No. 3235–0686]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE,, Washington, DC 20549–2736

Extension:

Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934—Form TCR and Form WB–APP

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit an extension for this current collection of information to the Office of Management and Budget for approval.

In Release No. 34–64545,[1] the Commission adopted rules (''Rules'') and forms to implement Section 21F of the Securities Exchange Act of 1934 entitled ''Securities Whistleblower Incentives and Protection,'' which was created by Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[2] The Rules describe the whistleblower program that the Commission has established pursuant to the Dodd-Frank Act which requires the Commission to pay an award, subject to certain limitations and conditions, to whistleblowers who voluntarily provide the Commission with original information about a violation of the federal securities laws that leads to the successful enforcement of a covered judicial or administrative action, or of a related action. The Rules define certain terms critical to the operation of the whistleblower program, outline the procedures for applying for awards and the Commission's procedures for making decisions on claims, and generally explain the scope of the whistleblower program to the public and to potential whistleblowers.

Form TCR is a form submitted by whistleblowers who wish to provide information to the Commission and its staff regarding potential violations of the securities laws. Form TCR is required for submission of information under the Rules. The Commission estimates that it takes a whistleblower, on average, one and one-half hours to complete Form TCR. Based on the receipt of approximately 560 annual responses on average for the past three fiscal years, the Commission estimates that the annual PRA burden of Form TCR is 840 hours.

Form WB–APP is a form that is submitted by whistleblowers filing a claim for a whistleblower award. Form WB–APP is required for application for an award under the Rules. On December 4, 2020, the Commission approved an updated version of the WB–APP in accordance with its newly amended rules.[3] The updated WB–APP removes the requirement for the filer to submit their Social Security Number and modified the order of the questions on the form. No substantive changes were made to the WB–APP. The Commission estimates that it takes a whistleblower, on average, two hours to complete Form WB–APP. The completion time depends largely on the complexity of the alleged violation and the amount of information the whistleblower possesses in support of his or her application for an award. Based on the receipt of approximately 215 annual responses on average for the past three fiscal years, the Commission estimates that the annual PRA burden of Form WB–APP is 430 hours. The total estimated annual reporting burden for Form TCR and Form WB–APP is 1,270 hours.

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication. Please direct your written comments to David Bottom, Director/ Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F St. NE, Washington DC 20549; or send an email to: *PRA_ Mailbox@sec.gov.*

Dated: December 18, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28425 Filed 12–22–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90695; File No. SR–NYSEArca–2020–110]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Description of the ''Indicative Partnership Value'' Disseminated in Connection With Trading of ''Units'' of the United States Oil Fund, LP

December 17, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December

[1] Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, Release No. 34–64545; File No. S7–33–10 (adopted May 25, 2011).

[2] Public Law 111–203, 922(a), 124 Stat 1841 (2010).

[3] *Whistleblower Program Rules,* 85 FR 70898 (Nov. 5, 2020).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

9, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I 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 certain changes regarding the description of the ''Indicative Partnership Value'' disseminated in connection with trading of ''Units'' of the United States Oil Fund, LP, which are currently listed and traded on the Exchange under NYSE Arca Rule 8.300–E (Partnership Units). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently lists and trades Units of the United States Oil Fund, LP (the ''Fund'' or ''USO'') under NYSE Arca Rule 8.300–E (Partnership Units). The Exchange proposes certain changes regarding the description of the ''Indicative Partnership Value'' disseminated in connection with trading of Units of the Fund on the Exchange.

Background

Units of the Fund initially were approved for listing on the American Stock Exchange LLC (''Amex'') in 2006,[4] and were subsequently approved for trading on the Exchange pursuant to unlisted trading privileges.[5] Units of the Fund were approved for listing and trading on the Exchange in 2008.[6]

On April 20, 2020, the Fund filed its latest registration statement (''Registration Statement'') under the Securities Act of 1933 that was declared effective by the Commission on June 12, 2020.[7] The prospectus (''Prospectus'') under the Registration Statement describes the investment objective of USO, which has not changed from the description of the investment objective of USO as described in the Amex Prior Releases. Specifically, the Prospectus describes the investment objective of USO to be for the daily changes in percentage terms of its shares' per share net asset value (''NAV'') to reflect the daily changes in percentage terms of the spot price of light, sweet crude oil delivered to Cushing, Oklahoma, as measured by the daily changes in the price of the ''Benchmark Oil Futures Contract,'' plus interest earned on USO's collateral holdings, less USO's expenses. The Benchmark Oil Futures Contract is the futures contract on light, sweet crude oil as traded on the New York Mercantile Exchange (the ''NYMEX'') that is the near month contract to expire. The Prospectus supplements the statements in the Prior Amex Releases in a manner consistent with the previously-approved investment objective of the Fund in stating further that the Benchmark Oil Futures Contract will not be the near month contract to expire when the near month contract is within two weeks of expiration, in which case it will be measured by the futures contract that is the next month contract to expire.

As stated in the Prior Amex Releases, USO seeks to achieve its investment objective by investing so that the average daily percentage change in USO's NAV for any period of 30 successive valuation days will be within plus/minus ten percent (10%) of the average daily percentage change in the price of the Benchmark Oil Futures Contract over the same period.

The Prospectus, which is consistent with the Prior Amex Releases, states that USO seeks to achieve this investment objective by investing primarily in futures contracts for light, sweet crude oil, other types of crude oil, diesel heating oil, gasoline, natural gas, and other petroleum-based fuels that are traded on the NYMEX, ICE Futures Europe, and ICE Futures U.S. (ICE Futures Europe and ICE Futures U.S., referred to together as ''ICE Futures''), or other U.S. and foreign exchanges (collectively, ''Oil Futures Contracts'') and to a lesser extent, in order to comply with regulatory requirements or in view of market conditions, other oil-related investments such as cash-settled options on Oil Futures Contracts, forward contracts for oil, cleared swap contracts and non-exchange traded (''over-the-counter'' or ''OTC'') transactions that are based on the price of oil, other petroleum-based fuels, Oil Futures Contracts and indices based on the foregoing (collectively, ''Other Oil-Related Investments'').[8] The Prospectus supplements the statements in the Prior Amex Releases in a manner consistent with the previously-approved investment objective of the Fund in stating further that market conditions that the Fund currently anticipates could cause USO to invest in Other Oil-Related Investments include those allowing USO to obtain greater liquidity or to execute transactions with more favorable pricing. (Oil Futures Contracts and Other Oil-Related Investments collectively are referred to as ''Oil Interests''.)

As stated in the Prior Amex Releases, the Fund also holds cash and invests in short-term obligations of the United States Government (''Treasuries'') and other cash equivalents to be used to satisfy its current or future margin and collateral requirements and to otherwise satisfy its obligations with respect to its investments in Oil Interests.

ICE Data Indices, LLC currently disseminates through the facilities of the

[4] *See* Securities Exchange Act Release Nos. 53324 (February 16, 2006), 71 FR 9614 (February 24, 2006) (SR–Amex–2005–127) (Notice of Filing of a Proposed Rule Change, and Amendment Nos. 1 and 2 Thereto, Relating to the Listing and Trading of Units of the United States Oil Fund, LP) (''Prior Amex Notice''); 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR–Amex–2005–127) (order approving listing and trading of shares of United States Oil Fund, LP) (''Prior Amex Order'' and, together with the Prior Amex Notice, the ''Prior Amex Releases''). The Prior Amex Releases set forth the current listing representations for the Fund.

[5] *See* Securities Exchange Act Release No. 53875 (May 25, 2006), 71 FR 32164 (June 2, 2006) (SR–NYSEArca–2006–11) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Trading of the United States Oil Fund, LP Pursuant to Unlisted Trading Privileges).

[6] *See* Securities Exchange Act Release No. 58965 (November 17, 2008), 73 FR 71078 (November 24, 2008) (SR–NYSEArca–2008–127) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Units of the United States Oil Fund, United States Heating Oil Fund, United States Gasoline Fund, United States 12 Month Oil Fund, United States 12 Month Natural Gas Fund, and the United States Natural Gas Fund).

[7] *See* the Registration Statement on Form S–3 under the Securities Act of 1933, dated April 20, 2020 (File No. 333–237750) declared effective, as amended, on June 12, 2020. The Fund filed a supplement (''Supplement'') to the Registration Statement on December 7, 2020.

[8] Other Oil-Related Investments as referenced in the Registration Statement are referred to as ''Other Oil Interests'' in the Prior Amex Releases.

Consolidated Tape Association (''CTA'') an updated ''Indicative Partnership Value'' during the NYSE Arca Core Trading Session (normally 9:30 a.m. to 4:00 p.m., Eastern Time). The current Exchange listing representations for Units of the Fund, as stated in the Prior Amex Notice, require that the Indicative Partnership Value (also referred to below as the ''indicative fund value'' or ''IFV'') be calculated based on the Treasuries and cash required for creations and redemptions adjusted to reflect the price changes of the current Benchmark Oil Futures Contract (''Prior IFV'').[9]

Proposed Rule Change

The Prospectus and the Supplement describe a change to the method of calculating the IFV (the ''Proposed IFV'') for the Fund, which differs from the method of calculating the IFV as set forth in the Prior Amex Notice.[10] Accordingly, the Exchange proposes to amend the current listing representations for the Fund relating to the change to the method of calculating the IFV for the Fund.

As stated in the Prospectus, in order to provide updated information relating to USO for use by investors and market professionals, ICE Data Indices, LLC calculates and disseminates throughout the Core Trading Session on each trading day the Proposed IFV. The Proposed IFV, which is currently being utilized in connection with trading of Units, is calculated by using the prior day's closing per share NAV of USO as a base and updating that value throughout the trading day to reflect changes in the most recently reported trade prices for the Oil Futures Contracts and Other Oil-Related Investments held by USO. This representation differs from that in the Prior Amex Notice regarding the Prior IFV, which stated that the IFV reflects only price changes of the current Benchmark Oil Futures Contract. The Proposed IFV disseminated during NYSE Arca Core Trading Session should not be viewed as an actual real-time update of the per share NAV, because the per share NAV is calculated only once at the end of each trading day based upon the relevant end of day values of USO's investments.

The Proposed IFV is disseminated on a per share basis at least every 15 seconds during the regular NYSE Arca Core Trading Session. As stated in the Supplement, the normal trading hours for Oil Futures Contracts traded on the NYMEX are 6:00 p.m. Eastern Time to 5:00 p.m. Eastern Time the next day and its closing settlement price is set as of 2:30 p.m. Eastern Time. ICE Futures normal trading hours for its Oil Futures Contracts are 8:00 p.m. until 6:00 p.m. Eastern Time the next day. It also sets its settlement price as of 2:30 p.m. Eastern Time each trading day. The Proposed IFV during the Core Trading Session includes the real-time prices of the Fund's holdings of Oil Futures Contracts traded on the NYMEX and ICE Futures up until approximately 2:30 p.m. Eastern Time, and, thereafter, to the close of the NYSE Arca Core Trading Session, is based on the 2:30 p.m. settlement prices of Oil Futures Contracts traded on the NYMEX and ICE Futures, which are the same prices used for valuing such contracts in determining USO's official end of day NAV. Therefore, a static Proposed IFV is disseminated between the time the settlement price is published (at approximately 2:30 p.m. Eastern Time) for NYMEX and ICE Futures and the close of the NYSE Arca Core Trading Session.[11]

In addition, the Proposed IFV calculation includes the other Oil Futures Contracts (*i.e.,* other than Oil Futures Contracts traded on NYMEX or ICE Futures) and Other Oil-Related Investments held by USO by using the prices of the Oil Futures Contracts traded on NYMEX or ICE Futures referenced in, or used as the basis for, the prices of these other Oil Futures Contracts and Other Oil-Related Investments. Such other Oil Futures Contracts and Other Oil-Related Investments, like Oil Futures Contracts traded on the NYMEX and ICE Futures referenced above, also are valued using the real-time prices of Oil Futures Contracts traded on the NYMEX and ICE Futures up until approximately 2:30 p.m. Eastern Time, and, thereafter, to the close of the NYSE Arca Core Trading Session, based on the 2:30 p.m. settlement prices of Oil Futures Contracts traded on the NYMEX and ICE Futures. Therefore, the prices in the Proposed IFV relating to such other Oil Futures Contracts and Other Oil-Related Investments are static between the time the settlement price is published for NYMEX and ICE Futures and the close of the NYSE Arca Core Trading Session. While the end of day value of Treasuries, cash and cash equivalents are included in USO's prior end of day NAV, to which changes in the value of Oil Futures Contracts and Other Oil-Related Investments are applied in calculating the Proposed IFV, intraday changes in the value of Treasuries, cash and cash equivalents are not applied in calculating the Proposed IFV.

ICE Data Indices, LLC disseminates the Proposed IFV through the facilities of CTA. In addition, the Proposed IFV is available through on-line information services such as Bloomberg and Refinitiv.

As stated in the Prospectus, and consistent with the current listing representations applicable to the Units as described in the Prior Amex Releases, the Fund has invested increasingly in Oil Futures Contracts other than Benchmark Oil Futures Contracts.[12] Accordingly, because of the Fund's ability to invest in other Oil Futures Contracts in addition to the Benchmark Oil Futures Contracts as well as Other Oil-Related Investments, the Proposed IFV better reflects the intraday value of Units because it incorporates price changes of Oil Futures Contracts held by the Fund other than Benchmark Oil Futures Contracts as well as Other Oil-Related Investments referenced in the Prior Amex Releases and in the Prospectus.

The Exchange believes that the Proposed IFV may be useful to market participants in providing information regarding the intraday value of Units. As such, it is necessary and appropriate that the Proposed IFV reflect prices of

[9] Units of the Fund are issued and redeemed in ''baskets'' of 100,000 Units or multiples thereof.

[10] For purposes of this filing, the IFV referenced in the Prospectus and the Supplement is the ''Indicative Partnership Value'' referenced in NYSE Arca Rule 8.300–E(d)(2)(iii).

[11] The Commission has previously approved listing and trading of exchange-traded products for which a static indicative value is disseminated after the close of the applicable futures exchange and before the close of the Exchange's Core Trading Session. *See, e.g.,* Securities Exchange Act Release Nos. 65601 (October 20, 2022), 76 FR 66339 (October 26, 2011) (order approving listing and trading of shares of the United States Metals Index Fund, the United States Agriculture Index Fund and the United States Copper Index Fund Under NYSE Arca Equities Rule 8.200 (SR–NYSEArca–2011–63); United States Commodity Index Fund (SR–NYSE Arca–2010–44); 80296 (March 22, 2017), 82 FR 15400 (March 28, 2017) (SR–NYSEArca–2017–07) (order approving listing and trading of shares of ProShares UltraPro 3x Crude Oil ETF and ProShares UltraPro 3x Short Crude Oil ETF; 65344 (September 15, 2011), 76 FR 58549 (September 21, 2011) (SR–NYSEArca–2011–48) (order approving listing and trading of shares of the Teucrium Wheat Fund, the Teucrium Soybean Fund and the Teucrium Sugar Fund under Rule 8.200, Commentary .02).

[12] Descriptions of the Fund's investment changes have been filed with the Commission on Form 8–K. *See, e.g.,* the Fund's Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated April 30, 2020. In this regard, the Prospectus states that, ''as a result of market and regulatory conditions, including significant market volatility, large numbers of USO shares purchased during a short period of time, and applicable regulatory accountability levels and position limits on oil futures contracts that were imposed on USO in 2020, including as a result of the COVID–19 pandemic and the state of crude oil markets, USO has invested in Oil Futures Contracts in months other than the Benchmark Oil Futures Contract.''

Oil Futures Contracts and Other Oil-Related Investments, as described in the Prospectus and the Supplement, rather than price changes of the current Benchmark Oil Futures Contract, except to the extent the Fund holds Benchmark Oil Futures Contracts.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[13] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the Proposed IFV is useful to market participants in providing information regarding the intraday value of Units. As such, it is necessary and appropriate that the Proposed IFV reflect prices of Oil Futures Contracts and Other Oil-Related Investments, as described in the Prior Amex Notice, rather than price changes to the current Benchmark Oil Futures Contract. The Exchange believes this change facilitates fair and orderly trading of Units because the Proposed IFV better reflects the intraday value of Units by incorporating price changes of all Oil Futures Contracts held by the Fund, including Benchmark Oil Futures Contracts, as well as Other Oil-Related Investments referenced in the Prior Amex Releases and in the Prospectus.

As noted above, ICE Data Indices, LLC disseminates the Proposed IFV through facilities of CTA. In addition, the Proposed IFV is available through on-line information services such as Bloomberg and Refinitiv.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes that the proposed rule change facilitates fair and orderly trading of Units that will enhance competition among market participants, to the benefit of investors and the marketplace.

[13] 15 U.S.C. 78f(b)(5).

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[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[17] 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. The Exchange states that waiver of the 30-day operative delay would permit the Fund's IFV to better reflect prices of the Fund's actual holdings, including Oil Futures Contracts and Other Oil-Related Investments, as described in the Prospectus and Supplement, rather than price changes of the current Benchmark Oil Futures Contracts, except to the extent the Fund holds Benchmark Oil Futures Contracts. The proposed rule change does not raise any novel regulatory issues, and the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[18]

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2020–110 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2020–110. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–110, and should be submitted on or before January 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28303 Filed 12–22–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90717; File No. SR–NASDAQ–2020–057]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Allow Companies To List in Connection With a Direct Listing With a Primary Offering In Which the Company Will Sell Shares Itself In the Opening Auction on the First Day of Trading on Nasdaq and To Explain How the Opening Transaction for Such a Listing Will Be Effected

December 17, 2020.

I. Introduction

On September 4, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow companies to list in connection with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading on the Exchange and to explain how the opening transaction for such a listing will be effected. The proposed rule change was published for comment in the **Federal Register** on September 21, 2020.[3] On November 4, 2020, pursuant to Section 19(b(2) of the Exchange Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

Listing Rule IM–5315–1 provides additional listing requirements for listing a company that has not previously had its common equity securities registered under the Exchange Act on the Nasdaq Global Select Market at the time of effectiveness of a registration statement[7] filed solely for the purpose of allowing existing shareholders to sell their shares (a ''Selling Shareholder Direct Listing''). To allow a company to also sell shares on its own behalf in connection with its initial listing upon effectiveness of a registration statement, without a traditional underwritten public offering, the Exchange has proposed to adopt Listing Rule IM–5315–2. This proposed rule would allow a company that has not previously had its common equity securities registered under the Exchange Act, to list its common equity securities on the Nasdaq Global Select Market at the time of effectiveness of a registration statement pursuant to which the company itself will sell shares in the opening auction on the first day of trading on the Exchange (a ''Direct Listing with a Capital Raise'').[8]

In considering a Selling Shareholder Direct Listing, Listing Rule IM–5315–1 currently provides that the Exchange will determine that such company has met the applicable Market Value of Unrestricted Publicly Held Shares[9] requirements based on the lesser of: (i) An independent third party valuation of the company (a ''Valuation'');[10] and (ii) the most recent trading price for the company's common stock in a Private Placement Market[11] where there has been sustained recent trading. For a security that has not had sustained trading in a Private Placement Market prior to listing, the Exchange will determine that such company has met the Market Value of Unrestricted Publicly Held Shares requirement if the company satisfies the applicable Market Value of Unrestricted Publicly Held Shares requirement and provides a Valuation evidencing a Market Value of Publicly Held Shares of at least $250,000,000.

With respect to a Direct Listing with a Capital Raise, the Exchange has proposed that, in determining whether a company satisfies the Market Value of Unrestricted Publicly Held Shares requirement for initial listing on the Nasdaq Global Select Market, the Exchange will deem such company to have met the applicable requirement if the amount of the company's Unrestricted Publicly Held Shares before the offering, along with the market value of the shares to be sold in the Exchange's opening auction in the Direct Listing with a Capital Raise, is at least $110 million (or $100 million, if the company has stockholders' equity of at least $110 million).[12] The Exchange has proposed to calculate the Market Value of Unrestricted Publicly Held Shares, for this purpose, using a price per share equal to the price that is 20% below the lowest price of the price range disclosed by the issuer in its registration

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89878 (September 15, 2020), 85 FR 59349 (September 21, 2020) (''Notice''). Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2020-057/srnasdaq2020057.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 90331 (November 4, 2020), 85 FR 71708 (November 10, 2020). The Commission designated December 20, 2020, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] The reference to a registration statement refers to a registration statement effective under the Securities Act of 1933 (''Securities Act'').

[8] *See* proposed IM–5315–2. A Direct Listing with a Capital Raise would include listings where either: (i) Only the company itself is selling shares in the opening auction on the first day of trading; or (ii) the company is selling shares and selling shareholders may also sell shares in such opening auction. *See id.* The Commission notes that while the Exchange's current rules also permit Selling Shareholder Direct Listings on the Nasdaq Global Market and Nasdaq Capital Market (*see* IM–5405–1 and IM–5505–1), the current proposal would only provide for a Direct Listing with a Capital Raise on the Nasdaq Global Select Market.

[9] ''Restricted Securities'' means securities that are subject to resale restrictions for any reason, including, but not limited to, securities: (1) Acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings; (2) acquired through an employee stock benefit plan or as compensation for professional services; (3) acquired in reliance on Regulation S, which cannot be resold within the United States; (4) subject to a lockup agreement or a similar contractual restriction; or (5) considered ''restricted securities'' under Rule 144. *See* Rule 5005(a)(37). ''Unrestricted Securities'' means securities that are not Restricted Securities. *See* Rule 5005(a)(46). ''Unrestricted Publicly Held Shares'' means the Publicly Held Shares that are Unrestricted Securities. *See* Rule 5005(a)(45). See *also* Rule 5005(a)(23) and (35) for definitions of ''Market Value'' and ''Publicly Held Shares.''

[10] IM–5315–1 describes the requirement for a Valuation, including the experience and independence of the entity providing the Valuation.

[11] The Exchange defines ''Private Placement Market'' in Listing Rule 5005(a)(34) as a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer.

[12] *See* proposed IM–5315–2.

statement.[13] The Exchange also proposes to determine whether the company has met the applicable bid price and market capitalization requirements based on the same share price.[14]

The Exchange states that, except as proposed for a Direct Listing with a Capital Raise, its listing rules generally do not include shares held by officers, directors, or owners of more than 10% of the company's common stock in calculations of Publicly Held Shares.[15] In qualifying companies for listing in a Direct Listing with a Capital Raise, however, such officers, directors and owners of 10% or more of the company's common stock will be included in determining whether the company meets the Market Value of Publicly Held Shares requirement. According to the Exchange, such investors may acquire in secondary market trades shares sold by the issuer in a Direct Listing with a Capital Raise that were included when calculating whether the issuer meets the Market Value of Unrestricted Publicly Held Shares requirement for initial listing.[16] The Exchange states, however, that a company listing in conjunction with a Direct Listing with a Capital Raise will be required to have a Market Value of Unrestricted Publicly Held Shares that is much higher than the Exchange's $45 million Market of Unrestricted Publicly Held Shares requirement that applies to a traditional underwritten initial public offering (''IPO'').[17] The Exchange further states that this heightened requirement, along with the ability of all investors to purchase shares in the opening process on the Exchange, should result in companies using a Direct Listing with a Capital Raise having adequate public float and a liquid trading market after completion of the opening auction.[18]

The Exchange also states that it believes that it is consistent with the protection of investors to calculate the security's bid price and values derived from the security's price using a price per share equal to the price that is 20% below the lowest price of the price range disclosed by the issuer in its registration statement.[19] According to the Exchange, Commission rules and interpretations generally allow the sale of securities pursuant to an effective registration statement at a price that is 20% below the lowest price of the price range disclosed by the issuer in its registration statement.[20] The Exchange states that, as a result, the Exchange will allow the opening auction, otherwise known as the Nasdaq Halt Cross,[21] to take place at a price as low as this price, but no lower, and so this is the minimum price at which a company could be listed.[22]

The Exchange states that any company listing in connection with a Direct Listing with a Capital Raise would continue to be subject to, and be required to meet, all other applicable initial listing requirements. According to the Exchange, this would include the requirements to have the applicable number of shareholders and at least 1,250,000 Unrestricted Publicly Held Shares outstanding at the time of initial listing, and the requirement to have a price per share of at least $4.00 at the time of initial listing.[23]

In addition, the Exchange has proposed to amend Rule 4702 to add a new order type, the ''Company Direct Listing Order'' or ''CDL Order,'' which would be used by the issuer in a Direct Listing with a Capital Raise. This would be a market order entered for the quantity of shares offered by the issuer, as disclosed in an effective registration statement for the offering, that will execute at the price determined in the Nasdaq Halt Cross.[24] A CDL Order may be entered only on behalf of the issuer and the CDL Order may not be cancelled or modified. Only one Nasdaq member, representing the issuer, may enter a CDL Order during a Direct Listing with a Capital Raise. The CDL Order must be executed in full at the price determined in the Nasdaq Halt Cross, and all orders priced better than the price determined in the Nasdaq Halt Cross also would need to be satisfied.[25]

The Exchange has proposed that securities listing in connection with a Direct Listing with a Capital Raise must begin trading on the Exchange following the initial pricing through the Nasdaq Halt Cross, which is described in Rules 4120(c)(8) and Rule 4753. The Exchange further has proposed that, to allow such initial pricing, the company must, in accordance with Rule 4120(c)(9), have a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed, who is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an IPO.[26] The Exchange states that the requirement that the company begin trading of the company's securities following the initial pricing through the Nasdaq Halt Cross will promote fair and orderly markets by protecting against volatility in the pricing and initial

[13] *See* proposed IM–5315–2. The Exchange states that, for example, if the company is selling five million shares in the opening auction and there are 45 million shares issued and outstanding immediately prior to the listing that are eligible for inclusion as Unrestricted Publicly Held Shares based on disclosure in the company's registration statement, then the Exchange would calculate the Market Value of Unrestricted Publicly Held Shares based on a combined total of 50 million shares. If the lowest price of the price range disclosed in the company's registration statement is $10 per share, the Exchange will attribute to the company a Market Value of Unrestricted Publicly Held Shares of $400 million, based on an $8 price per share, which is 20% below the bottom of the disclosed range. *See* Notice, *supra* note 3, 85 FR at 59350, n.7. The Exchange also states that, as described below, the opening auction would not execute at a price that is more than 20% below the bottom of the disclosed range, so this is the minimum price at which the company could list in connection with a Direct Listing with a Capital Raise. *See* Notice, *supra* note 3, 85 FR at 59350, n.6.

[14] *See* proposed IM–5315–2.

[15] *See* Notice, *supra* note 3, 85 FR at 59350. The Exchange states that these types of inside investors may purchase shares sold by the company in the opening auction, and purchase shares sold by other shareholders or sell their own shares in the opening auction and in trading after the opening auction, to the extent not inconsistent with general anti-manipulation provisions, Regulation M, and other applicable securities laws. *See id.*

[16] *See* Notice, *supra* note 3, 85 FR at 59350. The Exchange states that it expects that a company expecting to sell a significant portion of its shares to officers, directors, and existing significant shareholders would not undertake a public listing through a Direct Listing with a Capital Raise. *See id.* at 59352.

[17] *See* Notice, *supra* note 3, 85 FR at 59350. The Exchange also states that, unlike a company listing in connection with a Selling Shareholder Direct Listing that could qualify for the price-based initial listing requirements based on a Valuation, a company listing in connection with a Direct Listing with a Capital Raise, like an IPO, must qualify for such requirements based on the minimum price at which it could sell shares in the offering. *See id.* at 59352.

[18] *See* Notice, *supra* note 3, 85 FR at 59350.

[19] *See* Notice, *supra* note 3, 85 FR at 59352.

[20] *See* Notice, *supra* note 3, 85 FR at 59352.

[21] ''Nasdaq Halt Cross'' means the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest. *See* Rule 4753(a)(4). ''Eligible Interest'' means any quotation or any order that has been entered into the system and designated with a time-in-force that would allow the order be in force at the time of the Halt Cross. *See* Rule 4753(a)(5). Pursuant to Rule 4120, the Exchange will halt trading in a security that is the subject of an IPO (or direct listing), and terminate that halt when the Exchange releases the security for trading upon certain conditions being met, as discussed further below. *See* Rule 4120(a)(7) and (c)(8).

[22] *See* Notice, *supra* note 3, 85 FR at 59352.

[23] *See* Notice, *supra* note 3, 85 FR at 59351 (citing Rules 5315(e)(1) and (2), and 5315(f)).

[24] *See* proposed Rule 4702(b)(16)(A) and (B).

[25] *See* proposed Rule 4702(a)(16)(A); Notice, *supra* note 3, 85 FR at 59351.

[26] *See* proposed IM–5315–2. Rule 4120(c)(9) states that the process for halting and initial pricing of a security that is subject to an IPO is also available for the initial pricing of any other security that has not been listed on a national security exchange immediately prior to the initial pricing, if a broker-dealer serving in the role of financial to the issuer is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an IPO, and if more than one broker-dealer is serving in the role of financial advisor, the issuer must designate one to perform these functions. The Exchange proposes to renumber this provision as Rule 4120(c)(9)(A). *See* proposed Rule 4120(c)(9)(A).

trading of securities covered by the proposal.[27] In addition, the Exchange has proposed to amend Rule 4120(c)(9) to specify that any services provided by such financial advisor to the issuer of a security, including a company listing in connection with a Direct Listing with a Capital Raise, must provide such services in a manner that is consistent with all federal securities laws, including Regulation M and other anti-manipulation requirements.[28]

With respect to the Nasdaq Halt Cross, the Exchange has proposed that, in the case of a Direct Listing with a Capital Raise, a security shall not be released for trading by Nasdaq unless the expected price at which the cross would occur (as defined in Rule 4120(c)(8)(A)(i)) is at or above the price that is 20% below the lowest price of the price range established by the issuer in its effective registration statement.[29] This requirement would be in addition to the existing conditions described in Rule 4120(c)(8)(A)(i), (ii), and (iii), which would continue to apply.[30] The Exchange notes that, unlike in an IPO, a company listing through a Direct Listing with a Capital Raise would not have an underwriter to guarantee that a specified number of shares would be sold by the company at a price consistent with disclosure in the company's effective registration statement. However, the Exchange asserts that this would be achieved through the proposed requirements that (1) the Nasdaq Halt Cross occur only if the CDL Order, which must be equal to the total number of shares disclosed as being offered by the company in the effective registration statement, is executed in full, and (2) the Nasdaq Halt Cross occur at a price per share no less than 20% below the lowest price of the price range disclosed by the issuer in its registration statement.[31]

The Exchange states that, because the financial advisor would be responsible for determining when the security subject to the Nasdaq Halt Cross is ready to trade, the proposal would make the financial advisor responsible for determining whether the Nasdaq Halt Cross for a Direct Listing with a Capital Raise can proceed.[32] According to the Exchange, if there is insufficient buy interest to satisfy the CDL Order as required by the proposal, the Nasdaq Halt Cross would not proceed and such security would not begin trading.[33] The Exchange represents that, if the Nasdaq Halt Cross cannot be conducted, the Exchange would notify market participants via a Trader Update that the Direct Listing with a Capital Raise has been cancelled and any orders for that security that had been entered on the Exchange, including the CDL Order, would be cancelled back to the entering firms.[34] The Exchange further states that, because the CDL Order will be a market order, if the Nasdaq Halt Cross proceeds, that order will execute in full in the Nasdaq Halt Cross, along with orders priced at or better than the price determined in the Nasdaq Halt Cross.[35] The Exchange notes that, while the Nasdaq Halt Cross would not proceed if the price calculated is 20% or more below the lowest price disclosed by the company in its effective registration statement, there would be no upper limit to the price determined in the Nasdaq Halt Cross.[36]

Finally, the Exchange has proposed to make adjustments to how it would calculate the Current Reference Price, which is disseminated in the Nasdaq Order Imbalance Indicator, and the price at which the Nasdaq Halt Cross would execute, for a Direct Listing with a Capital Raise.[37] In each case, where there are multiple prices that would satisfy the conditions for determining the price, the Exchange would modify the fourth tie-breaker for a Direct Listing with a Capital Raise to use the price that is closest to the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement.[38]

III. Summary of Comment Letters Received

One commenter recommended that the Commission disapprove the proposal because it believes that the proposed expansion of direct listings would compound problems that shareholders face in tracing their share purchases to a registration statement and may lead to a decline in effective governance at U.S. public companies.[39] The commenter stated that traceability concerns often arise when there have been successive offerings, as shareholders seek to establish their standing to litigate claims for material misstatements or omissions under federal securities law.[40] The commenter stated that investor concerns about the traceability of shares in a direct listing were drawn into sharp focus in current litigation involving a direct listing by Slack Technologies, Inc. (''Slack''), which is still under consideration.[41] The commenter further stated that, independent of the Slack case, the Exchange's proposal raises important investor issues that the Commission should consider before opening U.S. capital markets up to the potential for a vastly increased number of direct listings.[42] The commenter urged the Commission to explore updating its ''proxy plumbing'' regulations before approving an expanded direct listings regime.[43]

In addition, this commenter stated that it is concerned that the Exchange's proposal would result in a significant increase in the use of direct listings, and that more direct listings may lead to a

[27] *See* Notice, *supra* note 3, 85 FR at 59352.

[28] *See* proposed Rule 4120(c)(9)(A).

[29] *See* proposed Rule 4120(c)(9)(B).

[30] Rule 4120(c)(8)(A) provides that a security will not be released for trading until Nasdaq receives notice from the underwriter of the IPO or financial advisor in the case of a Direct Listing that the security is ready to trade, the system verifies that all market orders will be executed in the cross, and the price determined in the cross satisfies a price validation test.

[31] *See* Notice, *supra* note 3, 85 FR at 59352.

[32] *See* Notice, *supra* note 3, 85 FR at 59351.

[33] *See* Notice, *supra* note 3, 85 FR at 59351.

[34] *See* Notice, *supra* note 3, 85 FR at 59351.

[35] *See* Notice, *supra* note 3, 85 FR at 59351.

[36] *See* Notice, *supra* note 3, 85 FR at 59351.

[37] *See* Rule 4853(a)(3) for a description of the ''Current Reference Price'' and ''Order Imbalance Indicator.''

[38] *See* proposed Rule 4753(a)(3)(A)(iv)(c) and (b)(2)(D)(iii). The Exchange states that the fourth tie-breaker used to calculate the Current Reference Price for an IPO is the price that is closest to the issuer's IPO price, and that a Direct Listing with a Capital Raise is similar to an IPO in that the company sells securities in the offering. *See* Notice, *supra* note 3, 85 FR at 59352. The Exchange also proposes non-substantive changes to renumber the other alternatives for the fourth tie-breaker. *See* proposed Rule 4753(a)(3)(A)(iv) and (b)(2)(D).

[39] *See* Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, at 2, 4 (October 8, 2020) (''CII Letter''). The commenter stated that on September 25, 2020, the Commission issued an order granting the Council of Institutional Investors' petition for review of an order, issued by delegated authority, granting approval of a proposed rule change by the New York Stock Exchange LLC relating to a proposed direct listing with a primary offering (''NYSE Proposal''). *See id.* at 1–2. *See also* Securities Exchange Act Release No. 90001 (September 25, 2020), 85 FR 61793 (September 30, 2020) (SR–NYSE–2019–67) (Order Granting Petition for Review, Scheduling Filing of Statements, and Denying New York Stock Exchange LLC's Motion to Lift the Stay). This commenter stated that the Exchange's current proposal is similar to the NYSE Proposal and cites its petition for review of the NYSE Proposal as further support for its recommendation that the Commission disapprove the Exchange's proposal. *See* CII Letter, at 1–2 (citing Petition of Council of Institutional Investors for Review of an Order, Issued by Delegated Authority, Granting Approval of a Proposed Rule (September 8, 2020), *available at https://www.sec.gov/rules/sro/nyse/2020/34-89684-petition.pdf*).

[40] *See* CII Letter, *supra* note 39, at 2–3.

[41] *See* CII Letter, *supra* note 39, at 3. The commenter stated with respect to this case that while the district court denied a motion to dismiss a Section 11 claim on the grounds that the plaintiff could not trace its purchases to Slack's registration statement, the court of appeals has agreed to hear the matter on an interlocutory basis, so it is unclear whether the district court case will be upheld. *See id. See also Pirani* v. *Slack Technologies, Inc.*, No. 20–16419 (9th Cir. July 23, 2020), Docket No. 1.

[42] *See* CII Letter, *supra* note 39, at 3.

[43] *See* CII Letter, *supra* note 39, at 4.

decline in the effective corporate governance of U.S. public companies to the detriment of long-term investors and the capital markets generally.[44] The commenter stated that a recent direct listing of Palantir Technologies Inc. had a dual-class structure that is viewed by many market participants as inconsistent with effective governance.[45]

Another commenter simply stated support for the proposed method of opening the transaction.[46]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2020–057 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposal should be approved or disapproved.[47] Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Exchange Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning the proposed rule change's consistency with the Exchange Act[48] and, in particular, with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[49]

The Commission has consistently recognized the importance of exchange listing standards. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[50]

The Exchange proposal states that for a Direct Listing with a Capital Raise, the Nasdaq Halt Cross on the first day of trading for the security would not proceed unless the price would be at or above the price that is 20% below the lowest price of the price range established by the issuer in its effective registration statement.[51] The proposal, however, has no maximum price above which the Nasdaq Halt Cross may not proceed.[52] Therefore, the proposed rule would permit issuers to sell, in the opening, the quantity of shares disclosed as offered in the prospectus included in the effective registration statement at a price that is above the price range disclosed in the effective registration statement. As there is no proposed upside limit on the price at which the opening auction could occur, it is not clear how the issuer could ensure that the issuer's Securities Act registration statement covers the full amount of securities to be sold in the offering.[53] Although issuers may file additional Securities Act registration statements to register additional securities needed to complete an offering, Section 5 of the Securities Act requires all of the related registration statements to be effective prior to the time of sale. To the extent Nasdaq's proposal may result in issuers needing to register additional securities beyond those included in an initial Securities Act registration statement, it is not apparent how an issuer could ensure that any additional required registration statement would be effective prior to the time of opening. Nor is it apparent how an issuer would be able to determine whether an additional Securities Act registration statement would be required before the opening occurs. Thus, we have concerns that Nasdaq's proposed rule may not provide adequate safeguards to ensure that issuers conducting a Direct Listing with a Capital Raise are able to comply with Section 5 of the Securities Act. The Exchange has not explained how this would be consistent with the investor protection requirements under Section 6(b)(5) and other relevant provisions of the Exchange Act.

In addition, the Exchange states that ''investors know the minimum price at which the company can sell shares in the offering.'' [54] The Exchange has not explained how investors would know that price, as the opening could occur if the price obtained in the Nasdaq Halt Cross is up to 20% below the price range disclosed by the issuer in its effective registration statement.

Further, the Exchange asserts, throughout its proposal, that the Nasdaq Halt Cross will not occur at a price lower than 20% below the low end of the issuer's disclosed price range, but it is unclear from the Exchange's rules that this would always be the case. Specifically, proposed Rule 4120(c)(9)(B) states that the security will not be released for trading unless ''the Expected Price is at or above the price that is 20% below the lowest price of the price range established'' in the effective registration statement.[55] Rule 4120(c)(8), however, appears to permit the underwriter or financial advisor to select price bands of up to $0.50 outside of the Expected Price, and provide that the Nasdaq system would view the price validation test as having been passed and permit the security to be released for trading, so long as the actual price calculated by the cross differs from the Expected Price by no more than the price band.[56] The Exchange has not

[44] *See* CII Letter, *supra* note 39, at 4.

[45] *See* CII Letter, *supra* note 39, at 5.

[46] *See* Letter from Rahul Chaudhary (October 13, 2020).

[47] 15 U.S.C. 78s(b)(2)(B).

[48] 15 U.S.C. 78f(b)(5).

[49] *Id.*

[50] The Commission has stated in approving exchange listing requirements that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to the financial markets and the investing public. In addition, once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained. *See, e.g.,* Securities Exchange Act Release Nos. 82627 (February 2, 2018), 83 FR 5650, 5653, n.53 (February 8, 2018) (SR–NYSE–2017–30) (''NYSE 2018 Order''); 81856 (October 11, 2017), 82 FR 48296, 48298 (October 17, 2017) (SR–NYSE–2017–31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR–NYSE–2017–11). The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Exchange Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. *See, e.g.,* NYSE 2018 Order, 83 FR at 5653, n.53; Securities Exchange Act Release Nos. 87648 (December 3, 2019), 84 FR 67308, 67314, n.42 (December 9, 2019) (SR–NASDAQ–2019–059); 88716 (April 21, 2020), 85 FR 23393, 23395, n.22 (April 27, 2020) (SR–NASDAQ–2020–001).

[51] *See supra* note 29 and accompanying text.

[52] *See supra* note 36 and accompanying text.

[53] Securities Act Rule 457 permits issuers to register securities either by specifying the quantity of shares registered, pursuant to Rule 457(a), or the proposed maximum aggregate offering amount, pursuant to Rule 457(o). For issuers that register securities based on the proposed maximum aggregate offering amount, it is not clear how the issuer could ensure that the total amount sold by the issuer in the opening auction does not exceed the amount of securities registered under the Securities Act.

[54] Notice, *supra* note 3, 85 FR at 59350.

[55] ''Expected Price'' under Rule 4120(c)(8)(A)(i) means the Current Reference Price at the time the Exchange receives notice that the security is ready to trade from an underwriter or financial advisor.

[56] Under Nasdaq Rule 4120(c)(8)(B) a financial advisor in a Direct Listing with a Capital Raise would select ''price bands'' that are defined as the

explained this apparent inconsistency in its rules.

Finally, although the Exchange has proposed that the CDL Order may not be cancelled or modified, the Exchange's rules appear to permit the issuer's financial advisor broad discretion to postpone the offering, which would effectively cancel the CDL Order. Specifically, Rule 4120(c)(8) provides that the validation needed to open the security only occurs after the Expected Price is displayed to the financial advisor and the financial advisor then approves proceeding. Rule 4120(c)(8) also permits the financial advisor, with the concurrence of Nasdaq, to determine at any point during the Nasdaq Halt Cross process up through the conclusion of the pre-launch period to postpone and reschedule the offering. The financial advisor therefore could effectively ''cancel'' the CDL Order, on behalf of the issuer, by deciding not to proceed with the offering for a variety of reasons, including being dissatisfied with the Expected Price. The Exchange has not explained why its rules appear to allow the financial advisor this discretion in the case of a Direct Listing with a Capital Raise, or why doing so would be consistent with Section 6(b)(5) and other relevant provisions of the Exchange Act.

The Commission notes that, under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [57] The description of a 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,[58] and any failure of an SRO to provide this information 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 applicable rules and regulations.[59]

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [60] to determine whether the proposal should be approved or disapproved.

V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written view of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[61]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by January 13, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 27, 2021.

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–2020–057 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–2020–057. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2020–057 and should be submitted on or before January 13, 2021. Rebuttal comments should be submitted by January 27, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[62]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28319 Filed 12–22–20; 8:45 am]

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amounts by which the actual price may not be lower, or higher, than the Expected Price. The rule states that available price bands, set by Nasdaq, shall include $0 but shall not be in excess of $0.50. Under the proposal, the financial advisor in a Direct Listing with a Capital Raise is not restricted from selecting price bands in accordance with Rule 4120(c)(8)(B).

[57] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[58] *See id.*

[59] *See id.*

[60] 15 U.S.C. 78s(b)(2)(B).

[61] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[62] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90711; File No. SR–MIAX–2020–38]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Chapter XVII, Audit Trail Compliance Rule

December 17, 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 December 11, 2020, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Chapter XVII, MIAX's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') [3] to be consistent with a conditional exemption granted by the Commission from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Allocation Exemption'').[4]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Chapter XVII to be consistent with the Allocation Exemption.[5] The Commission granted the relief conditioned upon the Participants' adoption of Compliance Rules that implement the alternative approach to reporting allocations to the Central Repository described in the Allocation Exemption (referred to as the ''Allocation Alternative'').

(1) Request for Exemptive Relief

Pursuant to Section 6.4(d)(ii)(A) of the CAT NMS Plan, each Participant must, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if the order is executed, in whole or in part: (1) An Allocation Report; [6] (2) the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and the (3) CAT-Order-ID of any contra-side order(s). Accordingly, the Exchange and the other Participants implemented Compliance Rules that require their Industry Members that are executing brokers to submit to the Central Repository, among other things, Allocation Reports and the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.

On August 27, 2020, the Participants submitted to the Commission a request for an exemption from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Exemption Request'').[7] In the Exemption Request, the Participants requested that they be permitted to implement the Allocation Alternative, which, as noted above, is an alternative approach to reporting allocations to the Central Repository. Under the Allocation Alternative, any Industry Member that performs an allocation to a client account would be required under the Compliance Rule to submit an Allocation Report to the Central Repository when shares/contracts are allocated to a client account regardless of whether the Industry Member was involved in executing the underlying order(s). Under the Allocation Alternative, a ''client account'' would be any account that is not owned or controlled by the Industry Member.

In addition, under the Allocation Alternative, an ''Allocation'' would be defined as: (1) The placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations). Pursuant to this definition and the proposed Allocation Alternative, an Industry Member that performs an Allocation to an account that is not a client account, such as proprietary accounts and events including step outs,[8] or correspondent flips,[9] would not be required to submit an Allocation Report to the Central Repository for that allocation, but could do so on a voluntary basis. Industry Members would be allowed to report Allocations to accounts other than client accounts; in that instance, such Allocations must be marked as Allocations to accounts other than client accounts.

(A) Executing Brokers and Allocation Reports

To implement the Allocation Alternative, the Participants requested exemptive relief from Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members that are executing brokers, who do not perform Allocations, to record and report to the Central Repository, if the order is executed, in whole or in part, an Allocation Report. Under the Allocation Alternative, when an Industry Member other than an executing broker (*e.g.,* a prime broker or clearing broker) performs an Allocation, that Industry Member would be required to submit the Allocation Report to the Central Repository. When an executing broker performs an Allocation for an order that is executed, in whole

[3] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012) (''Adopting Release''). Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[4] *See* Securities Exchange Act Rel. No. 90223 (October 19, 2020), 85 FR 67576 (October 23, 2020) (''Allocation Exemptive Order'').

[5] The Exchange notes that MIAX Chapter XVII is incorporated by reference into the rulebooks of MIAX PEARL, LLC (''PEARL'') and MIAX Emerald, LLC (''Emerald''). As such, the amendments to MIAX Chapter XVII proposed herein will also impact PEARL and Emerald Chapters XVII.

[6] Section 1.1 of the CAT NMS Plan defines an ''Allocation Report'' as ''a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.''

[7] *See* letter from the Participants to Vanessa Countryman, Secretary, Commission, dated August 27, 2020 (the ''Exemption Request'').

[8] ''A step-out allows a broker-dealer to allocate all or part of a client's position from a previously executed trade to the client's account at another broker-dealer. In other words, a step-out functions as a client's position transfer, rather than a trade; there is no exchange of shares and funds and no change in beneficial ownership.'' *See* FINRA, Trade Reporting Frequently Asked Questions, at Section 301, available at: *https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq.*

[9] Correspondent clearing flips are the movement of a position from an executing broker's account to a different account for clearance and settlement, allowing a broker-dealer to execute a trade through another broker-dealer and settle the trade in its own account. *See, e.g.,* The Depository Trust & Clearing Corporation, Correspondent Clearing, available at: *https://www.dtcc.com/clearing-services/equities-tradecapture/correspondent-clearing.*

or in part, the burden of submitting an Allocation Report to the Central Repository would remain with the executing broker under the Allocation Alternative. In certain circumstances this would result in multiple Allocation Reports—the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

The Participants stated that granting exemptive relief from submitting Allocation Reports for executing brokers who do not perform an Allocation, and requiring the Industry Member other than the executing broker that is performing the Allocation to submit such Allocation Reports, is consistent with the basic approach taken by the Commission in adopting Rule 613 under the Exchange Act. Specifically, the Participants stated that they believe that the Commission sought to require each broker-dealer and exchange that touches an order to record the required data with respect to actions it takes on the order.[10] Without the requested exemptive relief, executing brokers that do not perform Allocations would be required to submit Allocation Reports. In addition, the Participants stated that, because shares/contracts for every execution must be allocated to an account by the clearing broker in such circumstances, there would be no loss of information by shifting the reporting obligation from the executing broker to the clearing broker.

(B) Identity of Prime Broker

To implement the Allocation Alternative, the Participants also requested exemptive relief from Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if an order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the prime broker, if applicable. Currently, under the CAT NMS Plan, an Industry Member is required to report the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker in connection with the execution of an order, and such information would be part of the order's lifecycle, rather than in an Allocation Report that is not linked to the order's lifecycle.[11] Under the Allocation Alternative, the identity of the prime broker would be required to be reported by the clearing broker on the Allocation Report, and, in addition, the prime broker itself would be required to report the ultimate allocation, which the Participants believe would provide more complete information.

The Participants stated that associating a prime broker with a specific execution, as is currently required by the CAT NMS Plan, does not reflect how the allocation process works in practice as allocations to a prime broker are done post-trade and are performed by the clearing broker of the executing broker. The Participants also stated that with the implementation of the Allocation Alternative, it would be duplicative for the executing broker to separately identify the prime broker for allocation purposes.

The Participants stated that if a particular customer only has one prime broker, the identity of the prime broker can be obtained from the customer and account information through the DVP accounts for that customer that contain the identity of the prime broker. The Participants further stated that Allocation Reports related to those executions would reflect that shares/contracts were allocated to the single prime broker. The Participants believe that there is no loss of information through the implementation of the Allocation Alternative compared to what is required in the CAT NMS Plan and that this approach does not decrease the regulatory utility of the CAT for single prime broker circumstances.

In cases where a customer maintains relationships with multiple prime brokers, the Participants asserted that the executing broker will not have information at the time of the trade as to which particular prime broker may be allocated all or part of the execution. Under the Allocation Alternative, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts where the shares/contracts were ultimately allocated. To determine the prime broker for a customer, a regulatory user would query the customer and account database using the customer's CCID to obtain all DVP accounts for the CCID at broker-dealers. The Participants state that when a customer maintains relationships with multiple prime brokers, the customer typically has a separate DVP account with each prime broker, and the identities of those prime brokers can be obtained from the customer and account information.

(C) Additional Conditions to Exemptive Relief

In the Exemption Request, the Participants included certain additional conditions for the requested relief. Currently, the definition of Allocation Report in the CAT NMS Plan only refers to shares. To implement the Allocation Alternative, the Participants proposed to require that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Specifically, Participants would require the reporting of the following in each Allocation Report: (1) The FDID for the account receiving the allocation, including subaccounts; (2) the security that has been allocated; (3) the identifier of the firm reporting the allocation; (3) the price per share/contracts of shares/contracts allocated; (4) the side of shares/contracts allocated; (4) the number of shares/contracts allocated; and (5) the time of the allocation.

Furthermore, to implement the Allocation Alternative, the Participants proposed to require the following information on all Allocation Reports: (1) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (2) trade date; (3) settlement date; (4) IB/correspondent CRD Number (if applicable); (5) FDID of new order(s) (if available in the booking system); [12] (6) allocation instruction time (optional); (7) if the account meets the definition of institution under FINRA Rule 4512(c); [13] (8) type of allocation

[10] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45748 (August 1, 2012).

[11] The Participants did not request exemptive relief relating to the reporting of the SRO-Assigned Market Participant Identifier of clearing brokers.

[12] The Participants propose that for scenarios where the Industry Member responsible for reporting the Allocation has the FDID of the related new order(s) available, such FDID must be reported. This would include scenarios in which: (1) The FDID structure of the top account and subaccounts is known to the Industry Member responsible for reporting the Allocation(s); and (2) the FDID structure used by the IB/Correspondent when reporting new orders is known to the clearing firm reporting the related Allocations.

[13] FINRA Rule 4512(c) states the for purposes of the rule, the term ''institutional account'' means the account of: (1) A bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a

Continued

(allocation to a custody account, allocation to a DVP account, step out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (9) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (10) if an allocation was cancelled, a cancel flag, which indicates that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(2) Proposed Rule Changes To Implement Exemptive Relief

On October 29, 2020, the Commission granted the exemptive relief requested in the Exemption Request. The Commission granted the relief conditioned upon the adoption of Compliance Rules that implement the reporting requirements of the Allocation Alternative. Accordingly, the Exchange proposes the following changes to its Compliance Rule to implement the reporting requirements of the Allocation Alternative.

(A) Definition of Allocation

The Exchange proposes to add a definition of ''Allocation'' as new paragraph (c) to Rule 1701.[14] Proposed paragraph (c) of Rule 1701 would define an ''Allocation'' to mean ''(1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations).'' The SEC stated in the Allocation Exemption that this definition of ''Allocation'' is reasonable.

(B) Definition of Allocation Report

The Exchange proposes to amend the definition of ''Allocation Report'' set forth in Exchange Rule 1701(c) to reflect the requirements of the Allocation Exemption. Exchange Rule 1701(c) defines the term ''Allocation Report'' to mean:

a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

The Exchange proposes to amend this definition in two ways: (1) Applying the requirements for Allocation Reports to contracts in addition to shares; and (2) requiring the reporting of additional elements for the Allocation Report.

(i) Shares and Contracts

The requirements for Allocation Reports apply only to shares, as the definition of ''Allocation Report'' in Rule 1701(c) refers to shares, not contracts. In the Allocation Exemption, the Commission stated that applying the requirements for Allocation Reports to contracts in addition to shares is appropriate because CAT reporting requirements apply to both options and equities. Accordingly, the SEC stated that the Participants would be required to modify their Compliance Rules such that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Therefore, the Exchange proposes to amend Rule 1701(c) (to be renumbered as Rule 1701(d)) to apply to contracts, as well as shares. Specifically, the Exchange proposes to add references to contracts to the definition of ''Allocation Report'' to the following phrases: ''the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/contracts are allocated,'' ''the price per share/contract of shares/contracts allocated,'' ''the side of shares/contracts allocated,'' and ''the number of shares/contracts allocated to each account.''

(ii) Additional Elements

The Commission also conditioned the Allocation Exemption on the Participants amending their Compliance Rules to require the ten additional elements in Allocation Reports described above. Accordingly, the Exchange proposes to require these additional elements in Allocation Reports. Specifically, the Exchange proposes to amend the definition of ''Allocation Report'' in Rule 1701(c) (to be renumbered as Rule 1701(d)) to include the following elements, in addition to those elements currently required under the CAT NMS Plan:

(6) the time of the allocation; (7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(C) Allocation Reports

(i) Executing Brokers That Do Not Perform Allocations

The Commission granted the Participants an exemption from the requirement that the Participants, through their Compliance Rule, require executing brokers that do not perform Allocations to submit Allocation Reports. The Commission stated that it understands that executing brokers that are not self-clearing do not perform allocations themselves, and such allocations are handled by prime and/or clearing brokers, and these executing brokers therefore do not possess the requisite information to provide Allocation Reports. Accordingly, the Exchange proposes to eliminate Rule 1703(a)(2)(A)(i),[15] which requires an Industry Member to record and report to the Central Repository an Allocation Report if the order is executed, in whole or in part, and to replace this provision with proposed Rule 1703(a)(2)(F) as discussed below.

(ii) Industry Members That Perform Allocations

The Allocation Exemption requires the Participants to amend their Compliance Rules to require Industry Members to provide Allocation Reports to the Central Repository any time they perform Allocations to a client account, whether or not the Industry Member was the executing broker for the trades. Accordingly, the Commission conditioned the Allocation Exemption on the Participants adopting Compliance Rules that require prime and/or clearing brokers to submit Allocation Reports when such brokers

natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

[14] The Exchange proposes to renumber the definitions in Rule 1701 to accommodate the addition of this new definition of ''Allocation'' and the new definition of ''Client Account'' discussed below.

[15] The Exchange proposes to renumber Rule 1703(a)(2)(A)(ii) and (iii) as Rule 1703(a)(2)(A)(i) and (ii) in light of the proposed deletion of Rule 1703(a)(2)(A)(i).

perform allocations, in addition to requiring executing brokers that perform allocations to submit Allocation Reports. The Commission determined that such exemptive relief would improve efficiency and reduce the costs and burdens of reporting allocations for Industry Members because the reporting obligation would belong to the Industry Member with the requisite information, and executing brokers that do not have the information required on an Allocation Report would not have to develop the infrastructure and processes required to obtain, store and report the information. The Commission stated that this exemptive relief should not reduce the regulatory utility of the CAT because an Allocation Report would still be submitted for each executed trade allocated to a client account, which in certain circumstances could still result in multiple Allocation Reports,[16] just not necessarily by the executing broker.

In accordance with the Allocation Exemption, the Exchange proposes to add proposed Rule 1703(a)(2)(F) to the Compliance Rule. Proposed Rule 1703(a)(2)(F) would require Industry Members to record and report to the Central Repository ''an Allocation Report any time the Industry Member performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.''

(iii) Client Accounts

In the Allocation Exemption, the Commission also exempted the Participants from the requirement that they amend their Compliance Rules to require Industry Members to report Allocations for accounts other than client accounts. The Commission believes that allocations to client accounts, and not allocations to proprietary accounts or events such as step-outs and correspondent flips, provide regulators the necessary information to detect abuses in the allocation process because it would provide regulators with detailed information regarding the fulfillment of orders submitted by clients, while reducing reporting burdens on broker-dealers. For example, Allocation Reports would be required for allocations to registered investment advisor and money manager accounts. The Commission further believes that the proposed approach should facilitate regulators' ability to distinguish Allocation Reports relating to allocations to client accounts from other Allocation Reports because Allocations to accounts other than client accounts would have to be identified as such. This approach could reduce the time CAT Reporters expend to comply with CAT reporting requirements and lower costs by allowing broker-dealers to use existing business practices.

To clarify that an Industry Member must report an Allocation Report solely for Allocations to a client account, proposed Rule 1703(a)(2)(F) specifically references ''Client Accounts,'' as discussed above. In addition, the Exchange proposes to add a definition of ''Client Account'' as proposed Rule 1701(l). Proposed Rule 1701(l) would define a ''Client Account'' to mean ''for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.''

(D) Identity of Prime Broker

The Exchange also proposes to amend Rule 1703(a)(2)(A)(ii) to eliminate the requirement for executing brokers to record and report the SRO-Assigned Market Participant Identifier of the prime broker. Rule 1703(a)(2)(A)(ii) states that each Industry Member is required to record and report to the Central Repository, if the order is executed, in whole or in part, the ''SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.'' The Exchange proposes to delete the phrase ''or prime broker'' from this provision. Accordingly, each Industry Member that is an executing broker would no longer be required to report the SRO-Assigned Market Participant Identifier of the prime broker.

As the Commission noted in the Allocation Exemption, exempting the Participants from the requirement that they, through their Compliance Rules, require executing brokers to provide the SRO-Assigned Market Participant Identifier of the prime broker is appropriate because, as stated by the Participants, allocations are done on a post-trade basis and the executing broker will not have the requisite information at the time of the trade. Because an executing broker, in certain circumstances, does not have this information at the time of the trade, this relief relieves executing brokers of the burdens and costs of developing infrastructure and processes to obtain this information in order to meet the contemporaneous reporting requirements of the CAT NMS Plan.

As the Commission noted in the Allocation Exemption, although executing brokers would no longer be required to provide the prime broker information, regulators will still be able to determine the prime broker(s) associated with orders through querying the customer and account information database. If an executing broker has only one prime broker, the identity of the prime broker can be obtained from the customer and account information associated with the executing broker. For customers with multiple prime brokers, the identity of the prime brokers can be obtained from the customer and account information which will list the prime broker, if there is one, that is associated with each account.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[17] which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,[18] which requires that MIAX rules not impose any burden on competition that is not necessary or appropriate.

The Exchange believes that this proposal is consistent with the Act because it is consistent with, and implements, the Allocation Exemption, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [19] To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

[16] As noted above, under the Allocation Alternative, for certain executions, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

[17] 15 U.S.C. 78f(b)(6).

[18] 15 U.S.C. 78f(b)(8).

[19] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule changes are consistent with the Allocation Exemption, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the proposed rule changes will apply equally to all Industry Members. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing and does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [20] and Rule 19b–4(f)(6) [21] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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–2020–38 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–2020–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2020–38, and should be submitted on or before January 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28316 Filed 12–22–20; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90702; File No. 4–529]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective an Amended Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and Nasdaq ISE, LLC

December 17, 2020.

Notice is hereby given that the Securities and Exchange Commission (''Commission'') has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] approving and declaring effective an amendment to the plan for allocating regulatory responsibility (''Plan'') filed on November 19, 2020, pursuant to Rule 17d–2 of the Act,[2] by the Financial Industry Regulatory Authority, Inc. (''FINRA'') and Nasdaq ISE, LLC (''ISE'') (collectively, ''Participating Organizations'' or ''parties''). This agreement amends and restates the agreement entered into between FINRA and International Securities Exchange, LLC on December 16, 2006, entitled ''Agreement Between Financial Industry Regulatory Authority, Inc. and International Securities Exchange, LLC Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934,'' and any subsequent amendments thereafter.

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

17(d)[4] or Section 19(g)(2)[5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and opportunity for comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On February 27, 2007, the Commission declared effective the Plan entered into between FINRA and ISE for allocating regulatory responsibility pursuant to Rule 17d–2.[11] The Plan is intended to reduce regulatory duplication for firms that are common members of FINRA and ISE by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations that are common among them. Included in the Plan is an exhibit that lists every ISE rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to ISE members that are also members of FINRA and the associated persons therewith (''Certification'').

III. Proposed Amendment to the Plan

On November 19, 2020, the parties submitted a proposed amendment to the Plan (''Amended Plan''). The primary purpose of the Amended Plan is to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e–4 under the Act and to reflect the name change of International Securities Exchange, LLC to Nasdaq ISE, LLC. The text of the proposed Amended Plan is as follows (additions are *italicized;* deletions are [bracketed]):

* * * * *

AGREEMENT BETWEEN [NASD]*FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.* AND [INTERNATIONAL SECURITIES EXCHANGE]*NASDAQ ISE,* LLC PURSUANT TO RULE 17d–2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, by and between the [National Association of Securities Dealers, Inc. (''NASD'')]*Financial Industry Regulatory Authority, Inc. (''FINRA'')* and the [International Securities Exchange]*Nasdaq ISE,* LLC (''ISE''), is made this [20th] *16th* day of [December] *November,* 20[06]*20* (the ''Agreement''), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 17d–2 thereunder which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. [NASD]*FINRA* and ISE may be referred to individually as a ''party'' and together as the ''parties.''

This Agreement amends and restates the agreement entered into between the parties on April 3, 2000 and amended on April 27, 2000 *and December 20, 2006,* entitled ''Agreement Between the National Association of Securities Dealers, Inc., NASD [Regulation, Inc.] and the International Securities Exchange LLC Pursuant to Section 17(d) and Rule 17d–2,'' and any subsequent amendments thereafter.

Whereas, [NASD]*FINRA* and ISE desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, [NASD]*FINRA* and ISE desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d–2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, [NASD]*FINRA* and ISE hereby agree as follows:

1. *Definitions.* Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) ''*ISE Rules*'' or ''[*NASD]FINRA Rules*'' shall mean the rules of the ISE or [NASD]*FINRA,* respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) ''*Common Rules*'' shall mean the ISE Rules that are substantially similar to the applicable [NASD]*FINRA* Rules in that examination for compliance with such rules would not require [NASD]*FINRA* to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member's activity, conduct, or output in relation to such rule. *Common Rules shall not include any provisions regarding (i)*

[4] 15 U.S.C. 78q(d).

[5] 15 U.S.C. 78s(g)(2).

[6] 15 U.S.C. 78q(d)(1).

[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[11] *See* Securities Exchange Act Release No. 55367 (February 27, 2007), 72 FR 9983 (March 6, 2007).

notice, reporting or any other filings made directly to or from ISE, (ii) incorporation by reference of ISE Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority by ISE, (iv) prior written approval of ISE and (v) payment of fees or fines to ISE.

(c) ''*Dual Members*'' shall mean those ISE members that are also members of [NASD]*FINRA* and the associated persons therewith.

(d) ''*Effective Date*'' shall have the meaning set forth in paragraph 14.

(e) ''*Enforcement Responsibilities*'' shall mean the conduct of appropriate proceedings, in accordance with the [NASD]*FINRA* Code of Procedure (the Rule 9000 Series) and other applicable [NASD]*FINRA* procedural rules, to determine whether violations of pertinent laws, rules or regulations have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under the [NASD]*FINRA's* Code of Procedure and sanctions guidelines.

(f) ''*Regulatory Responsibilities*'' shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto. *The term ''Regulatory Responsibilities'' shall also include the surveillance, investigation and Enforcement Responsibilities relating to compliance by Common Members with Rule 14e–4 of the Securities Exchange Act (''Rule 14e–4''), with a focus on the standardized call option provision of Rule 14e–4(a)(1)(ii)(D).*

2. *Regulatory and Enforcement Responsibilities.* [NASD]*FINRA* shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as *Exhibit 1* to this Agreement and made part hereof, ISE furnished [NASD]*FINRA* with a current list of Common Rules and certified to [NASD]*FINRA* that such rules are substantially similar to the corresponding [NASD]*FINRA* rule (the ''Certification''). [NASD]*FINRA* hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of ISE or [NASD]*FINRA,* ISE shall submit an updated list of Common Rules to [NASD]*FINRA* for review which shall add ISE rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete ISE rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be ISE rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, [NASD]*FINRA* shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term ''Regulatory Responsibilities'' does not include, and ISE shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following:

(a) Surveillance and enforcement with respect to trading activities or practices involving ISE's own marketplace, including without limitation ISE's rules relating to the rights and obligations of market makers;

(b) registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) any ISE Rules that are not Common Rules, except for ISE Rules for any ISE member that operates as a facility (as defined in Section 3(a)(2) of the Exchange Act), acts as an outbound router for the ISE and is a member of [NASD]*FINRA* (''Router Member'') as provided in paragraph 6. As of the date of this Agreement, ISE Route LLC is the only Router Member.

3. *Dual Members.* Prior to the Effective Date, ISE shall furnish [NASD]*FINRA* with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. *No Charge.* There shall be no charge to ISE by [NASD]*FINRA* for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. [NASD]*FINRA* shall provide ISE with ninety (90) days advance written notice in the event [NASD]*FINRA* decides to impose any charges to ISE for performing the Regulatory Responsibilities under this Agreement. If [NASD]*FINRA* determines to impose a charge, ISE shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that [NASD]*FINRA's* Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. *Reassignment of Regulatory Responsibilities.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission, or industry agreement, restructuring the regulatory framework of the securities industry or reassigning Regulatory Responsibilities between self-regulatory organizations. To the extent such action is inconsistent with this Agreement, such action shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

6. *Notification of Violations.* In the event that [NASD]*FINRA* becomes aware of apparent violations of any ISE Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, [NASD]*FINRA* shall notify ISE of those apparent violations for such response as ISE deems appropriate. Apparent violations of all other applicable rules, including violations of the Common Rules, various securities acts, and rules and regulations thereunder, shall be processed by, and enforcement proceedings in respect thereto shall be conducted by [NASD]*FINRA* as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on the ISE, ISE may in its discretion assume concurrent jurisdiction and responsibility. With respect to apparent violations of any ISE Rules by any Router Member, [NASD]*FINRA* shall not make referrals to ISE pursuant to this paragraph 6. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, [NASD]*FINRA* as provided in this Agreement. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. *Continued Assistance.* [NASD]*FINRA* shall make available to ISE all information obtained by [NASD]*FINRA* in the performance by it of the Regulatory Responsibilities hereunder in respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, [NASD]*FINRA* shall furnish ISE any information it obtains about Dual Members which reflects adversely on their financial condition. It is understood that such information is of an extremely sensitive nature and, accordingly, ISE acknowledges and agrees to take all reasonable steps to maintain its confidentiality. ISE shall make available to [NASD]*FINRA* any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates

possible violations of applicable laws, rules or regulations by such firms.

8. *Dual Member Applications.*

(a) Dual Members subject to this Agreement shall be required to submit, and [NASD]*FINRA* shall be responsible for processing and acting upon all applications submitted on behalf of allied persons, partners, officers, registered personnel and any other person required to be approved by the rules of both ISE and [NASD]*FINRA* or associated with Dual Members thereof. Upon request, [NASD]*FINRA* shall advise ISE of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the rules of both ISE and [NASD]*FINRA.*

(b) Dual Members shall be required to send to [NASD]*FINRA* all letters, termination notices or other material respecting the individuals listed in paragraph 8(a).

(c) When as a result of processing such submissions [NASD]*FINRA* becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, [NASD]*FINRA* shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep ISE advised of its actions in this regard for such subsequent proceedings as ISE may initiate.

(d) Notwithstanding the foregoing, [NASD]*FINRA* shall not review the membership application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or a person associated therewith or other persons required to register or qualify by examination: (i) Meets the ISE requirements for general membership or for specified categories of membership or participation in the ISE, such as (A) Primary Market Maker Membership (''PMM''); (B) Competitive Market Maker Membership (''CMM''); (C) Electronic Access Membership (''EAM'') (or any similar type of ISE membership or participation that is created after this Agreement is executed); or (ii) meets the ISE requirements to be associated with, or employed by, an ISE member or participant in any capacity, such a Designated Trading Representative (''DTR'') (or any similar type of participation, employment category or title, or associate-person category or class that is created after this Agreement is executed). [NASD]*FINRA* shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 8(d), including termination or limitation on activities, of a member or a participant of the ISE, or a person associated with, or requesting association with, a member or participant of the ISE.

9. *Branch Office Information.* [NASD]*FINRA* shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Dual Members and any other applications required of Dual Members with respect to the Common Rules as they may be amended from time to time. [NASD]*FINRA* shall advise ISE monthly of the opening, address change and termination of branch and main offices of Dual Members and the names of such branch office managers.

10. *Customer Complaints.* ISE shall forward to [NASD]*FINRA* copies of all customer complaints involving Dual Members received by ISE relating to [NASD]*FINRA's* Regulatory Responsibilities under this Agreement. It shall be [NASD]*FINRA's* responsibility to review and take appropriate action in respect to such complaints.

11. *Advertising.* [NASD]*FINRA* shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with [NASD]*FINRA* in accordance with [NASD]*FINRA's* filing procedures and is accompanied with any applicable filing fees set forth in [NASD]*FINRA* Rules. Such review shall be made in accordance with then applicable [NASD]*FINRA* rules and interpretations. The advertising of Dual Members shall be subject only to compliance with appropriate [NASD]*FINRA* rules and interpretations.

12. *No Restrictions on Regulatory Action.* Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

13. *Termination.* This Agreement may be terminated by ISE or [NASD]*FINRA* at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 4.

14. *Effective Date.* This Agreement shall be effective upon approval of the Commission.

15. *Arbitration.* In the event of a dispute between the parties as to the operation of this Agreement, ISE and [NASD]*FINRA* hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

16. *Separate Agreement.* This Agreement is wholly separate from *(1)* the multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act between the [American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange LLC, the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.] *NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, BOX Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC* involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants entered into on [January 14, 2004]*February 12, 2019,* and as may be amended from time to time *or (2) the multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act among NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, BOX Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC approved by the Commission on February 11, 2019 involving options-related market surveillance matters and such agreements as may be amended from time to time.*

17. *Notification of Members.* ISE and [NASD]*FINRA* shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

18. *Amendment.* This Agreement may be amended in writing duly approved

by each party. All such amendments must be filed with and approved by the Commission before they become effective.

19. *Limitation of Liability.* Neither [NASD]*FINRA* nor ISE nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of [NASD]*FINRA* or ISE and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by [NASD]*FINRA* or ISE with respect to any of the responsibilities to be performed by each of them hereunder.

20. *Relief from Responsibility.* Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d–2 thereunder, [NASD]*FINRA* and ISE join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve ISE of any and all responsibilities with respect to matters allocated to [NASD]*FINRA* pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

In witness whereof, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

[NATIONAL ASSOCIATION OF SECURITIES DEALERS]*FINANCIAL INDUSTRY REGULATORY AUTHORITY,* INC.

By _____
Name:
Title:

[INTERNATIONAL SECURITIES EXCHANGE]*NASDAQ ISE,* LLC

By _____
Name:
Title:

Note: The entire existing table of rules should be deleted and replaced with the table below.

EXHIBIT 1

ISE CERTIFICATION OF COMMON RULES

ISE hereby certifies that the requirements contained in the rules listed below for ISE are identical to, or substantially similar to, the comparable [NASD]*FINRA* rules identified.

 # Common Rules shall not include provisions regarding (i) notice, reporting or any other filings made directly to or from ISE, (ii) incorporations by reference to other ISE Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority, by ISE, (iv) prior written approval of ISE, and (v) payment of fees or fines to ISE.

ISE RULE(S)	*FINRA RULE(S)*
General 3, Section 3(b)—Persons Associated with Members; General 4—Nasdaq Stock Market General 4, Rule 1.1250 Electronic Filing Requirements for Uniform Forms incorporated by reference#.	*FINRA Rule 1010 Electronic Filing Requirements for Uniform Forms; FINRA By-Laws Article IV, Sec. 1(c) Application for Membership; FINRA By-Laws, Article V, Section 1 Qualification Requirements; FINRA By-Laws, Article V, Sec. 2 Application for Registration; and FINRA By-Laws Article V, Section 3 Notification by Member to the Corporation and Associated Person of Termination; Amendments to Notification.*
General 4—Nasdaq Stock Market General 4, Section 1.1240 Continuing Education Requirements incorporated by reference#.	*FINRA Rule 1240 Continuing Education Requirements.*
Options 9, Section 1 Just and Equitable Principles of Trade[1]	*FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade; FINRA Rule 0140(a) Applicability.*
Options 9, Section 9(a)(1) Prevention of the Misuse of Material, Nonpublic Information#.	*Section 15(g) of the Securities Exchange Act of 1934, and FINRA Rule 3110(b)(1), (d) Supervision.*
Options 9, Section 10 Disciplinary Action by Other Organizations#	*FINRA Rule 4530(a)(1)(A) and (2) Reporting Requirements; FINRA By-Laws, Article V, Section 2(c); and FINRA By-Laws, Article V, Section 3.*
Options 9, Section 21 Anti-Money Laundering Compliance Program# ...	*FINRA Rule 3310 Anti-Money Laundering Compliance Program.*
Options 10, Section 12 Statements of Financial Condition to Customers	*Rule 17a–5 of the Securities Exchange Act of 1934.*
Options 10, Section 19 Transfer of Accounts#	*FINRA Rule 11870 Customer Account Transfer Contracts.*
Options 10, Section 23 Telemarketing	*FINRA Rule 3230 Telemarketing.*
Options 6E, Section 1 Maintenance, Retention, and Furnishing of Books, Records and Other Information#.	*FINRA Rule 4511(a) Books and Records—Requirements.*

[1] FINRA shall not have Regulatory Responsibilities with respect to the Supplementary Material to ISE Options 9, Section 1. Responsibility for such shall remain with ISE.

In addition, the following provisions shall be part of this 17d–2 Agreement:

SEA Rule 14e–4—Prohibited Transactions in Connection with Partial Tender Offers^

^FINRA shall perform surveillance, investigation, and Enforcement Responsibilities for SEA Rule 14e–4(a)1)(ii)(D).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 4–529 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 4–529. 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

plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of FINRA and ISE. 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 4–529 and should be submitted on or before January 13, 2021.

V. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act [12] and Rule 17d–2(c) thereunder [13] in that the proposed Amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by both FINRA and ISE. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because ISE and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, ISE and FINRA have allocated regulatory responsibility for those ISE rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Common Member's activity, conduct, or output in relation to such rule. In addition, under the Amended Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Amended Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Amended Plan, ISE will review the Certification at least annually, or more frequently if required by changes in either the rules of ISE or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add ISE rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete ISE rules included in the then-current list of Common Rules that no longer qualify as common rules; and confirm that the remaining rules on the list of Common Rules continue to be ISE rules that qualify as common rules.[14] FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Amended Plan. Under the Amended Plan, ISE also will provide FINRA with a current list of Common Members and will update the list no less frequently than once each quarter.[15] The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all ISE rules that are substantially similar to the rules of FINRA for Common Members of ISE and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Amended Plan, provided that the Parties are only adding to, deleting from, or confirming changes to ISE rules in the Certification in conformance with the definition of Common Rules provided in the Amended Plan. However, should the Parties decide to add a ISE rule to the Certification that is not substantially similar to a FINRA rule; delete a ISE rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a ISE rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan, which must be filed with the Commission pursuant to Rule 17d–2 under the Act.[16]

Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e–4 under the Act, to reflect the name change of International Securities Exchange, LLC to Nasdaq ISE, LLC. By declaring it effective today, the Amended Plan can become effective and be implemented without undue delay. The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.[17] Furthermore, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4–529. The Parties shall notify all members affected by the Amended Plan of their rights and obligations under the Amended Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Amended Plan in File No. 4–529, between the FINRA and ISE, filed pursuant to Rule 17d–2 under the Act, hereby is approved and declared effective.

It is further ordered that ISE is relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4–529.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28307 Filed 12–22–20; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78q(d).

[13] 17 CFR 240.17d–2(c).

[14] *See* paragraph 2 of the Amended Plan.

[15] *See* paragraph 3 of the Amended Plan.

[16] The addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Amended Plan for examining, and enforcing compliance by, Common Members, also would constitute an amendment to the Amended Plan.

[17] *See supra* note 11 (citing to Securities Exchange Act Release No. 55367).

[18] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90703; File No. 4–697]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective an Amended Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and Nasdaq MRX, LLC

December 17, 2020.

Notice is hereby given that the Securities and Exchange Commission (''Commission'') has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] approving and declaring effective an amendment to the plan for allocating regulatory responsibility (''Plan'') filed on November 19, 2020, pursuant to Rule 17d–2 of the Act,[2] by the Financial Industry Regulatory Authority, Inc. (''FINRA'') and Nasdaq MRX, LLC (''MRX'') (collectively, ''Participating Organizations'' or ''parties''). This agreement amends and restates the agreement entered into between FINRA and ISE Mercury, LLC (n/k/a MRX) on February 8, 2016, entitled ''Agreement Between Financial Industry Regulatory Authority, Inc. and ISE Mercury, LLC Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934,'' and any subsequent amendments thereafter.

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)[4] or Section 19(g)(2)[5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d).

[5] 15 U.S.C. 78s(g)(2).

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and opportunity for comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

[6] 15 U.S.C. 78q(d)(1).

[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

II. The Plan

On March 8, 2016, the Commission declared effective the Plan entered into between FINRA and MRX for allocating regulatory responsibility pursuant to Rule 17d–2.[11] The Plan is intended to reduce regulatory duplication for firms that are common members of FINRA and MRX by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations that are common among them. Included in the Plan is an exhibit that lists every MRX rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to MRX members that are also members of FINRA and the associated persons therewith (''Certification'').

III. Proposed Amendment to the Plan

On November 19, 2020, the parties submitted a proposed amendment to the Plan (''Amended Plan''). The primary purpose of the Amended Plan is to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e–4 under the Act and to reflect the name change of ISE Mercury, LLC to Nasdaq MRX, LLC. The text of the proposed Amended Plan is as follows (additions are italicized; deletions are [bracketed]):

* * * * *

AGREEMENT BETWEEN

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. AND [ISE MERCURY]*NASDAQ MRX,* LLC PURSUANT TO RULE 17d–2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, by and between Financial Industry Regulatory Authority, Inc. (''FINRA'') and [ISE Mercury]*Nasdaq MRX,* LLC (''[ISE Mercury]*MRX*''), is made this [8th]*16th* day of [February]*November,* 20[16]*20* (the ''Agreement''), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 17d–2 thereunder which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and [ISE Mercury]*MRX* may be referred to

[11] *See* Securities Exchange Act Release No. 77321 (March 8, 2016), 81 FR 13434 (March 14, 2016).

individually as a ''party'' and together as the ''parties.''

This Agreement amends and restates this agreement entered into between FINRA and MRX on February 8, 2016, entitled ''Agreement between Financial Industry Regulatory Authority, Inc. and ISE Mercury, LLC Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934,'' and any subsequent amendments thereafter.

Whereas, FINRA and [ISE Mercury]*MRX* desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, FINRA and [ISE Mercury]*MRX* desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d–2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, FINRA and [ISE Mercury]*MRX* hereby agree as follows:

1. Definitions. Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) ''*[ISE Mercury]MRX Rules*'' or ''*FINRA Rules*'' shall mean the rules of [ISE Mercury]*MRX* or FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) ''*Common Rules*'' shall mean the [ISE Mercury]*MRX* Rules that are substantially similar to the applicable FINRA Rules set forth in *Exhibit 1* in that examination for compliance with such rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member's activity, conduct, or output in relation to such rule. *Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from MRX, (ii) incorporation by reference of MRX Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority by MRX, (iv) prior written approval of MRX and (v) payment of fees or fines to MRX.*

(c) ''*Dual Members*'' shall mean those [ISE Mercury]*MRX* members that are also members of FINRA and the associated persons therewith.

(d) ''*Effective Date*'' shall have the meaning set forth in paragraph 13.

(e) ''*Enforcement Responsibilities*'' shall mean the conduct of appropriate proceedings, in accordance with the FINRA Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under the FINRA's Code of Procedure and sanctions guidelines.

(f) ''*Regulatory Responsibilities*'' shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto. *The term ''Regulatory Responsibilities'' shall also include the surveillance, investigation and Enforcement Responsibilities relating to compliance by Common Members with Rule 14e–4 of the Securities Exchange Act (''Rule 14e–4''), with a focus on the standardized call option provision of Rule 14e–4(a)(1)(ii)(D).*

2. Regulatory and Enforcement Responsibilities. FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as *Exhibit 1* to this Agreement and made part hereof, [ISE Mercury]*MRX* furnished FINRA with a current list of Common Rules and certified to FINRA that such rules are substantially similar to the corresponding FINRA Rule (the ''Certification''). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the [ISE Mercury]*MRX* Rules or FINRA Rules, [ISE Mercury]*MRX* shall submit an updated list of Common Rules to FINRA for review which shall add [ISE Mercury]*MRX* Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete [ISE Mercury]*MRX* Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be [ISE Mercury]*MRX* Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term ''Regulatory Responsibilities'' does not include, and [ISE Mercury]*MRX* shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following (collectively, the ''Retained Responsibilities''):

(a) surveillance and enforcement with respect to trading activities or practices involving [ISE Mercury's]*MRX's* own marketplaces, including without limitation [ISE Mercury's]*MRX's* Rules relating to the rights and obligations of market makers;

(b) registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) any [ISE Mercury]*MRX* Rules that are not Common Rules.

3. Dual Members. Prior to the Effective Date, [ISE Mercury]*MRX* shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. No Charge. There shall be no charge to [ISE Mercury]*MRX* by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide [ISE Mercury]*MRX* with ninety (90) days advance written notice in the event FINRA decides to impose any charges to [ISE Mercury]*MRX* for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, [ISE Mercury]*MRX* shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. Reassignment of Regulatory Responsibilities. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission. To the extent such action is inconsistent with this Agreement, such action shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

6. Notification of Violations. In the event that FINRA becomes aware of apparent violations of any [ISE Mercury]*MRX* Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify [ISE Mercury]*MRX* of those apparent violations for such response as [ISE Mercury]*MRX* deems appropriate. In the event [ISE Mercury]*MRX* becomes aware of apparent violations of the Common Rules, discovered pursuant to the performance of the Retained Responsibilities, [ISE Mercury]*MRX* shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. Apparent violations of all the Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on [ISE Mercury]*MRX,* [ISE Mercury]*MRX* may in its discretion assume concurrent jurisdiction and responsibility. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. Continued Assistance. FINRA shall make available to [ISE Mercury]*MRX* all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder in respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish [ISE Mercury]*MRX* any information it obtains about Dual Members which reflects adversely on their financial condition. It is understood that such information is of an extremely sensitive nature and, accordingly, [ISE Mercury]*MRX* acknowledges and agrees to take all reasonable steps to maintain its confidentiality. [ISE Mercury]*MRX* shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

8. Dual Member Applications.

(a) Dual Members subject to this Agreement shall be required to submit, and FINRA shall be responsible for processing and acting upon all applications submitted on behalf of allied persons, partners, officers, registered personnel and any other person required to be approved by the [ISE Mercury]*MRX* Rules and FINRA Rules or associated with Dual Members thereof. Upon request, FINRA shall advise [ISE Mercury]*MRX* of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the [ISE Mercury]*MRX* Rules and FINRA Rules.

(b) Dual Members shall be required to send to FINRA all letters, termination notices or other material respecting the individuals listed in paragraph 8(a).

(c) When as a result of processing such submissions FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep [ISE Mercury]*MRX* advised of its actions in this regard for such subsequent proceedings as [ISE Mercury]*MRX* may initiate.

(d) Notwithstanding the foregoing, FINRA shall not review the membership application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or a person associated therewith or other persons required to register or qualify by examination: (i) meets the [ISE Mercury]*MRX* requirements for general membership or for specified categories of membership or participation in [ISE Mercury]*MRX,* such as (A) Primary Market Maker Membership (''PMM''); (B) Competitive Market Maker Membership (''CMM''); (C) Electronic Access Membership (''EAM'') (or any similar type of [ISE Mercury]*MRX* membership or participation that is created after this Agreement is executed); or (ii) meets the [ISE Mercury]*MRX* requirements to be associated with, or employed by, a [ISE Mercury]*MRX* member or participant in any capacity, such a Designated Trading Representative (''DTR'') (or any similar type of participation, employment category or title, or associate-person category or class that is created after this Agreement is executed). FINRA shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 8(d), including termination or limitation on activities, of a member or a participant of [ISE Mercury]*MRX,* or a person associated with, or requesting association with, a member or participant of [ISE Mercury]*MRX.*

9. Branch Office Information. FINRA shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Dual Members and any other applications required of Dual Members with respect to the Common Rules as they may be amended from time to time. Upon request, FINRA shall advise [ISE Mercury]*MRX* of the opening, address change and termination of branch and main offices of Dual Members and the names of such branch office managers.

10. Customer Complaints. [ISE Mercury]*MRX* shall forward to FINRA copies of all customer complaints involving Dual Members received by [ISE Mercury]*MRX* relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

11. No Restrictions on Regulatory Action. Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. Termination. This Agreement may be terminated by [ISE Mercury]*MRX* or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party (or such shorter time as may be agreed by the parties), except as provided in paragraph 4.

13. Effective Date. This Agreement shall be effective upon approval of the Commission.

14. Arbitration. In the event of a dispute between the parties as to the operation of this Agreement, [ISE Mercury]*MRX* and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

15. Separate Agreement. This Agreement is wholly separate from (1) the multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act among [BATS Exchange, Inc., BOX Options Exchange, LLC, the Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, the New York Stock Exchange, LLC, the NYSE MKT LLC, the NYSE Arca Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., and the NASDAQ OMX PHLX,

LLC] *NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, BOX Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC* approved by the Commission on [December 5, 2012]*February 12, 2019* involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants or (2) the multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act among [NYSE MKT LLC, BATS Exchange, Inc., BOX Options Exchange, LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, International Securities Exchange LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc. and Miami International Securities Exchange, LLC,] *NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, BOX Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC* approved by the Commission on [December 5, 2012]*February 11, 2019* involving options-related market surveillance matters and such agreements as may be amended from time to time.

16. Notification of Members. [ISE Mercury]*MRX* and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

17. Amendment. This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

18. Limitation of Liability. Neither FINRA nor [ISE Mercury]*MRX* nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or [ISE Mercury]*MRX* and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or [ISE Mercury]*MRX* with respect to any of the responsibilities to be performed by each of them hereunder.

19. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

20. Relief From Responsibility. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d–2 thereunder, FINRA and [ISE Mercury]*MRX* join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve [ISE Mercury]*MRX* of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

In witness whereof, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

By _____
Name:
Title:

[ISE MERCURY]*NASDAQ MRX,* LLC

By _____
Name:
Title:

Note: The entire existing table of rules should be deleted and replaced with the table below.

EXHIBIT 1

[ISE MERCURY]*MRX* CERTIFICATION OF COMMON RULES

[ISE Mercury]*MRX* hereby certifies that the requirements contained in the rules listed below for [ISE Mercury]*MRX* are identical to, or substantially similar to, the comparable FINRA Rules or SEC Rules identified.

 # Common Rules shall not include provisions regarding (i) notice, reporting or any other filings made directly to or from MRX, (ii) incorporations by reference to other MRX Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority, by MRX, (iv) prior written approval of MRX, and (v) payment of fees or fines to MRX.

MRX Rule	FINRA or SEC Rule
General 3, Section 3(b)—Persons Associated with Members; General 4—Nasdaq Stock Market General 4, Rule 1.1250 Electronic Filing Requirements for Uniform Forms incorporated by reference#.	*FINRA Rule 1010 Electronic Filing Requirements for Uniform Forms; FINRA By-Laws Article IV, Sec. 1(c) Application for Membership; FINRA By-Laws, Article V, Section 1 Qualification Requirements; FINRA By-Laws, Article V, Sec. 2 Application for Registration; and FINRA By-Laws Article V, Section 3 Notification by Member to the Corporation and Associated Person of Termination; Amendments to Notification.*
General 4—Nasdaq Stock Market General 4, Section 1.1240 Continuing Education Requirements incorporated by reference#.	*FINRA Rule 1240 Continuing Education Requirements.*
Options 9—Nasdaq ISE Options 9, Section 1 Just and Equitable Principles of Trade incorporated by reference[1].	*FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade; FINRA Rule 0140(a) Applicability.*
Options 9—Nasdaq ISE Options 9, Section 9(a)(1)Prevention of the Misuse of Material, Nonpublic Information incorporated by reference#.	*Section 15(g) of the Securities Exchange Act of 1934, and FINRA Rule 3110(b)(1), (d) Supervision.*

MRX Rule	FINRA or SEC Rule
Options 9—Nasdaq ISE Options 9, Section 10 Disciplinary Action by Other Organizations incorporated by reference#.	*FINRA Rule 4530(a)(1)(A) and (2) Reporting Requirements; FINRA By-Laws, Article V, Section 2(c); and FINRA By-Laws, Article V, Section 3.*
Options 9—Nasdaq ISE Options 9, Section 21 Anti-Money Laundering Compliance Program incorporated by reference#.	*FINRA Rule 3310 Anti-Money Laundering Compliance Program.*
Options 10—Nasdaq ISE Options 10, Section 12 Statements of Financial Condition to Customers incorporated by reference.	*Rule 17a–5 of the Securities Exchange Act of 1934.*
Options 10—Nasdaq ISE Options 10, Section 19 Transfer of Accounts incorporated by reference#.	*FINRA Rule 11870 Customer Account Transfer Contracts.*
Options 10—Nasdaq ISE Options 10, Section 23. Telemarketing incorporated by reference.	*FINRA Rule 3230 Telemarketing.*
Options 6E—Nasdaq ISE Options 6E, Section 1 Maintenance, Retention, and Furnishing of Books, Records and Other Information incorporated by reference#.	*FINRA Rule 4511(a) Books and Records—Requirements.*

[1] FINRA shall not have Regulatory Responsibilities with respect to the Supplementary Material to Nasdaq ISE Options 9, Section 1. Responsibility for such shall remain with MRX.

In addition, the following provisions shall be part of this 17d–2 Agreement:

*SEA Rule 14e–4—Prohibited Transactions in Connection with Partial Tender Offers^*

^FINRA shall perform surveillance, investigation, and Enforcement Responsibilities for SEA Rule 14e–4(a)1)(ii)(D).

[#FINRA shall not have Regulatory Responsibilities regarding notification or reporting to ISE Mercury. In addition, FINRA shall only have Regulatory Responsibilities to the extent the exercise of discretion by ISE Mercury is the same as FINRA.]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 4–697 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 4–697. 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 plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of FINRA and MRX. 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 4–697 and should be submitted on or before January 13, 2021.

V. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act[12] and Rule 17d–2(c) thereunder[13] in that the proposed Amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by both FINRA and MRX. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because MRX and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, MRX and FINRA have allocated regulatory responsibility for those MRX rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Common Member's activity, conduct, or output in relation to such rule. In addition, under the Amended Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Amended Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Amended Plan, MRX will review the Certification at least annually, or more frequently if required by changes in either the rules of MRX or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add MRX rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete MRX rules included in the then-current list of Common Rules that no longer qualify as common rules; and confirm that the remaining rules on the list of Common Rules continue to be MRX rules that qualify as common rules.[14] FINRA will then confirm in writing whether the rules listed in any

[12] 15 U.S.C. 78q(d).

[13] 17 CFR 240.17d–2(c).

[14] *See* paragraph 2 of the Amended Plan.

updated list are Common Rules as defined in the Amended Plan. Under the Amended Plan, MRX also will provide FINRA with a current list of Common Members and will update the list no less frequently than once each quarter.[15] The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all MRX rules that are substantially similar to the rules of FINRA for Common Members of MRX and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Amended Plan, provided that the Parties are only adding to, deleting from, or confirming changes to MRX rules in the Certification in conformance with the definition of Common Rules provided in the Amended Plan. However, should the Parties decide to add a MRX rule to the Certification that is not substantially similar to a FINRA rule; delete a MRX rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a MRX rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act.[16]

Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e–4 under the Act, to reflect the name change of ISE Mercury, LLC to Nasdaq MRX, LLC. By declaring it effective today, the Amended Plan can become effective and be implemented without undue delay. The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.[17] Furthermore, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4–697. The Parties shall notify all members affected by the Amended Plan of their rights and obligations under the Amended Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Amended Plan in File No. 4–697, between the FINRA and MRX, filed pursuant to Rule 17d–2 under the Act, hereby is approved and declared effective.

It is further ordered that MRX is relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4–697.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[15] *See* paragraph 3 of the Amended Plan.

[16] The addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Amended Plan for examining, and enforcing compliance by, Common Members, also would constitute an amendment to the Amended Plan.

[17] *See supra* note 11 (citing to Securities Exchange Act Release No. 77321).

[18] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90710; File No. SR–NYSEAMER–2020–83]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Rule 6800 Series

December 17, 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 December 4, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78a.

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 6800 Series, the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') [3] to be consistent with a conditional exemption granted by the Commission from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Allocation Exemption'').[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Rule 6800 Series to be consistent with the Allocation Exemption. The Commission granted the relief conditioned upon the Participants' adoption of Compliance Rules that implement the alternative approach to reporting allocations to the Central Repository described in the Allocation Exemption (referred to as the ''Allocation Alternative'').

(1) Request for Exemptive Relief

Pursuant to Section 6.4(d)(ii)(A) of the CAT NMS Plan, each Participant must, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if the order is executed, in whole or in part: (1) An

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[4] *See* Securities Exchange Act Rel. No. 90223 (October 19, 2020), 85 FR 67576 (October 23, 2020) (''Allocation Exemptive Order'').

Allocation Report;[5] (2) the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and the (3) CAT-Order-ID of any contra-side order(s). Accordingly, the Exchange and the other Participants implemented Compliance Rules that require their Industry Members that are executing brokers to submit to the Central Repository, among other things, Allocation Reports and the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.

On August 27, 2020, the Participants submitted to the Commission a request for an exemption from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Exemption Request'').[6] In the Exemption Request, the Participants requested that they be permitted to implement the Allocation Alternative, which, as noted above, is an alternative approach to reporting allocations to the Central Repository. Under the Allocation Alternative, any Industry Member that performs an allocation to a client account would be required under the Compliance Rule to submit an Allocation Report to the Central Repository when shares/contracts are allocated to a client account regardless of whether the Industry Member was involved in executing the underlying order(s). Under the Allocation Alternative, a ''client account'' would be any account that is not owned or controlled by the Industry Member.

In addition, under the Allocation Alternative, an ''Allocation'' would be defined as: (1) The placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations). Pursuant to this definition and the proposed Allocation Alternative, an Industry Member that performs an Allocation to an account that is not a client account, such as proprietary accounts and events including step outs,[7] or correspondent flips,[8] would not be required to submit an Allocation Report to the Central Repository for that allocation, but could do so on a voluntary basis. Industry Members would be allowed to report Allocations to accounts other than client accounts; in that instance, such Allocations must be marked as Allocations to accounts other than client accounts.

(A) Executing Brokers and Allocation Reports

To implement the Allocation Alternative, the Participants requested exemptive relief from Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members that are executing brokers, who do not perform Allocations, to record and report to the Central Repository, if the order is executed, in whole or in part, an Allocation Report. Under the Allocation Alternative, when an Industry Member other than an executing broker (*e.g.,* a prime broker or clearing broker) performs an Allocation, that Industry Member would be required to submit the Allocation Report to the Central Repository. When an executing broker performs an Allocation for an order that is executed, in whole or in part, the burden of submitting an Allocation Report to the Central Repository would remain with the executing broker under the Allocation Alternative. In certain circumstances this would result in multiple Allocation Reports—the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

The Participants stated that granting exemptive relief from submitting Allocation Reports for executing brokers who do not perform an Allocation, and requiring the Industry Member other than the executing broker that is performing the Allocation to submit such Allocation Reports, is consistent with the basic approach taken by the Commission in adopting Rule 613 under the Exchange Act. Specifically, the Participants stated that they believe that the Commission sought to require each broker-dealer and exchange that touches an order to record the required data with respect to actions it takes on the order.[9] Without the requested exemptive relief, executing brokers that do not perform Allocations would be required to submit Allocation Reports. In addition, the Participants stated that, because shares/contracts for every execution must be allocated to an account by the clearing broker in such circumstances, there would be no loss of information by shifting the reporting obligation from the executing broker to the clearing broker.

(B) Identity of Prime Broker

To implement the Allocation Alternative, the Participants also requested exemptive relief from Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if an order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the prime broker, if applicable. Currently, under the CAT NMS Plan, an Industry Member is required to report the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker in connection with the execution of an order, and such information would be part of the order's lifecycle, rather than in an Allocation Report that is not linked to the order's lifecycle.[10] Under the Allocation Alternative, the identity of the prime broker would be required to be reported by the clearing broker on the Allocation Report, and, in addition, the prime broker itself would be required to report the ultimate allocation, which the Participants believe would provide more complete information.

The Participants stated that associating a prime broker with a specific execution, as is currently

[5] Section 1.1 of the CAT NMS Plan defines an ''Allocation Report'' as ''a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.''

[6] *See* letter from the Participants to Vanessa Countryman, Secretary, Commission, dated August 27, 2020 (the ''Exemption Request'').

[7] ''A step-out allows a broker-dealer to allocate all or part of a client's position from a previously executed trade to the client's account at another broker-dealer. In other words, a step-out functions as a client's position transfer, rather than a trade; there is no exchange of shares and funds and no change in beneficial ownership.'' *See* FINRA, Trade Reporting Frequently Asked Questions, at Section 301, available at: *https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq.*

[8] Correspondent clearing flips are the movement of a position from an executing broker's account to a different account for clearance and settlement, allowing a broker-dealer to execute a trade through another broker-dealer and settle the trade in its own account. *See, e.g.,* The Depository Trust & Clearing Corporation, Correspondent Clearing, available at: *https://www.dtcc.com/clearing-services/equities-tradecapture/correspondent-clearing.*

[9] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45748 (August 1, 2012).

[10] The Participants did not request exemptive relief relating to the reporting of the SRO-Assigned Market Participant Identifier of clearing brokers.

required by the CAT NMS Plan, does not reflect how the allocation process works in practice as allocations to a prime broker are done post-trade and are performed by the clearing broker of the executing broker. The Participants also stated that with the implementation of the Allocation Alternative, it would be duplicative for the executing broker to separately identify the prime broker for allocation purposes.

The Participants stated that if a particular customer only has one prime broker, the identity of the prime broker can be obtained from the customer and account information through the DVP accounts for that customer that contain the identity of the prime broker. The Participants further stated that Allocation Reports related to those executions would reflect that shares/contracts were allocated to the single prime broker. The Participants believe that there is no loss of information through the implementation of the Allocation Alternative compared to what is required in the CAT NMS Plan and that this approach does not decrease the regulatory utility of the CAT for single prime broker circumstances.

In cases where a customer maintains relationships with multiple prime brokers, the Participants asserted that the executing broker will not have information at the time of the trade as to which particular prime broker may be allocated all or part of the execution. Under the Allocation Alternative, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts where the shares/contracts were ultimately allocated. To determine the prime broker for a customer, a regulatory user would query the customer and account database using the customer's CCID to obtain all DVP accounts for the CCID at broker-dealers. The Participants state that when a customer maintains relationships with multiple prime brokers, the customer typically has a separate DVP account with each prime broker, and the identities of those prime brokers can be obtained from the customer and account information.

(C) Additional Conditions to Exemptive Relief

In the Exemption Request, the Participants included certain additional conditions for the requested relief. Currently, the definition of Allocation Report in the CAT NMS Plan only refers to shares. To implement the Allocation Alternative, the Participants proposed to require that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Specifically, Participants would require the reporting of the following in each Allocation Report: (1) The FDID for the account receiving the allocation, including subaccounts; (2) the security that has been allocated; (3) the identifier of the firm reporting the allocation; (3) the price per share/contracts of shares/contracts allocated; (4) the side of shares/contracts allocated; (4) the number of shares/contracts allocated; and (5) the time of the allocation.

Furthermore, to implement the Allocation Alternative, the Participants proposed to require the following information on all Allocation Reports: (1) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (2) trade date; (3) settlement date; (4) IB/correspondent CRD Number (if applicable); (5) FDID of new order(s) (if available in the booking system); [11] (6) allocation instruction time (optional); (7) if the account meets the definition of institution under FINRA Rule 4512(c); [12] (8) type of allocation (allocation to a custody account, allocation to a DVP account, step out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (9) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (10) if an allocation was cancelled, a cancel flag, which indicates that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(2) Proposed Rule Changes To Implement Exemptive Relief

On October 29, 2020, the Commission granted the exemptive relief requested in the Exemption Request. The Commission granted the relief conditioned upon the adoption of Compliance Rules that implement the reporting requirements of the Allocation Alternative. Accordingly, the Exchange proposes the following changes to its Compliance Rule to implement the reporting requirements of the Allocation Alternative.

(A) Definition of Allocation

The Exchange proposes to add a definition of ''Allocation'' as new paragraph (c) to Rule 6810.[13] Proposed paragraph (c) of Rule 6810 would define an ''Allocation'' to mean ''(1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations).'' The SEC stated in the Allocation Exemption that this definition of ''Allocation'' is reasonable.

(B) Definition of Allocation Report

The Exchange proposes to amend the definition of ''Allocation Report'' set forth in Exchange Rule 6810(c) to reflect the requirements of the Allocation Exemption. Exchange Rule 6810(c) defines the term ''Allocation Report'' to mean:

> a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

The Exchange proposes to amend this definition in two ways: (1) Applying the requirements for Allocation Reports to contracts in addition to shares; and (2) requiring the reporting of additional elements for the Allocation Report.

[11] The Participants propose that for scenarios where the Industry Member responsible for reporting the Allocation has the FDID of the related new order(s) available, such FDID must be reported. This would include scenarios in which: (1) The FDID structure of the top account and subaccounts is known to the Industry Member responsible for reporting the Allocation(s); and (2) the FDID structure used by the IB/Correspondent when reporting new orders is known to the clearing firm reporting the related Allocations.

[12] FINRA Rule 4512(c) states the for purposes of the rule, the term ''institutional account'' means the account of: (1) A bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

[13] The Exchange proposes to renumber the definitions in Rule 6810 to accommodate the addition of this new definition of ''Allocation'' and the new definition of ''Client Account'' discussed below.

(i) Shares and Contracts

The requirements for Allocation Reports apply only to shares, as the definition of ''Allocation Report'' in Rule 6810(c) refers to shares, not contracts. In the Allocation Exemption, the Commission stated that applying the requirements for Allocation Reports to contracts in addition to shares is appropriate because CAT reporting requirements apply to both options and equities. Accordingly, the SEC stated that the Participants would be required to modify their Compliance Rules such that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Therefore, the Exchange proposes to amend Rule 6810(c) (to be renumbered as Rule 6810(d)) to apply to contracts, as well as shares. Specifically, the Exchange proposes to add references to contracts to the definition of ''Allocation Report'' to the following phrases: ''the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/contracts are allocated,'' ''the price per share/contract of shares/contracts allocated,'' ''the side of shares/contracts allocated,'' and ''the number of shares/contracts allocated to each account.''

(ii) Additional Elements

The Commission also conditioned the Allocation Exemption on the Participants amending their Compliance Rules to require the ten additional elements in Allocation Reports described above. Accordingly, the Exchange proposes to require these additional elements in Allocation Reports. Specifically, the Exchange proposes to amend the definition of ''Allocation Report'' in Rule 6810(c) (to be renumbered as Rule 6810(d)) to include the following elements, in addition to those elements currently required under the CAT NMS Plan:

(6) the time of the allocation; (7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(C) Allocation Reports

(i) Executing Brokers That Do Not Perform Allocations

The Commission granted the Participants an exemption from the requirement that the Participants, through their Compliance Rule, require executing brokers that do not perform Allocations to submit Allocation Reports. The Commission stated that it understands that executing brokers that are not self-clearing do not perform allocations themselves, and such allocations are handled by prime and/or clearing brokers, and these executing brokers therefore do not possess the requisite information to provide Allocation Reports. Accordingly, the Exchange proposes to eliminate Rule 6830(a)(2)(A)(i),[14] which requires an Industry Member to record and report to the Central Repository an Allocation Report if the order is executed, in whole or in part, and to replace this provision with proposed Rule 6830(a)(2)(F) as discussed below.

(ii) Industry Members That Perform Allocations

The Allocation Exemption requires the Participants to amend their Compliance Rules to require Industry Members to provide Allocation Reports to the Central Repository any time they perform Allocations to a client account, whether or not the Industry Member was the executing broker for the trades. Accordingly, the Commission conditioned the Allocation Exemption on the Participants adopting Compliance Rules that require prime and/or clearing brokers to submit Allocation Reports when such brokers perform allocations, in addition to requiring executing brokers that perform allocations to submit Allocation Reports. The Commission determined that such exemptive relief would improve efficiency and reduce the costs and burdens of reporting allocations for Industry Members because the reporting obligation would belong to the Industry Member with the requisite information, and executing brokers that do not have the information required on an Allocation Report would not have to develop the infrastructure and processes required to obtain, store and report the information. The Commission stated that this exemptive relief should not reduce the regulatory utility of the CAT because an Allocation Report would still be submitted for each executed trade allocated to a client account, which in certain circumstances could still result in multiple Allocation Reports,[15] just not necessarily by the executing broker.

In accordance with the Allocation Exemption, the Exchange proposes to add proposed Rule 6830(a)(2)(F) to the Compliance Rule. Proposed Rule 6830(a)(2)(F) would require Industry Members to record and report to the Central Repository ''an Allocation Report any time the Industry Member performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.''

(iii) Client Accounts

In the Allocation Exemption, the Commission also exempted the Participants from the requirement that they amend their Compliance Rules to require Industry Members to report Allocations for accounts other than client accounts. The Commission believes that allocations to client accounts, and not allocations to proprietary accounts or events such as step-outs and correspondent flips, provide regulators the necessary information to detect abuses in the allocation process because it would provide regulators with detailed information regarding the fulfillment of orders submitted by clients, while reducing reporting burdens on broker-dealers. For example, Allocation Reports would be required for allocations to registered investment advisor and money manager accounts. The Commission further believes that the proposed approach should facilitate regulators' ability to distinguish Allocation Reports relating to allocations to client accounts from other Allocation Reports because Allocations to accounts other than client accounts would have to be identified as such. This approach could reduce the time CAT Reporters expend to comply with CAT reporting requirements and lower costs by allowing broker-dealers to use existing business practices.

To clarify that an Industry Member must report an Allocation Report solely for Allocations to a client account,

[14] The Exchange proposes to renumber Rule 6830(a)(2)(A)(ii) and (iii) as Rules 6830(a)(2)(A)(i) and (ii) in light of the proposed deletion of Rule 6830(a)(2)(A)(i).

[15] As noted above, under the Allocation Alternative, for certain executions, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

proposed Rule 6830(a)(2)(F) specifically references ''Client Accounts,'' as discussed above. In addition, the Exchange proposes to add a definition of ''Client Account'' as proposed Rule 6810(l). Proposed Rule 6810(l) would define a ''Client Account'' to mean ''for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.''

(D) Identity of Prime Broker

The Exchange also proposes to amend Rule 6830(a)(2)(A)(ii) to eliminate the requirement for executing brokers to record and report the SRO-Assigned Market Participant Identifier of the prime broker. Rule 6830(a)(2)(A)(ii) states that each Industry Member is required to record and report to the Central Repository, if the order is executed, in whole or in part, the ''SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.'' The Exchange proposes to delete the phrase ''or prime broker'' from this provision. Accordingly, each Industry Member that is an executing broker would no longer be required to report the SRO-Assigned Market Participant Identifier of the prime broker.

As the Commission noted in the Allocation Exemption, exempting the Participants from the requirement that they, through their Compliance Rules, require executing brokers to provide the SRO-Assigned Market Participant Identifier of the prime broker is appropriate because, as stated by the Participants, allocations are done on a post-trade basis and the executing broker will not have the requisite information at the time of the trade. Because an executing broker, in certain circumstances, does not have this information at the time of the trade, this relief relieves executing brokers of the burdens and costs of developing infrastructure and processes to obtain this information in order to meet the contemporaneous reporting requirements of the CAT NMS Plan.

As the Commission noted in the Allocation Exemption, although executing brokers would no longer be required to provide the prime broker information, regulators will still be able to determine the prime broker(s) associated with orders through querying the customer and account information database. If an executing broker has only one prime broker, the identity of the prime broker can be obtained from the customer and account information associated with the executing broker. For customers with multiple prime brokers, the identity of the prime brokers can be obtained from the customer and account information which will list the prime broker, if there is one, that is associated with each account.

2. Statutory Basis

NYSE American believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[16] which require, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,[17] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

NYSE American believes that this proposal is consistent with the Act because it is consistent with, and implements, the Allocation Exemption, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [18] To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE American does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. NYSE American notes that the proposed rule changes are consistent with the Allocation Exemption, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. NYSE American also notes that the proposed rule changes will apply equally to all Industry Members. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing and does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMER–2020–83 on the subject line.

[16] 15 U.S.C. 78f(b)(6).

[17] 15 U.S.C. 78f(b)(8)

[18] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 15 U.S.C. 78s(b)(2)(B).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–83. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–83, and should be submitted on or before January 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28315 Filed 12–22–20; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90712; File No. SR–OCC–2020–013]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, To Update The Options Clearing Corporation's Recovery and Orderly Wind-Down Plan

December 17, 2020.

I. Introduction

On October 20, 2020, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2020–013, (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to make changes to OCC's Recovery and Orderly Wind-Down Plan (''RWD Plan'').[3] The Proposed Rule Change was published for public comment in the **Federal Register** on November 9, 2020.[4] The Commission has received no comments regarding the Proposed Rule Change.[5] On October 20, 2020, OCC filed a partial amendment (''Partial Amendment No. 1'') to modify the Proposed Rule Change.[6] The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis.[7]

II. Background [8]

The Proposed Rule Change concerns changes to OCC's RWD Plan. As described in greater detail below, OCC proposes to (1) update the RWD Plan to reflect changes to OCC's capital structure resulting from the disapproval of OCC's previously approved ''Capital Plan'' [9] and the subsequent approval of OCC's ''Capital Management Policy,'' [10] and (2) implement changes identified during OCC's annual review of the RWD Plan. The changes arise out of OCC's annual review of the RWD Plan and include factual updates (*e.g.,* market share and contract volume data) and streamlined discussions in the RWD Plan (*e.g.,* replacement of detailed overview of OCC's risk management program with a more concise summary).

Capital Management Policy Updates. As a result of the implementation of the Capital Management Policy, OCC is proposing changes to Chapters 2, 5, and 6 of its RWD Plan. In Chapter 2, OCC is proposing to revise its discussion of fee management for consistency with the Capital Management Policy. In Chapter 5, OCC is proposing to (i) replace its discussion of the Replenishment Plan established under the disapproved Capital Plan with a discussion of the replenishment structure adopted under the Capital Management Policy; (ii) replace references to the discretionary use of OCC's current and/or retained earnings with references to the mandatory contribution—immediately following the use of margin, deposits in lieu of margin and the Clearing Fund deposits of the suspended Clearing Member—of OCC's current and retained earnings greater than 110% of OCC's annually-established ''Target Capital Requirement;'' (iii) update the description of how OCC could increase the minimum required cash contribution to the Clearing Fund to reflect enhancements to OCC's liquidity risk management framework that the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, 85 FR at 71384.

[4] Securities Exchange Act Release No. 90315 (Nov. 3, 2020), 85 FR 71384 (Nov. 9, 2020) (File No. SR–OCC–2020–013) (''Notice of Filing''). OCC also filed a related advance notice (SR–OCC–2020–806) (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Advance Notice was published in the **Federal Register** on November 18, 2020. Securities Exchange Act Release No. 90416 (Nov. 13, 2020), 85 FR 73553 (Nov. 18, 2020) (File No. SR–OCC–2020–806).

[5] Since the proposal contained in the Proposed Rule Change was also filed as an advance notice, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice.

[6] In Partial Amendment No. 1, OCC corrects and updates a confidential Exhibit 5 to the materials filed on October 20, 2020 regarding File No. SR–OCC–2020–013. Partial Amendment No. 1 corrects an error in the proposed rule text and updates the list of vendor agreements attached to the RWD Plan, but did not change the purpose of or basis for the Proposed Rule Change.

[7] References to the Proposed Rule Change from this point forward refer to the Proposed Rule Change as modified by Partial Amendment No. 1.

[8] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[9] *See* Securities Exchange Act Release No. 85121 (Feb. 13, 2019), 84 FR 5157 (Feb. 20, 2019) (File No. SR–OCC–2015–02).

[10] *See* Securities Exchange Act Release No. 86725 (Aug. 21, 2019), 84 FR 44952 (Aug. 27, 2019) (File No. SR–OCC–2019–007).

Commission approved in 2020;[11] and (iv) include a discussion of the mandatory contribution of any unvested portions of OCC's Executive Deferred Compensation Plan (''EDCP'') in proportion to any charges against the mutualized portion of OCC's Clearing Fund. OCC also proposes to revise the list of ''Recovery Trigger Events'' in Chapter 5 to: (a) Delete one of the Recovery Trigger Events that was derived from a defined term in the Capital Plan; (b) consolidate two other Recovery Trigger Events into a single, operational loss-related recovery trigger; and (c) add a qualification onto an existing liquidity loss-related recovery trigger. In Chapter 6, OCC is proposing to update discussion of the tools by which OCC could recapitalize in certain recovery and wind-down scenarios. Further, OCC is proposing to revise the list of Wind-Down Plan Trigger Events (''WDP Triggers''): Specifically, OCC proposes to consolidate two current WDP Triggers into a single WDP Trigger related to OCC's financial resource requirements and to consolidate two other WDP Triggers into a single WDP Trigger related to operational disruption. Similar to the changes OCC proposes in Chapter 5, the changes proposed in Chapter 6 would be designed to reflect OCC's current replenishment plan under the Capital Management Policy.

Annual Review Updates. As a result of its annual review and update process, OCC is proposing changes to Chapters 2, 3, 5, 6, 7, and 8 of its RWD Plan. In Chapter 2, OCC is proposing to update (i) market share and contract volume data; (ii) lists of the securities options exchanges and other markets for which OCC provides clearing services; (iii) organizational charts, headcount numbers, discussions of OCC's management structure and descriptions of management roles and responsibilities; (iv) updated descriptions of OCC's Board's responsibilities and procedures, lists of Board members and descriptions of OCC's Board committees' roles and responsibilities; and (v) graphs of total monthly deposits to OCC's Clearing Fund. OCC is also proposing revisions to reflect certain program changes that have occurred at OCC since the initial approval of the RWD Plan in 2018 (*e.g.,* changes to cross-margining arrangements, credit facilities, investment counterparties, and vendors) as well as changes to OCC's retirement plan obligations. In Chapter 3, the RWD Plan lists OCC's internal support functions. OCC is proposing the addition of two new internal support functions to that list and the removal of the Office of the Corporate Executive from the list. The net result of the proposed changes would bring the total number of internal support functions listed from fourteen to sixteen. OCC also proposes to update the descriptions of all OCC's internal support functions so they align with OCC's internal descriptions of such functions.

In Chapter 6, OCC is proposing to (i) update references to OCC's internal support functions; and (ii) certain references to headcount. In Chapter 7, OCC is proposing to update staff titles to reflect changes in related office titles. In Chapter 8, OCC is proposing to update lists of (i) Clearing Members; (ii) Board participation; (iii) settlement bank and letter of credit bank; (iv) OCC's vendors and service providers; (v) updates to the extreme hypothetical scenarios designed by OCC that, if such scenarios occurred, could cause OCC to activate the RWD Plan; and (vi) key agreements.

Administrative and Streamlining Changes. In addition to the updates described above, OCC is also proposing several administrative and streamlining changes throughout the RWD Plan. OCC proposes to align the executive summary and overview section of the RWD Plan with the changes described above. OCC also proposes moving annual report excerpts from Chapter 2 to an appendix to the RWD Plan, replace the current overview of OCC's risk management program with a more concise summary, and update a summary description of OCC's interconnections with external vendors and a list of vendors that provide OCC critical technology and information reporting services. In Chapter 4, OCC proposes to update certain factual references and make other minor changes to reflect the use of a single term for Critical Services that are currently identified separately. OCC also proposes to revise the mapping of Critical Services to Support Functions in Chapter 4 to reflect the categorization of Support Functions as either ''primary,'' ''secondary,'' or ''non-critical.'' In Chapter 5, OCC proposes to (i) clean up references to its by-laws that are now rules; (ii) consolidate two recovery triggers into a single, operational loss-related recovery trigger; and (iii) add qualifying language to an existing liquidity loss-related recovery trigger.

[11] *See* Securities Exchange Act Release No. 89014 (Jun. 4, 2020), 85 FR 35446 (Jun. 10, 2020) (File No. SR–OCC–2020–003).

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[12] After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act[13] and Rule17Ad–22(e)(3)(ii) thereunder.[14]

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[15] As a central counterparty, it is important for OCC to have a plan in place to address extreme stresses or crises with the aim of maintaining OCC's viability and ability to provide critical services. In the event that OCC's recovery efforts are not successful, the RWD Plan would seek to increase the possibility that a resolution of OCC's operations could be conducted in an orderly manner. The Commission continues to believe that OCC specifying the steps that it would take in either a recovery or orderly wind-down would enhance OCC's ability to address circumstances specific to an extreme stress event. The Commission also continues to believe that, by increasing the likelihood that recovery would be orderly, efficient, and successful, the RWD Plan enhances OCC's ability to maintain the continuity of its critical services (including clearance and settlement services) during, through, and following periods of extreme stress giving rise to the need for recovery, thereby promoting the prompt and accurate clearance and settlement of

[12] 15 U.S.C. 78s(b)(2)(C).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 240.17Ad–22(e)(3)(ii).

[15] 15 U.S.C. 78q–1(b)(3)(F).

securities transactions.[16] Further, the Commission continues to believe that the RWD Plan is designed to assure the safeguarding of securities or funds in the custody or control of OCC by reducing the likelihood of a disorderly or unsuccessful recovery or wind-down, which could otherwise disrupt access to such securities or funds.[17]

As described above, OCC proposes to (1) update the RWD Plan to reflect changes to OCC's capital structure resulting from the disapproval of OCC's previously approved ''Capital Plan'' [18] and the subsequent approval of OCC's ''Capital Management Policy,'' [19] and (2) implement changes identified during OCC's annual review of the RWD Plan. Consistent with the Commission's prior statements regarding disclosure of documents describing a covered clearing agency's recovery and wind-down plans, the Commission believes that such recovery and wind-down plans should be updated regularly or more frequently as necessary.[20] OCC also proposes to update and streamline the data and descriptions provided in the RWD Plan.[21] The Commission believes that keeping the RWD Plan updated with current information, and refining the descriptions to make it more concise, makes it a more accurate and useful document. As such, the Commission believes, therefore, that the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[22]

B. Consistency With Rule 17Ad–22(e)(3)(ii) Under the Exchange Act

Rule 17Ad–22(e)(3)(ii) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[23]

The Commission continues to believe that the RWD Plan (i) clearly describes OCC's recovery tools, which enhance OCC's ability to recover from credit losses, liquidity shortfalls, general business risk losses, or other losses, consistent with Rule 17Ad–22(e)(3)(ii); and (ii) supports OCC's ability to use risk management and recovery tools effectively to bring about a recovery by identifying in advance which tools may be most effective for different situations or needs, consistent with Rule 17Ad–22(e)(3)(ii).[24] As described above, the RWD Plan sets forth OCC's plans to recover or wind-down its operations as a result of severe financial or operational stress in an orderly fashion. The proposed updates will make the information provided in the RWD Plan more accurate and useful. The revised RWD Plan would, in turn, provide a more accurate and usable playbook for OCC or source of information for a resolution authority. Accordingly, the Commission believes that the proposed changes to the RWD Plan are consistent with Rule 17Ad–22(e)(3)(ii) under the Exchange Act.[25]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2020–013 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–OCC–2020–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

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–OCC–2020–013 and should be submitted on or before January 13, 2021.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Partial Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[26] to approve the proposed rule change prior to the 30th day after the date of publication of Partial Amendment No. 1 in the **Federal Register**. As discussed above, Partial Amendment No. 1 corrects an error in the proposed rule text and updates the list of vendor agreements attached to the RWD Plan. Correcting typographical errors Partial Amendment No. 1

[16] *See* Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091, 44094 (Aug. 29, 2018) (File No. SR–OCC–2017–021); Securities Exchange Release No. 83928 (Aug. 23, 2018), 83 FR 44109, 44112 (Aug. 29, 2018) (File No. SR–OCC–2017–810).

[17] *See* Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091, 44094 (Aug. 29, 2018) (File No. SR–OCC–2017–021).

[18] *See* Securities Exchange Act Release No. 85121 (Feb. 13, 2019), 84 FR 5157 (Feb. 20, 2019) (File No. SR–OCC–2015–02).

[19] *See* Securities Exchange Act Release No. 86725 (Aug. 21, 2019), 84 FR 44952 (Aug. 27, 2019) (File No. SR–OCC–2019–007).

[20] *See* Securities Exchange Act Release No. 34–78961 (Oct. 13, 2016), 81 FR 70786, 70808 (Oct. 13, 2016) (File No. S7–03–14).

[21] For example, OCC is proposing to update its market share and contract volume data, lists of the securities options exchanges and other markets for which OCC provides clearing services, organizational charts, and headcount numbers. OCC also proposes to replace the detailed overview of OCC's risk management program with a more concise summary.

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] 17 CFR 240.17Ad–22(e)(3)(ii).

[24] *See* Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091, 44095 (Aug. 29, 2018) (File No. SR–OCC–2017–021); Securities Exchange Release No. 83928 (Aug. 23, 2018), 83 FR 44109, 44113 (Aug. 29, 2018) (File No. SR–OCC–2017–810).

[25] 17 CFR 240.17Ad–22(e)(3)(ii).

[26] 15 U.S.C. 78s(b)(2).

improves the efficiency of the filing process by obviating the need for OCC to propose another change to its rules to resolve the error in the future while not changing the purpose of or basis for the Proposed Rule Change. Updating the list of vendor agreements as part of the immediate proposal would similarly reduce the need for future filings without changing the purpose of or basis for the Proposed Rule Change.

For similar reasons as discussed above, the Commission finds that Partial Amendment No. 1 is consistent with the requirement that OCC's rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible under Section 17A(b)(3)(F) of the Exchange Act.[27] Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.[28]

VI. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act[29] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[30] that the Proposed Rule Change (SR–OCC–2020–013), as modified by Partial Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28317 Filed 12–22–20; 8:45 am]

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[27] 15 U.S.C. 78q–1(b)(3)(F).

[28] 15 U.S.C. 78s(b)(2).

[29] In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90705; File No. SR–FINRA–2020–035]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend the FINRA Codes of Arbitration Procedure To Increase Arbitrator Chairperson Honoraria and Certain Arbitration Fees

December 17, 2020.

I. Introduction

On October 16, 2020, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') (together, ''Codes'') to increase arbitrator chairperson (''Chair'') honoraria. Specifically, the proposed rule change would: (1) Increase the additional hearing day honorarium Chairs receive for each hearing on the merits from $125 to $250 and (2) create a new $125 Chair honorarium for each prehearing conference in which the Chair participates. Under the proposed rule change, these increases would be funded primarily by certain increases to the member surcharge and process fees for claims of more than $250,000 or claims for non-monetary or unspecified damages. The proposed rule change would also increase filing fees and hearing session fees for customers, associated persons and members bringing claims of more than $500,000 or claims for non-monetary or unspecified damage.

The proposed rule change was published for comment in the **Federal Register** on October 26, 2020.[3] The public comment period closed on November 16, 2020. The Commission received one comment letter in response to the Notice.[4] On December 9, 2020, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to December 31, 2020.[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

FINRA makes arbitrator honoraria payments to its arbitrators for the services they provide to FINRA's dispute resolution forum. Currently, under FINRA Rule 12214(a)(1), arbitrators receive $300 for each hearing session in which the arbitrator participates.[6] In recognition of their increased experience and the extra responsibilities they must perform during an arbitration,[7] Chairs currently receive an additional $125 for serving as Chair during a hearing (''hearing day honorarium'').[8] The Chair receives the additional honorarium for each hearing day, regardless of the number of hearing sessions held per day.[9] Currently, Chairs do not receive an additional honorarium for prehearing conferences, which they are required to lead and for which they are required to perform additional tasks, such as setting discovery, briefing, and motion deadlines, scheduling subsequent hearing sessions, and drafting prehearing orders.[10]

A. Proposed Increases to Arbitrator Chair Honoraria

The proposed rule change would amend FINRA Rules 12214 and 13214 to increase the arbitrator Chair honoraria. Specifically, the proposed rule change would increase the hearing day honorarium from $125 to $250 to better compensate the Chair for the additional training and responsibilities required of the position. In addition, the proposed rule change would establish a new

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 90227 (Oct. 20, 2020), 85 FR 67794 (Oct. 26, 2020) (File No. SR–FINRA–2020–035 (''Notice'').

[4] Letter from the Steven B. Caruso, Maddox Hargett Caruso, P.C., dated October 20, 2020 (''Caruso Letter''), available at *https://www.sec.gov/comments/sr-finra-2020-035/srfinra2020035-7927147-224628.htm*.

[5] *See* letter from Mignon McLemore, Assistant General Counsel, Office of General Counsel, FINRA, to Lourdes Gonzalez, Assistant Chief Counsel, Division of Trading and Markets, Commission, dated December 9, 2020.

[6] A ''hearing session'' is any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a prehearing conference. *See* FINRA Rules 12100(p) and 13100(p).

[7] For example, during a typical arbitration, the Chair oversees the discovery process, conducts the initial prehearing conference (''IPHC'') and subsequent prehearing conferences as needed, drafts rulings and orders, and manages efficient hearings. *See* Notice at note 4.

[8] *See* FINRA Rule 12214(a)(2). The term ''hearing'' means the hearing on the merits of an arbitration under FINRA Rules 12600 and 13600. *See* FINRA Rules 12100(o) and 13100(o).

[9] A typical day has two hearing sessions. *See* Notice at note 3.

[10] *See* FINRA Rules 12500(c) and 13500(c).

honorarium to pay a Chair an additional $125 for each prehearing conference in which he or she participates. Under the proposed rule change, Chairs would receive the additional prehearing conference compensation even if an arbitration case closes without a hearing. For example, if the Chair participates in a prehearing conference,[11] but the parties settle the case, the Chair would still receive some compensation for serving as Chair.

B. Proposed Increases to Arbitration Fees

To fund increases in the arbitrator Chair honoraria, the proposed rule change would also increase the member surcharge, member process fees, filing fees, and hearing session fees that the forum assesses the parties during the course of an arbitration case.

1. Proposed Increases to Member Surcharge

Under FINRA Rules 12901 and 13901, FINRA assesses a surcharge against each member that: (1) Files a claim, counterclaim, cross claim, or third party claim under the Codes; (2) is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the Codes; or (3) employed, at the time the dispute arose, an associated person who is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the Codes. Member surcharges are intended to allocate the costs of administering the arbitration case to the firms that are involved in those cases.[12] Because the cost of administering an arbitration case generally is proportional to the aggregate claim amount,[13] the member surcharge increases with the size of the claim amount.[14] Proposed FINRA Rules 12901 and 13901 would increase the member surcharge for claims of more than $250,000 and claims for non-monetary or unspecified damages. Table 1 illustrates the proposed dollar and percentage changes for each tier.[15]

MEMBER SURCHARGE SCHEDULE—TABLE 1

Amount of claim (exclusive of interest and expenses)	Current surcharge	Proposed fee	Change	Percentage change (%)
$.01 to $5,000	$150	$150	$0	0
$5,000.01–$10,000	325	325	0	0
$10,000.01–$25,000	450	450	0	0
$25,000.01–$50,000	750	750	0	0
$50,000.01–$100,000	1,100	1,100	0	0
$100,000.01–$250,000	1,700	1,700	0	0
$250,000.01–$500,000	1,900	2,025	125	7
$500,000.01–$1,000,000	2,475	2,625	150	6
$1,000,000.01–$5,000,000	3,025	3,200	175	6
$5,000,000.01–$10,000,000	3,600	3,850	250	7
Over $10,000,000	4,025	4,325	300	7
Non-Monetary/Not Specified	1,900	2,000	100	5

2. Proposed Increases to Filing Fee

Under FINRA Rules 12900(a)(1) and 13900(a)(1), if a customer, associated person or other non-member files a claim, counterclaim, cross claim, or third party claim, they must pay a filing fee to initiate an arbitration. As with member surcharges, the filing fee is based on the claim amount or type of damages requested.[16] The proposed rule change would amend FINRA Rules 12900 and 13900 to increase the filing fees for customers, associated persons or other non-members bringing claims of more than $500,000 and claims for non-monetary or unspecified damages. Table 2 shows the proposed dollar and percentage changes.[17]

FILING FEES FOR CUSTOMERS, ASSOCIATED PERSONS OR OTHER NON-MEMBER CLAIMANTS—TABLE 2

Amount of claim (exclusive of interest and expenses)	Current claim filing fee	Proposed claim filing fee	Change	Percentage change (%)
$.01 to $1,000	$50	$50	$0	0
$1,000.01–$2,500	75	75	0	0
$2,500.01–$5,000	175	175	0	0
$5,000.01–$10,000	325	325	0	0
$10,000.01–$25,000	425	425	0	0
$25,000.01–$50,000	600	600	0	0
$50,000.01–$100,000	975	975	0	0
$100,000.01–$500,000	1,425	1,425	0	0
$500,000.01–$1,000,000	1,725	1,740	15	1
$1,000,000.01–$5,000,000	2,000	2,025	25	1
Over $5,000,000	2,250	2,300	50	2
Non-Monetary/Not Specified	1,575	1,600	25	2

[11] *See* FINRA Rules 12500(a) and 13500(a).

[12] *See* Notice at 67796. The member surcharge is the responsibility of the member party and cannot be allocated to any other party (''non-allocable''). *See* FINRA Rules 12901(a)(6) and 13901(f).

[13] *See* Notice at 67796.

[14] *Id.*

[15] *Id.*

[16] *See* FINRA Rules 12900(a)(1) and 13900(a)(1).

[17] *See* Notice at 67797.

The proposed rule change would also amend FINRA Rules 12900(b) and 13900(b) to increase the filing fees that members pay for claims of more than $500,000 and claims for non-monetary or unspecified damages. Table 3 shows the proposed dollar and percentage changes.[18]

FILING FEES FOR MEMBER CLAIMANT—TABLE 3

Amount of claim (exclusive of interest and expenses)	Current claim filing fee	Proposed claim filing fee	Change	Percentage change (%)
$.01 to $1,000	$225	$225	$0	0
$1,000.01–$2,500	350	350	0	0
$2,500.01–$5,000	525	525	0	0
$5,000.01–$10,000	750	750	0	0
$10,000.01–$25,000	1,050	1,050	0	0
$25,000.01–$50,000	1,450	1,450	0	0
$50,000.01–$100,000	1,750	1,750	0	0
$100,000.01–$500,000	2,125	2,125	0	0
$500,000.01–$1,000,000	2,550	2,650	100	4
$1,000,000.01–$5,000,000	3,400	3,550	150	4
Over $5,000,000	4,000	4,200	200	5
Non-Monetary/Not Specified	1,700	1,800	100	6

3. Proposed Increases to Process Fee

Under FINRA Rules 12903 and 13903, each member that is a party to an arbitration or employed an associated person who is a party to an arbitration in which the claim amount is more than $25,000 must pay a process fee based on the amount of the claim.[19] The proposed rule change would amend FINRA Rules 12903 and 13903 to increase the member process fees for claim amounts larger than $250,000 and for claims for non-monetary or unspecified damages. Table 4 illustrates the proposed dollar and percentage changes.[20]

MEMBER PROCESS FEE SCHEDULE—TABLE 4

Amount of claim (exclusive of interest and expenses)	Current process fee	Proposed fee	Change	Percentage change (%)
$.01–$25,000	$0	$0	$0	0
$25,000.01–$50,000	1,750	0	0	0
$50,000.01–$100,000	2,250	0	0	0
$100,000.01–$250,000	3,250	0	0	0
$250,000.01–$500,000	3,750	3,875	125	3
$500,000.01–$1,000,000	5,075	5,225	150	3
$1,000,000.01–$5,000,000	6,175	6,375	200	3
$5,000,000.01–$10,000,000	6,800	7,050	250	4
Over $10,000,000	7,000	7,300	300	4
Non-Monetary/Not Specified	3,750	3,850	100	3

4. Proposed Increases to Hearing Session Fee

Under FINRA Rules 12902(a) and 13902(a), FINRA assesses hearing session fees against the parties for each hearing and pre-hearing session conducted by a panel.[21] In the award, the panel determines the amount of the hearing session fees that each party is required to pay.[22] The arbitrators may apportion the fees in any manner, including assessing the entire amount against one party.[23] The proposed rule change would amend FINRA Rules 12902 and 13902 to increase the fees for claims of more than $500,000 and for claims for non-monetary or unspecified damages. There are different hearing session fees for hearings with one arbitrator versus hearings with three arbitrators. Under the proposed rule change, the fees would not change for hearings with one arbitrator. Table 5 illustrates the proposed dollar and percentage changes.[24]

HEARING SESSION FEES FOR SESSION WITH THREE ARBITRATORS—TABLE 5

Amount of claim (exclusive of interest and expenses)	Current fee for session w/ three arbitrators	Proposed fee for session w/ three arbitrators	Change	Percentage change (%)
Up to $2,500	NA	NA	NA	NA
$2,500.01–$5,000	NA	NA	NA	NA

[18] *Id.*

[19] Like the member surcharge, the process fee is non-allocable to other parties to the arbitration. *See* FINRA Rules 12903(d) and 13903(d). *See also* FINRA Rules 12701(b) and 13701(b).

[20] *See* Notice at 67797.

[21] *See supra* note 8.

[22] The term ''panel'' means the arbitration panel, whether it consists of one or more arbitrators. *See* FINRA Rules 12100(u) and 13100(s).

[23] *See* FINRA Rules 12902(a)(1) and 13902(a)(1).

[24] *See* Notice at 67798.

HEARING SESSION FEES FOR SESSION WITH THREE ARBITRATORS—TABLE 5—Continued

Amount of claim (exclusive of interest and expenses)	Current fee for session w/ three arbitrators	Proposed fee for session w/ three arbitrators	Change	Percentage change (%)
$5,000.01–$10,000	NA	NA	NA	NA
$10,000.01–$25,000	NA	NA	NA	NA
$25,000.01–$50,000	$600	$600	$0	0
$50,000.01–$100,000	750	750	0	0
$100,000.01–$500,000	1,125	1,125	0	0
$500,000.01–$1,000,000	1,300	1,325	25	2
$1,000,000.01–$5,000,000	1,400	1,435	35	3
Over $5,000,000	1,500	1,575	75	5
Non-Monetary/Not Specified	1,125	1,150	25	2

C. Technical Changes

The proposed rule change would amend FINRA Rules 12901 and 13901 to make the formatting more consistent in the fee schedules. In addition, the proposed rule change would amend FINRA Rule 12900(c)(3) to change the cross-reference in the rule from Rule 12202(c) to Rule 12202.

III. Discussion and Commission Findings

After careful review of the proposed rule change and the comment letter, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[25] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,[26] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(5) of the Exchange Act,[27] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

A. Protection of Investors and the Public Interest

FINRA's proposed rule change aims to address concerns related to recruiting and retaining arbitrators for its forum roster, including increasing the probability that local public Chairs would be proposed for selection. FINRA stated that Chair-eligible arbitrators have indicated that they are not interested in completing the required Chair training and serving on the Chair roster because of the extra work required compared to the modest, additional Chair honorarium currently offered.[28] And forum users have expressed concern with empaneling non-local public arbitrators to Chair their proceedings.[29] FINRA believes that increasing the current per-day Chair honorarium for hearings on the merits and establishing a Chair honorarium for prehearing conferences would provide more of an incentive for eligible arbitrators to become Chairs and to more adequately compensate Chairs for their additional work.[30] The commenter agrees with FINRA, stating that increasing the additional hearing day honorarium that Chairs receive for each hearing on the merits, would ''provide more of an incentive for both new and experienced arbitrators to become Chairs, would increase the number of arbitrators on the Chair roster and will serve to reduce the number of non-local Chair arbitrators all of which will expand the quality and depth of the arbitrator roster which is a critical component for protecting investors and the public interest.'' [31] The commenter also believes that the proposal rule change would ''more adequately compensate Chairs for their additional work.'' [32]

The Commission acknowledges FINRA's concern that fewer Chair-eligible arbitrators may be taking on the additional burdens of being on the Chair roster due to insufficient compensation. The Commission believes that increasing the amount that FINRA compensates its Chair-eligible arbitrators may incentivize them to take on the additional training and responsibilities associated with the position.[33] Consequently, FINRA may be able to recruit new, and retain current, Chairs for its roster, potentially alleviating the shortage of Chairs in certain locations and the concomitant negative impact (*e.g.,* dissatisfied parties and scheduling delays).

B. Equitable Allocation of Reasonable Fees

FINRA stated that the proposed increases to Chair honoraria would increase its expenses for operating the forum by approximately $1.1 million.[34] To offset these expenses, the proposed rule change would increase fees charged to parties for using its arbitration forum. In particular, the proposed rule change would increase the member surcharge, member process fees, filing fees, and hearing session fees. As illustrated above, FINRA would increase the member surcharge and process fees for claims of more than $250,000 or claims

[25] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78o–3(b)(6).

[27] 15 U.S.C. 78o–3(b)(5).

[28] *See* Notice at 67795.

[29] *Id.*

[30] *See* Notice at 67799.

[31] Caruso Letter.

[32] *Id.* (stating that the proposed $125 Chair honorarium for each prehearing conference in which the Chair participates would compensate Chairs who do not currently receive an additional honorarium for prehearing conferences, even though Chairs are required to lead the prehearing conferences and perform additional tasks in connection with the prehearing conferences, such as setting discovery, briefing, and motion deadlines, scheduling subsequent hearing sessions, drafting prehearing orders, and rendering decisions on discovery and other case-related motions).

[33] To qualify as a Chair, an arbitrator must complete Chair training and have served on at least three arbitrations through award in which hearings were held, or be a lawyer who served on at least one arbitration through award in which hearings were held. *See* FINRA Rules 12400(c) and 13400(c); *see also supra* note 10 and accompanying text.

[34] From 2014 through 2019, FINRA paid the hearing day honorarium on an average of 2,569 times per year. In order to fund the proposed hearing day honorarium increase from $125 to $250, FINRA would need to raise revenue by approximately $368,000 annually. *See* Notice at note 12. From 2014 through 2019, FINRA conducted an average of 4,954 prehearing conferences per year. In order to pay the proposed additional Chair prehearing honorarium of $125, FINRA would need to raise revenue by approximately $724,000 annually. *See* Notice at note 15.

for non-monetary or unspecified damages. The proposed rule change would also increase filing fees and hearing session fees for customers, associated persons and members bringing claims of more than $500,000 or claims for non-monetary or unspecified damages. FINRA believes the proposed rule change appropriately allocates the proposed fee increases among users of the forum by allocating the increases among high claim amounts and continuing its policy that the costs of the forum are borne 85 percent by members and 15 percent by customers.[35]

FINRA also believes the amount of the fee increases are reasonable. FINRA believes that the proposed fee increases would generate sufficient revenue to offset the proposed increases in the arbitrator Chair honoraria without placing an undue burden on users of the forum, particularly customers and claimants with small claims.[36] For example, the filing fee increases for non-member claimants will range from $15 to $50 (1%–2% increase); [37] the hearing session fee increases will range from $25 to $75 (2%–5% increase); [38] the increases to the member surcharge will range from $100 to $300 (3%–4% increase); [39] and the filing fee increases for member claimants will range from $100 to $200 (4%–6% increase).[40] FINRA believes these represent ''minimal'' increases.[41] Similarly, the commenter believes that increasing the filing fees and hearing session fees for customers, associated persons, and members bringing claims of more than $500,000 or claims for non-monetary or unspecified damages, is a fair, equitable and reasonable allocation of the costs among people using the forum that will be associated with the implementation of the proposed rule amendments.[42]

The Commission believes that increasing the amount of honoraria paid to arbitrators who chair hearings and pre-hearing conferences in the FINRA forum as proposed here would help improve the arbitration process for its users. To offset the costs of this improvement, FINRA designed the arbitration fee structure to distribute much of the increased costs of the forum to member firms that are parties to an arbitration proceeding and to parties associated with large claims or non-monetary or unspecified claims. The Commission believes that this proposed distribution of fees will help keep the FINRA arbitration forum accessible. Otherwise, the Commission believes that increasing fees on claimants with small claims could discourage retail investors from bringing their claims.[43] Accordingly, the proposed allocation of the fee increases will help ensure that FINRA's arbitration forum remains accessible and affordable to parties.

As stated above, the filing fee increases for non-member claimants will range from $15 to $50; the hearing session fee increases will range from $25 to $75; the increases to the member surcharge will range from $100 to $300; and the filing fee increases for member claimants range from $100 to $200. Because these increases would only apply to claims over $250,000 and, in some instances, over $500,000, they represent a small percentage of effected claims (collectively, 1%–6%).

The Commission believes that the proposed rule change is consistent with the Exchange Act. In particular, the Commission believes that the proposed rule change is appropriate and designed to protect investors and the public interest, consistent with Section 15A(b)(6) of the Exchange Act. Specifically, the Commission believes that the proposed increase to the hearing day Chair honorarium and the addition of a Chair honorarium for prehearing conferences are in the public interest because they would help improve the arbitration process for its users, including retail investors. Moreover, the Commission believes that the proposed fee increases represent an equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, consistent with Section 15A(b)(5). For these reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act [44] that the proposal (SR–FINRA–2020–035), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[35] *See* Notice at 67799; *see also* Notice at note 9 (stating that the FINRA Dispute Resolution Task Force suggested raising arbitration fees to fund arbitrator honoraria increases consistent with the current arbitration fee structure, which assigns a majority of the costs of the forum to firms through the member surcharge and process fees).

[36] *See* Notice at 67796.

[37] See Table 2 (Filing Fees for Customers, Associated Persons or Other Non-Member Claimants) *supra; see also* Notice at 67797.

[38] See Table 5 (Hearing Session Fees for Session with Three Arbitrators) *supra; see also* Notice at 67798.

[39] See Table 4 (Member Process Fee Schedule) *supra; see also* Notice at 67797.

[40] See Table 3 (Filing Fees for Member Claimant) *supra; see also* Notice at 67797.

[41] *See* Notice at 67794.

[42] *See* Caruso Letter.

[43] *See* Notice at 67801.

[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90707; File No. SR–NYSENAT–2020–37]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Rule 6.6800 Series

December 17, 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 December 4, 2020, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 6.6800 Series, the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') [3] to be consistent with a conditional exemption granted by the Commission from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Allocation Exemption'').[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78a.

[2] 17 CFR 240.19b–4.

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[4] *See* Securities Exchange Act Rel. No. 90223 (October 19, 2020), 85 FR 67576 (October 23, 2020) (''Allocation Exemptive Order'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Rule 6.6800 Series to be consistent with the Allocation Exemption. The Commission granted the relief conditioned upon the Participants' adoption of Compliance Rules that implement the alternative approach to reporting allocations to the Central Repository described in the Allocation Exemption (referred to as the ''Allocation Alternative'').

(1) Request for Exemptive Relief

Pursuant to Section 6.4(d)(ii)(A) of the CAT NMS Plan, each Participant must, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if the order is executed, in whole or in part: (1) An Allocation Report;[5] (2) the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and the (3) CAT-Order-ID of any contra-side order(s). Accordingly, the Exchange and the other Participants implemented Compliance Rules that require their Industry Members that are executing brokers to submit to the Central Repository, among other things, Allocation Reports and the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.

On August 27, 2020, the Participants submitted to the Commission a request for an exemption from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Exemption Request'').[6] In the Exemption Request, the Participants requested that they be permitted to implement the Allocation Alternative, which, as noted above, is an alternative approach to reporting allocations to the Central Repository. Under the Allocation Alternative, any Industry Member that performs an allocation to a client account would be required under the Compliance Rule to submit an Allocation Report to the Central Repository when shares/contracts are allocated to a client account regardless of whether the Industry Member was involved in executing the underlying order(s). Under the Allocation Alternative, a ''client account'' would be any account that is not owned or controlled by the Industry Member.

In addition, under the Allocation Alternative, an ''Allocation'' would be defined as: (1) The placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations). Pursuant to this definition and the proposed Allocation Alternative, an Industry Member that performs an Allocation to an account that is not a client account, such as proprietary accounts and events including step outs,[7] or correspondent flips,[8] would not be required to submit an Allocation Report to the Central Repository for that allocation, but could do so on a voluntary basis. Industry Members would be allowed to report Allocations to accounts other than client accounts; in that instance, such Allocations must be marked as Allocations to accounts other than client accounts.

(A) Executing Brokers and Allocation Reports

To implement the Allocation Alternative, the Participants requested exemptive relief from Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members that are executing brokers, who do not perform Allocations, to record and report to the Central Repository, if the order is executed, in whole or in part, an Allocation Report. Under the Allocation Alternative, when an Industry Member other than an executing broker (*e.g.,* a prime broker or clearing broker) performs an Allocation, that Industry Member would be required to submit the Allocation Report to the Central Repository. When an executing broker performs an Allocation for an order that is executed, in whole or in part, the burden of submitting an Allocation Report to the Central Repository would remain with the executing broker under the Allocation Alternative. In certain circumstances this would result in multiple Allocation Reports—the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

The Participants stated that granting exemptive relief from submitting Allocation Reports for executing brokers who do not perform an Allocation, and requiring the Industry Member other than the executing broker that is performing the Allocation to submit such Allocation Reports, is consistent with the basic approach taken by the Commission in adopting Rule 613 under the Exchange Act. Specifically, the Participants stated that they believe that the Commission sought to require each broker-dealer and exchange that touches an order to record the required data with respect to actions it takes on the order.[9] Without the requested exemptive relief, executing brokers that do not perform Allocations would be required to submit Allocation Reports. In addition, the Participants stated that, because shares/contracts for every execution must be allocated to an

[5] Section 1.1 of the CAT NMS Plan defines an ''Allocation Report'' as ''a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.''

[6] *See* letter from the Participants to Vanessa Countryman, Secretary, Commission, dated August 27, 2020 (the ''Exemption Request'').

[7] ''A step-out allows a broker-dealer to allocate all or part of a client's position from a previously executed trade to the client's account at another broker-dealer. In other words, a step-out functions as a client's position transfer, rather than a trade; there is no exchange of shares and funds and no change in beneficial ownership.'' *See* FINRA, Trade Reporting Frequently Asked Questions, at Section 301, available at: *https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq.*

[8] Correspondent clearing flips are the movement of a position from an executing broker's account to a different account for clearance and settlement, allowing a broker-dealer to execute a trade through another broker-dealer and settle the trade in its own account. *See, e.g.,* The Depository Trust & Clearing Corporation, Correspondent Clearing, available at: *https://www.dtcc.com/clearing-services/equities-tradecapture/correspondent-clearing.*

[9] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45748 (August 1, 2012).

account by the clearing broker in such circumstances, there would be no loss of information by shifting the reporting obligation from the executing broker to the clearing broker.

(B) Identity of Prime Broker

To implement the Allocation Alternative, the Participants also requested exemptive relief from Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if an order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the prime broker, if applicable. Currently, under the CAT NMS Plan, an Industry Member is required to report the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker in connection with the execution of an order, and such information would be part of the order's lifecycle, rather than in an Allocation Report that is not linked to the order's lifecycle.[10] Under the Allocation Alternative, the identity of the prime broker would be required to be reported by the clearing broker on the Allocation Report, and, in addition, the prime broker itself would be required to report the ultimate allocation, which the Participants believe would provide more complete information.

The Participants stated that associating a prime broker with a specific execution, as is currently required by the CAT NMS Plan, does not reflect how the allocation process works in practice as allocations to a prime broker are done post-trade and are performed by the clearing broker of the executing broker. The Participants also stated that with the implementation of the Allocation Alternative, it would be duplicative for the executing broker to separately identify the prime broker for allocation purposes.

The Participants stated that if a particular customer only has one prime broker, the identity of the prime broker can be obtained from the customer and account information through the DVP accounts for that customer that contain the identity of the prime broker. The Participants further stated that Allocation Reports related to those executions would reflect that shares/contracts were allocated to the single prime broker. The Participants believe that there is no loss of information through the implementation of the Allocation Alternative compared to what is required in the CAT NMS Plan and that this approach does not decrease the regulatory utility of the CAT for single prime broker circumstances.

In cases where a customer maintains relationships with multiple prime brokers, the Participants asserted that the executing broker will not have information at the time of the trade as to which particular prime broker may be allocated all or part of the execution. Under the Allocation Alternative, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts where the shares/contracts were ultimately allocated. To determine the prime broker for a customer, a regulatory user would query the customer and account database using the customer's CCID to obtain all DVP accounts for the CCID at broker-dealers. The Participants state that when a customer maintains relationships with multiple prime brokers, the customer typically has a separate DVP account with each prime broker, and the identities of those prime brokers can be obtained from the customer and account information.

(C) Additional Conditions to Exemptive Relief

In the Exemption Request, the Participants included certain additional conditions for the requested relief. Currently, the definition of Allocation Report in the CAT NMS Plan only refers to shares. To implement the Allocation Alternative, the Participants proposed to require that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Specifically, Participants would require the reporting of the following in each Allocation Report: (1) The FDID for the account receiving the allocation, including subaccounts; (2) the security that has been allocated; (3) the identifier of the firm reporting the allocation; (3) the price per share/contracts of shares/contracts allocated; (4) the side of shares/contracts allocated; (4) the number of shares/contracts allocated; and (5) the time of the allocation.

Furthermore, to implement the Allocation Alternative, the Participants proposed to require the following information on all Allocation Reports: (1) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (2) trade date; (3) settlement date; (4) IB/correspondent CRD Number (if applicable); (5) FDID of new order(s) (if available in the booking system); [11] (6) allocation instruction time (optional); (7) if the account meets the definition of institution under FINRA Rule 4512(c); [12] (8) type of allocation (allocation to a custody account, allocation to a DVP account, step out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (9) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (10) if an allocation was cancelled, a cancel flag, which indicates that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(2) Proposed Rule Changes To Implement Exemptive Relief

On October 29, 2020, the Commission granted the exemptive relief requested in the Exemption Request. The Commission granted the relief conditioned upon the adoption of Compliance Rules that implement the reporting requirements of the Allocation Alternative. Accordingly, the Exchange proposes the following changes to its Compliance Rule to implement the reporting requirements of the Allocation Alternative.

(A) Definition of Allocation

The Exchange proposes to add a definition of ''Allocation'' as new paragraph (c) to Rule 6.6810.[13] Proposed

[10] The Participants did not request exemptive relief relating to the reporting of the SRO-Assigned Market Participant Identifier of clearing brokers.

[11] The Participants propose that for scenarios where the Industry Member responsible for reporting the Allocation has the FDID of the related new order(s) available, such FDID must be reported. This would include scenarios in which: (1) The FDID structure of the top account and subaccounts is known to the Industry Member responsible for reporting the Allocation(s); and (2) the FDID structure used by the IB/Correspondent when reporting new orders is known to the clearing firm reporting the related Allocations.

[12] FINRA Rule 4512(c) states the for purposes of the rule, the term ''institutional account'' means the account of: (1) A bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

[13] The Exchange proposes to renumber the definitions in Rule 6.6810 to accommodate the addition of this new definition of ''Allocation'' and the new definition of ''Client Account'' discussed below.

paragraph (c) of Rule 6.6810 would define an ''Allocation'' to mean ''(1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations).'' The SEC stated in the Allocation Exemption that this definition of ''Allocation'' is reasonable.

(B) Definition of Allocation Report

The Exchange proposes to amend the definition of ''Allocation Report'' set forth in Exchange Rule 6.6810(c) to reflect the requirements of the Allocation Exemption. Exchange Rule 6.6810(c) defines the term ''Allocation Report'' to mean:

> a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

The Exchange proposes to amend this definition in two ways: (1) Applying the requirements for Allocation Reports to contracts in addition to shares; and (2) requiring the reporting of additional elements for the Allocation Report.

(i) Shares and Contracts

The requirements for Allocation Reports apply only to shares, as the definition of ''Allocation Report'' in Rule 6.6810(c) refers to shares, not contracts. In the Allocation Exemption, the Commission stated that applying the requirements for Allocation Reports to contracts in addition to shares is appropriate because CAT reporting requirements apply to both options and equities. Accordingly, the SEC stated that the Participants would be required to modify their Compliance Rules such that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Therefore, the Exchange proposes to amend Rule 6.6810(c) (to be renumbered as Rule 6.6810(d)) to apply to contracts, as well as shares. Specifically, the Exchange proposes to add references to contracts to the definition of ''Allocation Report'' to the following phrases: ''the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/contracts are allocated,'' ''the price per share/contract of shares/contracts allocated,'' ''the side of shares/contracts allocated,'' and ''the number of shares/contracts allocated to each account.''

(ii) Additional Elements

The Commission also conditioned the Allocation Exemption on the Participants amending their Compliance Rules to require the ten additional elements in Allocation Reports described above. Accordingly, the Exchange proposes to require these additional elements in Allocation Reports. Specifically, the Exchange proposes to amend the definition of ''Allocation Report'' in Rule 6.6810(c) (to be renumbered as Rule 6.6810(d)) to include the following elements, in addition to those elements currently required under the CAT NMS Plan:

> (6) the time of the allocation; (7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(C) Allocation Reports

(i) Executing Brokers That Do Not Perform Allocations

The Commission granted the Participants an exemption from the requirement that the Participants, through their Compliance Rule, require executing brokers that do not perform Allocations to submit Allocation Reports. The Commission stated that it understands that executing brokers that are not self-clearing do not perform allocations themselves, and such allocations are handled by prime and/or clearing brokers, and these executing brokers therefore do not possess the requisite information to provide Allocation Reports. Accordingly, the Exchange proposes to eliminate Rule 6.6830(a)(2)(A)(i),[14] which requires an Industry Member to record and report to the Central Repository an Allocation Report if the order is executed, in whole or in part, and to replace this provision with proposed Rule 6.6830(a)(2)(F) as discussed below.

(ii) Industry Members That Perform Allocations

The Allocation Exemption requires the Participants to amend their Compliance Rules to require Industry Members to provide Allocation Reports to the Central Repository any time they perform Allocations to a client account, whether or not the Industry Member was the executing broker for the trades. Accordingly, the Commission conditioned the Allocation Exemption on the Participants adopting Compliance Rules that require prime and/or clearing brokers to submit Allocation Reports when such brokers perform allocations, in addition to requiring executing brokers that perform allocations to submit Allocation Reports. The Commission determined that such exemptive relief would improve efficiency and reduce the costs and burdens of reporting allocations for Industry Members because the reporting obligation would belong to the Industry Member with the requisite information, and executing brokers that do not have the information required on an Allocation Report would not have to develop the infrastructure and processes required to obtain, store and report the information. The Commission stated that this exemptive relief should not reduce the regulatory utility of the CAT because an Allocation Report would still be submitted for each executed trade allocated to a client account, which in certain circumstances could still result in multiple Allocation Reports,[15] just not necessarily by the executing broker.

In accordance with the Allocation Exemption, the Exchange proposes to add proposed Rule 6.6830(a)(2)(F) to the Compliance Rule. Proposed Rule 6.6830(a)(2)(F) would require Industry Members to record and report to the Central Repository ''an Allocation Report any time the Industry Member

[14] The Exchange proposes to renumber Rule 6.6830(a)(2)(A)(ii) and (iii) as Rules 6.6830(a)(2)(A)(i) and (ii) in light of the proposed deletion of Rule 6.6830(a)(2)(A)(i).

[15] As noted above, under the Allocation Alternative, for certain executions, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.''

(iii) Client Accounts

In the Allocation Exemption, the Commission also exempted the Participants from the requirement that they amend their Compliance Rules to require Industry Members to report Allocations for accounts other than client accounts. The Commission believes that allocations to client accounts, and not allocations to proprietary accounts or events such as step-outs and correspondent flips, provide regulators the necessary information to detect abuses in the allocation process because it would provide regulators with detailed information regarding the fulfillment of orders submitted by clients, while reducing reporting burdens on broker-dealers. For example, Allocation Reports would be required for allocations to registered investment advisor and money manager accounts. The Commission further believes that the proposed approach should facilitate regulators' ability to distinguish Allocation Reports relating to allocations to client accounts from other Allocation Reports because Allocations to accounts other than client accounts would have to be identified as such. This approach could reduce the time CAT Reporters expend to comply with CAT reporting requirements and lower costs by allowing broker-dealers to use existing business practices.

To clarify that an Industry Member must report an Allocation Report solely for Allocations to a client account, proposed Rule 6.6830(a)(2)(F) specifically references ''Client Accounts,'' as discussed above. In addition, the Exchange proposes to add a definition of ''Client Account'' as proposed Rule 6.6810(l). Proposed Rule 6.6810(l) would define a ''Client Account'' to mean ''for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.''

(D) Identity of Prime Broker

The Exchange also proposes to amend Rule 6.6830(a)(2)(A)(ii) to eliminate the requirement for executing brokers to record and report the SRO-Assigned Market Participant Identifier of the prime broker. Rule 6.6830(a)(2)(A)(ii) states that each Industry Member is required to record and report to the Central Repository, if the order is executed, in whole or in part, the ''SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.'' The Exchange proposes to delete the phrase ''or prime broker'' from this provision. Accordingly, each Industry Member that is an executing broker would no longer be required to report the SRO-Assigned Market Participant Identifier of the prime broker.

As the Commission noted in the Allocation Exemption, exempting the Participants from the requirement that they, through their Compliance Rules, require executing brokers to provide the SRO-Assigned Market Participant Identifier of the prime broker is appropriate because, as stated by the Participants, allocations are done on a post-trade basis and the executing broker will not have the requisite information at the time of the trade. Because an executing broker, in certain circumstances, does not have this information at the time of the trade, this relief relieves executing brokers of the burdens and costs of developing infrastructure and processes to obtain this information in order to meet the contemporaneous reporting requirements of the CAT NMS Plan.

As the Commission noted in the Allocation Exemption, although executing brokers would no longer be required to provide the prime broker information, regulators will still be able to determine the prime broker(s) associated with orders through querying the customer and account information database. If an executing broker has only one prime broker, the identity of the prime broker can be obtained from the customer and account information associated with the executing broker. For customers with multiple prime brokers, the identity of the prime brokers can be obtained from the customer and account information which will list the prime broker, if there is one, that is associated with each account.

2. Statutory Basis

NYSE National believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[16] which require, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,[17] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

NYSE National believes that this proposal is consistent with the Act because it is consistent with, and implements, the Allocation Exemption, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [18] To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE National does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. NYSE National notes that the proposed rule changes are consistent with the Allocation Exemption, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. NYSE National also notes that the proposed rule changes will apply equally to all Industry Members. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing and does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20] Because the

[16] 15 U.S.C. 78f(b)(6).

[17] 15 U.S.C. 78f(b)(8)

[18] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2020–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2020–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2020–37, and should be submitted on or before January 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28312 Filed 12–22–20; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 81961, December 17, 2020

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Monday, December 21, 2020 at 11:00 a.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Monday, December 21, 2020 at 11:00 a.m. has been changed to Monday, December 21, 2020 at 10:00 a.m.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: December 18, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–28540 Filed 12–21–20; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–118, OMB Control No. 3235–0095]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 236

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Securities Act Rule 236 (17 CFR 230.236) provides an exemption from registration under the Securities Act for the offering of shares of stock or similar securities to provide funds to be distributed to security holders in lieu of fractional shares, scrip certificates or order forms, in connection with a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction. Issuers wishing to rely upon the exemption are required to furnish specified information to the Commission at least 10 days prior to the offering. The information is needed to provide notice that the issuer is relying on the exemption. Approximately 10 respondents file the information required by Rule 236 at an estimated 1.5 hours per response for a total annual reporting burden of 15 hours (1.5 hours per response × 10 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 18, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28430 Filed 12–22–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90698; File No. SR–BOX–2020–39]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility

December 17, 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 December 15, 2020, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule on the BOX Options Market LLC (''BOX'') facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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

To prevent the potential spread of coronavirus (COVID–19), BOX Exchange LLC (BOX) temporarily closed the Trading Floor in Chicago after the close of business on Thursday, December 10, 2020 but reopened on Monday, December 14, 2020 after existing BOX COVID–19 policies and procedures were executed. As a result of this and the uncertainty surrounding COVID–19, the Exchange proposes to amend the Fee Schedule for trading on BOX to govern certain pricing changes that will be in effect while the BOX Trading Floor is inoperable.

Facilitation and Solicitation Transaction Fees

First, the Exchange proposes to amend Section I.C. (Facilitation and Solicitation Transactions [5]) to establish a fee structure for Facilitation and Solicitation Transactions in lieu of the current fees for Facilitation and Solicitation Transactions while the BOX Trading Floor is inoperable. Further, the Exchange proposes that the Facilitation and Solicitation Transaction Rebate identified in Section I.C.1 will not apply when the BOX Trading Floor is inoperable. With the Trading Floor inoperable, Floor Participants will no longer be allowed to enter Qualified Open Outcry Orders (''QOO'') Orders on BOX. Instead these Participants must enter analogous types of electronic orders on BOX, which are most similar to orders executed through the Facilitation and Solicitation auction mechanism. Because of this, the Exchange proposes to mimic the current structure for Facilitation and Solicitation Transactions; however the Exchange proposes to make a few minor changes to the fees assessed for these transactions when the Trading Floor is inoperable. Specifically, the Exchange proposes to assess no fees for Agency Orders submitted to the Facilitation and Solicitation mechanisms for all Participants, regardless of account type.[6] Second, the Exchange proposes to assess no fees for Facilitation and Solicitation Orders [7] in Penny and Non-Penny Interval Classes. BOX also proposes to assess a $0.50 fee for Responses in the Facilitation or Solicitation Auction Mechanisms in Penny Interval Classes and $1.15 for Responses in the Facilitation and Solicitation mechanisms in Non-Penny Interval Classes.[8] The Exchange believes the proposed fee structure will incentivize Participants who would normally execute orders on the BOX Trading Floor to instead submit orders to the Exchange's Facilitation and Solicitation auction mechanisms.[9]

Liquidity Fees and Credits

The Exchange proposes to add text to Section III.B. (Liquidity Fees and Credits for Facilitation and Solicitation Transactions). Specifically, the Exchange proposes to add text which states that Participants will not be assessed Liquidity Fees and Credits for Facilitation and Solicitation Transactions when the BOX Trading Floor is inoperable.

[5] Transactions executed through the Solicitation Auction mechanism and Facilitation Auction mechanism.

[6] The Exchange notes that no fees are currently assessed for Agency Orders for any account type.

[7] Facilitation and Solicitation Orders are the matching contra orders submitted on the opposite side of the Agency Order.

[8] The Exchange notes that the total fees for Responses in the Facilitation and Solicitation auction mechanisms are not changing. Currently, Participants are assessed a $0.25 fee for Responses in the Facilitation and Solicitation mechanisms for Penny Interval Classes and an additional $0.25 liquidity fee in Section III.B totaling $0.50 for their order. For Non-Penny Pilot Classes, Participants are assessed a $0.40 fee for Responses in the Facilitation and Solicitation mechanisms and an additional $0.75 liquidity fee in Section III.B totaling $1.15 for their order. As discussed herein, the Exchange proposes to eliminate Liquidity Fees and Credits for Facilitation and Solicitation transactions when the Trading Floor is inoperable. As such, the current liquidity fees are included in the proposed Response fees for the Facilitation and Solicitation mechanisms.

[9] The Exchange notes that the QOO Orders are paired orders on the BOX Trading Floor similar to Facilitation and Solicitation orders submitted electronically through the Facilitation and Solicitation auction mechanism. The Exchange believes that the reduced Facilitation and Solicitation Order fees will incentivize Floor Participants (who are also electronic Participants on BOX) to execute orders electronically instead of directing this order flow to another exchange.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The proposed changes are due to the closing of the BOX Trading Floor as of December 11, 2020. The Exchange believes the proposed changes discussed herein will incentivize Participants to direct order flow that would have otherwise been executed on the BOX Trading Floor, to be executed through the Exchange's Facilitation and Solicitation auction mechanisms while the Trading Floor is inoperable.[11] The Exchange notes that a substantially similar proposal was effective upon filing in April 2020.[12]

Facilitation and Solicitation Transaction Fees

The Exchange believes that the proposed fee structure for Facilitation and Solicitation Transactions while the Trading Floor is inoperable is reasonable, equitable and not unfairly discriminatory. The Exchange notes that assessing no Agency Order fees is in line with the Exchange's current fee structure for Facilitation and Solicitation Transactions. Further, the Exchange believes that assessing no fees for Facilitation and Solicitation Orders in the Facilitation and Solicitation auction mechanism is reasonable.[13] As discussed above, the Exchange believes that assessing no fees for Facilitation and Solicitation Orders will attract order flow to these mechanisms that would have otherwise been executed on the BOX Trading Floor. The Exchange believes the proposed change will incentivize Participants to direct their orders to the Exchange's mechanisms (instead of directing these orders that would have normally executed on the BOX Trading Floor to other exchanges in the industry) which will result in greater liquidity and ultimately benefit all Participants trading on the Exchange. Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory, as the proposed change applies to all Participants, regardless of account type.

The Exchange believes that the proposed fees for Responses in the Facilitation and Solicitation auction mechanisms are reasonable. As discussed above, the Exchange is removing Liquidity Fees and Credits for the Facilitation and Solicitation mechanisms. With the Liquidity Fees and Credits removed, the Exchange is transferring the fee for adding liquidity ($0.25 for Penny Pilot Class and $0.75 Non-Penny Pilot Classes) and adding these fees to the proposed Response fees. BOX Participants responding to the Facilitation and Solicitation orders will not be charged any differently than they are today.[14] Further, the Exchange believes that the proposed fees are equitable and not unfairly discriminatory because the fees are assessed to all Participants, regardless of account type.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to charge higher exchange fees for responders in the Facilitation and Solicitation auctions than for initiators of these orders and the contra orders. The Exchange again notes that the total transaction fee for Responses in the Facilitation and Solicitation mechanisms is not changing. The Exchange is simply including the liquidity fees in Section III.B. to the fees for Responses in the Facilitation and Solicitation mechanisms which are currently assessed today. While the Exchange is decreasing the fees for Facilitation and Solicitation orders and creating a larger disparity between the Initiator and Responder, the Exchange believes that the differential between what an Initiator will pay compared to what a Responder will pay is reasonable because Responders are willing to pay a higher fee for liquidity discovery. The Exchange believes that assessing no fees for Agency Orders and Facilitation and Solicitation Orders will attract more liquidity to these mechanisms ultimately providing Responders with increased opportunity for executions on the Exchange. Despite the increased differential between the Initiator and Responder, the Exchange again notes that Responders are not paying any more than what they currently pay for responses in these mechanisms today. Further, the Exchange believes the proposed fees for Responders are equitable and not unfairly discriminatory as they apply to all Participants, regardless of account type.

The Exchange further believes it is reasonable to establish different fees for Responses to Facilitation and Solicitation transactions in Penny Pilot Classes compared to transactions in Non-Penny Pilot Classes. The Exchange makes this distinction throughout the BOX Fee Schedule, including the Exchange Fees for PIP and COPIP Transactions. The Exchange believes it is reasonable to establish higher fees for Non-Penny Pilot Classes because these Classes are typically less actively traded and have wider spreads.

Liquidity Fees and Credits

Currently, the Liquidity Fees and Credits fee structure for Facilitation and Solicitation transactions, in particular the credit for removing liquidity, aims to attract order flow to the BOX auction mechanisms. The Exchange believes that eliminating the Liquidity Fees and Credits for Facilitation and Solicitation Transactions when the Trading Floor is inoperable is reasonable as the Exchange has, pursuant to this proposal, eliminated Facilitation and Solicitation Order fees.[15] Market participants no longer need the incentive of a credit for removing liquidity when there are no fees assessed for Agency Orders and Facilitation and Solicitation Orders in the Facilitation and Solicitation auction mechanism. Further, the Exchange believes the proposed change is equitable and not unfairly discriminatory in that the change will apply to all categories of Participants and across all account types.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing exchanges. In such an environment, the Exchange must continually review, and consider adjusting, its fees to remain competitive

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] The Exchange notes that the QOO Orders are paired orders on the BOX Trading Floor similar to Facilitation and Solicitation orders submitted electronically through the Facilitation and Solicitation auction mechanism. Under this proposal, Floor Participants (who are also electronic Participants on BOX) will be able to execute orders electronically despite the Trading Floor being closed.

[12] *See* Securities Exchange Act Release No. 88559 (April 3, 2020), 85 FR 19968 (April 9, 2020) (SR–BOX–2020–08). The Exchange notes that the proposal discussed herein differs slightly from the proposal approved in April 2020. Here, the Exchange does not intend to waive the Participant Fees (detailed in Section IX) while the Trading Floor is inoperable. The waiver of the Floor Participant Fees in the April 2020 filing was appropriate as, at the time, the BOX Trading Floor closed indefinitely. This is no longer the case. Since reopening the BOX Trading Floor, BOX has put in place robust policies and procedures regarding the closure and reopening of the Trading Floor due to COVID–19. As such, BOX does not anticipate having to close the Trading Floor again for an indefinite amount of time.

[13] The Exchange notes that it previously did not charge Broker Dealers, Professional Customers and Market Makers for Facilitation and Solicitation Orders in the Facilitation and Solicitation mechanism. *See* SR–BOX–2015–29.

[14] *See supra* note 8.

[15] The Exchange again notes that no fees are assessed for Agency Orders for any account type.

with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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 Exchange believes that the proposed changes to the Facilitation and Solicitation Transaction fees will not impose a burden on competition among various Exchange Participants. Rather, BOX believes that the change will result in the Participants being charged appropriately for these transactions and are designed to enhance competition in the Facilitation and Solicitation mechanisms. Submitting an order is entirely voluntary and Participants can determine which order type they wish to submit, if any, to the Exchange. Further, the Exchange believes that this proposal will enhance competition between exchanges because it is designed to allow the Exchange to better compete with other exchanges for order flow. The Exchange does not believe that the proposed change will burden competition by creating a disparity between the fees an initiator pays and the fees a competitive responder pays that would result in certain Participants being unable to compete with initiators. In fact, the Exchange believes that these changes will not impair these Participants from adding liquidity and competing in the Facilitation and Solicitation mechanisms, and will help promote competition by providing incentives for market participants to submit Facilitation and Solicitation Orders, and thus benefit all Participants trading on the Exchange by attracting customer order flow.

Lastly, the Exchange believes that eliminating the Liquidity Fees and Credits for Facilitation and Solicitation Transactions will not burden competition as the proposed change applies to all market participants. As discussed above, the Exchange believes that eliminating the Liquidity Fees and Credits for Facilitation and Solicitation Transactions is reasonable as the Exchange, pursuant to this proposal, has eliminated Facilitation and Solicitation Order fees. Therefore, the credit for removing liquidity is no longer needed to incentivize Participants to submit order flow to the Facilitation and Solicitation auction mechanisms.

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 Exchange Act [16] and Rule 19b–4(f)(2) thereunder,[17] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2020–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2020–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2020–39, and should be submitted on or before January 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28305 Filed 12–22–20; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90713; File No. SR–CboeEDGX–2020–063]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend EDGX Rule 11.8(g), Which Describes the Handling of MidPoint Discretionary Orders Entered on the Exchange

December 17, 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 December 15, 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, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 proposed rule change to amend EDGX Rule 11.8(g), which describes the handling of MidPoint Discretionary Orders entered on the Exchange.[5] 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

The purpose of the proposed rule change is to amend EDGX Rule 11.8(g) to allow Users that enter MidPoint Discretionary Orders (''MDOs'') with a Quote Depletion Protection (''QDP'') instruction [6] to also include an optional instruction to allow the MDO to remove liquidity. An MDO is a Limit Order that when resting on the EDGX Book is pegged to the NBB for an order to buy or the NBO for an order to sell, with or without an offset, with discretion to execute at prices to and including the midpoint of the NBBO.[7] MDOs entered on the Exchange today are designed to only act as the provider of liquidity, including when resting on the EDGX Book and on entry.[8] On June 4, 2020, the Exchange received approval to introduce a new QDP instruction that Users can include on their MDOs to limit the order's ability to exercise discretion in certain circumstances where applicable market conditions indicate that it may be less desirable to execute within the order's discretionary range.[9] QDP is designed to enable market participants to enter orders that may exercise discretion to trade at more aggressive prices up to the midpoint of the NBBO, while providing additional protection to those orders at times where the market for the security may be about to transition to a worse price from the perspective of the MDO. As proposed, Users that enter an MDO with a QDP instruction would be permitted to include an optional instruction to allow the MDO to remove liquidity, thereby facilitating the ability of such orders to aggressively seek an execution on entry and when posted to the EDGX Book.

Currently, an MDO entered on the Exchange will only act as a liquidity provider once resting on the EDGX Book, and will only execute on entry in limited circumstances where the resting order includes a Super Aggressive or Non-Displayed Swap (''NDS'') instruction that allows for a liquidity swap with the incoming MDO.[10] As a result, MDOs entered on the Exchange will only act as liquidity provider—*i.e.,* either as the resting order, or by liquidity swapping with a resting order that is willing to assume the role of the liquidity remover in exchange for obtaining an execution.[11] By contrast, MDOs entered on the Exchange's affiliate, Cboe EDGA Exchange, Inc. (''EDGA''), are allowed to remove liquidity.[12] Although the Exchange believes that certain Users will continue to prefer to act solely as a liquidity provider, additional flexibility may be beneficial to market participants, particularly those that have begun entering MDOs with the recently-introduced QDP instruction. Indeed, the Exchange has received feedback from Users that utilize the QDP instruction on their MDOs indicating that they appreciate the protective features provided by QDP, but that it would also be valuable to improve fill rates by permitting such orders to remove liquidity. The Exchange is thus proposing to amend its rules such that Users would have the flexibility to allow such orders to remove liquidity. MDOs entered with both a QDP instruction and an instruction to allow the order to remove liquidity would be handled in the same manner as MDOs entered with a QDP instruction on EDGA today, thereby providing a consistent and familiar experience for market participants.

In addition, since the Exchange believes that Users utilizing the MDO order type with a QDP instruction are more concerned with potential adverse selection risks, and would generally prefer to be able to secure an execution when possible at times that the QDP indicator does not predict a potential adverse price change, *i.e.,* regardless of whether adding or removing liquidity, the Exchange proposes to make the ability to remove liquidity the default instruction for such orders. However, the Exchange would also retain the current functionality that allows MDOs to be entered that will only act as the provider of liquidity. This functionality would continue to apply to all MDOs entered without a QDP instruction, as well as to MDOs entered with a QDP instruction if the User affirmatively instructs the Exchange limit the order to providing liquidity.[13] Thus, Users that prefer to only have their MDOs execute exclusively as the provider of liquidity would be able to continue to do so in the same manner that they do today. Introducing the ability for MDOs entered with a QDP instruction to remove liquidity, while retaining current functionality, would therefore provide additional flexibility to market participants without impacting order handling for Users that prefer the current functionality.

The Exchange also proposes also make certain conforming and non-substantive changes to EDGX Rule 11.8(g). Specifically, to increase the readability of the MDO rule, the Exchange proposes to move all rule language associated with posting instructions to EDGX Rule 11.8(g)(5), labelled ''routing/posting.'' Currently,

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] QDP is an optional instruction that a User may include on an MDO to limit the order's ability to exercise discretion in certain circumstances. *See* EDGX Rule 11.9(g)(10).

[7] *See* EDGX Rule 11.8(g).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 89007 (June 4, 2020), 85 FR 35454 (June 10, 2020) (SR–CboeEDGX–2020–010).

[10] *See* EDGX Rule 11.8(g).

[11] The Exchange's Super Aggressive and NDS instructions allow orders entered with those instructions to trade as the remover of liquidity with orders that are designated to act solely as the liquidity provider. *See* EDGX Rules 11.6(n)(2),(7).

[12] *See* EDGA Rule 11.8(e).

[13] A User would be able to instruct the Exchange to limit the order to providing liquidity either on an order-by-order basis, or through the use of a port setting.

this subparagraph only references the fact that MDOs are not eligible for routing to other national securities exchanges, and does not reference order handling related to posting instructions—*i.e.,* whether and when an MDO is allowed to remove or add liquidity. As proposed, EDGX Rule 11.8(g)(5) would incorporate language currently included in the main section of the MDO rule that describes how such orders are handled consistent with an instruction to only act as the liquidity provider.

First, the current rule provides that upon entry, an MDO will only execute against resting orders that include a Super Aggressive instruction priced at the MDO's pegged price if the MDO also contains a Displayed instruction and against orders with an NDS instruction priced at the MDO's pegged price or within its discretionary range. The Exchange proposes to move this discussion to EDGX Rule 11.8(g)(5) along with other language that addresses order handling related to routing and posting. Given the proposed ability for such orders to remove liquidity in certain circumstances, the Exchange has proposed to preface this language in the rule with language that explains that it only applies to MDOs that do not include instructions that permit the removal of liquidity. Thus, as proposed, EDGX Rule 11.8(g)(5) would provide that if the instructions included on an MDO do not permit the order to remove liquidity, the MDO will only execute on entry against resting orders that include a Super Aggressive instruction priced at the MDO's pegged price if the MDO also contains a Displayed instruction, and against orders with an NDS instruction priced at the MDO's pegged price or within its discretionary range. As discussed, this functionality is the same as currently applied to MDOs entered on the Exchange.

Second, the current rule provides that should a resting contra-side order within the MDO's discretionary range not include an NDS instruction, the incoming MDO will be placed on the EDGX Book and its discretionary range shortened to equal the limit price of the contra-side resting order. Similar to the above, the Exchange proposes to move this discussion to EDGX Rule 11.8(g)(5), and would make minor non-substantive changes to the language to account for the ability of certain MDOs to remove liquidity under the proposal. Thus, as proposed, EDGX Rule 11.8(g)(5) would provide that if a resting contra-side order that does not include an NDS instruction is priced within the discretionary range of an incoming MDO that *is not permitted to remove liquidity,* the incoming MDO will be placed on the EDGX Book and its discretionary range will be shortened to equal the limit price of the resting contra-side order. This language relates specifically to incoming MDOs that do not remove liquidity and are therefore not able to trade on entry with certain orders that are unwilling to perform a liquidity swap. The proposed edits to the language would therefore make clear that this handling does not apply in circumstances where an MDO is entered with instructions that permit liquidity removal.

Third, the current rule provides that where an incoming order with a Post Only instruction does not remove liquidity on entry pursuant to Rule 11.6(n)(4) against a resting MDO, the discretionary range of the resting MDO will be shortened to equal the limit price of the incoming contra-side order with a Post Only instruction. The Exchange also proposes to move this language to Rule 11.8(g)(5) as it relates to relates generally to posting instructions. However, since this handling does not depend on whether the MDO is only allowed to add liquidity, or can both add or remove liquidity, the Exchange is not proposing to edit this language when moving it to this subsection of the MDO rule.

Finally, in addition to the proposed changes described above, the Exchange also proposes to amend EDGX Rule 11.8(g)(2) to allow MDOs to be entered for an odd lot size. Currently, EDGX Rule 11.8(g)(2) specifies that MDOs may be entered as a round lot or mixed lot only, and the Exchange does not permit Users odd lots to be entered using the MDO order type. By contrast, the Exchange's affiliate, EDGA, does not have a similar restriction, and MDOs entered on that exchange may therefore be entered for an odd lot size.[14] The Exchange is proposing to similarly permit odd lot MDOs to be entered on the EDGX Book, which would allow market participants trading on the Exchange to similarly utilize MDOs for smaller order sizes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] 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. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it would enable Users that enter MDOs with a QDP instruction to optionally remove liquidity, similar to the current handling on its affiliate, EDGA, which allows such orders to remove liquidity today. In addition, the proposed rule change would allow Users to enter MDOs for an odd lot quantity, which is similarly consistent with the operation of MDOs entered on EDGA.

Although MDOs are currently designed to only act as the provider of liquidity, the Exchange believes that Users that enter MDOs with a QDP instruction may benefit from the ability to trade more aggressively as the remover of liquidity. The Exchange is therefore proposing to allow MDOs entered with a QDP instruction to remove liquidity, by default, while allowing Users to alternatively select to have such orders limited to providing liquidity. MDOs that are not entered with a QDP instruction, and MDOs entered with a QDP instruction where the User chooses to opt out of the ability to remove liquidity, would be handled in the same manner as they are today, thereby allowing Users to properly reflect their trading intent with their choice of instruction. As discussed, MDOs entered on the Exchange currently only act as the provider of liquidity, both on entry and upon posting to the EDGX Book. By contrast, the Exchange's affiliate, EDGA, allows such orders to both provide and remove liquidity. The Exchange believes that allowing MDOs entered with a QDP instruction to optionally act as liquidity remover, similar to the current handling on its affiliate, EDGA, would remove impediments to and perfect the mechanism of a free and open market and a national market system.

With the recent introduction of the QDP instruction, the Exchange has decided to revisit whether these orders should be allowed to remove liquidity, and has determined that such handling would be generally beneficial to market participants trading on the Exchange as it would increase the probability of such orders obtaining an execution. This change is consistent with customer feedback as some Users have indicated that they would prefer the ability to remove liquidity in order to boost fill rates for MDOs entered with a QDP instruction. At the same time, the Exchange understands that certain market participants may wish to continue to have these orders act solely

[14] *See* EDGA Rule 11.8(e)(2).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

as a liquidity provider. The proposed rule change would therefore give Users the flexibility to determine whether an MDO entered with a QDP instruction should act solely as a liquidity provider, *i.e.,* the current functionality, or whether such orders should instead be allowed to also remove liquidity. The Exchange believes that this change will benefit market participants by offering functionality similar to that currently offered by its affiliate, while providing additional flexibility with respect to how MDOs are handled by the Exchange.

In addition, the Exchange believes that the proposed non-substantive changes to its MDO rule are consistent with just and equitable principles of trade as these changes are designed to increase transparency around the operation of the Exchange. As proposed, the Exchange would move certain language included in the MDO rule to the subsection of the rule that addressees routing and posting. The proposed language to be included in that subsection is substantively the same as the language currently included in the main text of the MDO rule, with a handful of minor changes to reflect the fact that certain MDOs may be permitted to remove liquidity based on User instructions. The Exchange believes that consolidating all of this language in the subsection on routing and posting would increase the readability of the rule, and the proposed edits to the language included in that subsection are merely designed to highlight where the language is applicable specifically to MDOs entered with instructions that require that the order act as the provider of liquidity. These changes are being proposed to ensure that the language remains accurate in light of the changes to allow certain MDOs to remove liquidity. As such, the Exchange believes that those edits would increase transparency around the operation of the MDO order type in light of the other proposed changes addressed in this filing.

Finally, the Exchange believes that allowing MDOs to be entered for an odd lot quantity would promote just and equitable principles of trade. As discussed, the Exchange's affiliate, EDGA, similarly allows such orders to be entered for an odd lot size, and the Exchange believes that market participants that trade on the EDGX Book should similarly be able to enter odd lot MDOs. While the Exchange initially restricted MDOs to either round lots or mixed lots, the Exchange now believes that this limitation unnecessarily limits the availability of the MDO order type for market participants that are interested in trading smaller sized orders. Expanding MDOs to odd lot orders would therefore increase the ability for market participants to trade using this order type, including potentially benefiting Users of the recently introduced QDP instruction.

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 changes would allow MDOs entered with a QDP instruction on EDGX to remove liquidity, which would increase flexibility offered by such orders. Although these orders do not remove liquidity today, the Exchange's affiliate, EDGA, already permits such orders to do so. Thus, the proposed rule change would allow market participants that trade on EDGX to utilize similar functionality to those that trade on its affiliated exchange today. Further, the Exchange has proposed to introduce the ability to remove liquidity as the default instruction for such orders, while allowing Users that prefer the current functionality to continue to have their orders handled in the same manner as they are today—*i.e.,* Users could chose to have these orders only add liquidity, as is the case with the current functionality. As a result, the Exchange does not believe that the proposed ability for these orders to remove liquidity would impose any significant burden on competition. Similarly, the Exchange notes that MDOs entered on the EDGA Book are permitted to be entered for an odd lot quantity. The Exchange believes that permitting odd lot MDOs on the EDGX Book would provide similar benefits to its Users by expanding the potential use of this order type, without imposing any significant burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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)[18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2020–063 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–2020–063. 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

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

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–CboeEDGX–2020–063 and should be submitted on or before January 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28318 Filed 12–22–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 81999, December 17, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Monday, December 21, 2020 at 10:00 a.m.

CHANGES IN THE MEETING: The Open Meeting scheduled for Monday, December 21, 2020 at 10:00 a.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: December 18, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–28521 Filed 12–21–20; 4:15 pm]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90708; File No. SR–NYSECHX–2020–32]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Rule 6.6800 Series

December 17, 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 December 4, 2020, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 6.6800 Series, the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') [3] to be consistent with a conditional exemption granted by the Commission from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Allocation Exemption'').[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Rule 6.6800 Series to be consistent with the Allocation Exemption. The Commission granted the relief conditioned upon the Participants' adoption of Compliance Rules that implement the alternative approach to reporting allocations to the Central Repository described in the Allocation Exemption (referred to as the ''Allocation Alternative'').

(1) Request for Exemptive Relief

Pursuant to Section 6.4(d)(ii)(A) of the CAT NMS Plan, each Participant must, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if the order is executed, in whole or in part: (1) An Allocation Report; [5] (2) the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and the (3) CAT-Order-ID of any contra-side order(s). Accordingly, the Exchange and the other Participants implemented Compliance Rules that require their Industry Members that are executing brokers to submit to the Central Repository, among other things, Allocation Reports and the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.

On August 27, 2020, the Participants submitted to the Commission a request for an exemption from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Exemption Request'').[6] In the Exemption Request, the Participants requested that they be permitted to implement the Allocation Alternative, which, as noted above, is an alternative approach to reporting

[1] 15 U.S.C. 78a.

[2] 17 CFR 240.19b–4.

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[4] *See* Securities Exchange Act Rel. No. 90223 (October 19, 2020), 85 FR 67576 (October 23, 2020) (''Allocation Exemptive Order'').

[5] Section 1.1 of the CAT NMS Plan defines an ''Allocation Report'' as ''a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.''

[6] *See* letter from the Participants to Vanessa Countryman, Secretary, Commission, dated August 27, 2020 (the ''Exemption Request'').

allocations to the Central Repository. Under the Allocation Alternative, any Industry Member that performs an allocation to a client account would be required under the Compliance Rule to submit an Allocation Report to the Central Repository when shares/contracts are allocated to a client account regardless of whether the Industry Member was involved in executing the underlying order(s). Under the Allocation Alternative, a ''client account'' would be any account that is not owned or controlled by the Industry Member.

In addition, under the Allocation Alternative, an ''Allocation'' would be defined as: (1) The placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations). Pursuant to this definition and the proposed Allocation Alternative, an Industry Member that performs an Allocation to an account that is not a client account, such as proprietary accounts and events including step outs,[7] or correspondent flips,[8] would not be required to submit an Allocation Report to the Central Repository for that allocation, but could do so on a voluntary basis. Industry Members would be allowed to report Allocations to accounts other than client accounts; in that instance, such Allocations must be marked as Allocations to accounts other than client accounts.

(A) Executing Brokers and Allocation Reports

To implement the Allocation Alternative, the Participants requested exemptive relief from Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members that are executing brokers, who do not perform Allocations, to record and report to the Central Repository, if the order is executed, in whole or in part, an Allocation Report. Under the Allocation Alternative, when an Industry Member other than an executing broker (*e.g.,* a prime broker or clearing broker) performs an Allocation, that Industry Member would be required to submit the Allocation Report to the Central Repository. When an executing broker performs an Allocation for an order that is executed, in whole or in part, the burden of submitting an Allocation Report to the Central Repository would remain with the executing broker under the Allocation Alternative. In certain circumstances this would result in multiple Allocation Reports—the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

The Participants stated that granting exemptive relief from submitting Allocation Reports for executing brokers who do not perform an Allocation, and requiring the Industry Member other than the executing broker that is performing the Allocation to submit such Allocation Reports, is consistent with the basic approach taken by the Commission in adopting Rule 613 under the Exchange Act. Specifically, the Participants stated that they believe that the Commission sought to require each broker-dealer and exchange that touches an order to record the required data with respect to actions it takes on the order.[9] Without the requested exemptive relief, executing brokers that do not perform Allocations would be required to submit Allocation Reports. In addition, the Participants stated that, because shares/contracts for every execution must be allocated to an account by the clearing broker in such circumstances, there would be no loss of information by shifting the reporting obligation from the executing broker to the clearing broker.

(B) Identity of Prime Broker

To implement the Allocation Alternative, the Participants also requested exemptive relief from Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if an order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the prime broker, if applicable. Currently, under the CAT NMS Plan, an Industry Member is required to report the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker in connection with the execution of an order, and such information would be part of the order's lifecycle, rather than in an Allocation Report that is not linked to the order's lifecycle.[10] Under the Allocation Alternative, the identity of the prime broker would be required to be reported by the clearing broker on the Allocation Report, and, in addition, the prime broker itself would be required to report the ultimate allocation, which the Participants believe would provide more complete information.

The Participants stated that associating a prime broker with a specific execution, as is currently required by the CAT NMS Plan, does not reflect how the allocation process works in practice as allocations to a prime broker are done post-trade and are performed by the clearing broker of the executing broker. The Participants also stated that with the implementation of the Allocation Alternative, it would be duplicative for the executing broker to separately identify the prime broker for allocation purposes.

The Participants stated that if a particular customer only has one prime broker, the identity of the prime broker can be obtained from the customer and account information through the DVP accounts for that customer that contain the identity of the prime broker. The Participants further stated that Allocation Reports related to those executions would reflect that shares/contracts were allocated to the single prime broker. The Participants believe that there is no loss of information through the implementation of the Allocation Alternative compared to what is required in the CAT NMS Plan and that this approach does not decrease the regulatory utility of the CAT for single prime broker circumstances.

In cases where a customer maintains relationships with multiple prime brokers, the Participants asserted that the executing broker will not have information at the time of the trade as to which particular prime broker may be allocated all or part of the execution.

[7] ''A step-out allows a broker-dealer to allocate all or part of a client's position from a previously executed trade to the client's account at another broker-dealer. In other words, a step-out functions as a client's position transfer, rather than a trade; there is no exchange of shares and funds and no change in beneficial ownership.'' *See* FINRA, Trade Reporting Frequently Asked Questions, at Section 301, available at: *https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq.*

[8] Correspondent clearing flips are the movement of a position from an executing broker's account to a different account for clearance and settlement, allowing a broker-dealer to execute a trade through another broker-dealer and settle the trade in its own account. *See, e.g.,* The Depository Trust & Clearing Corporation, Correspondent Clearing, available at: *https://www.dtcc.com/clearing-services/equities-tradecapture/correspondent-clearing.*

[9] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45748 (August 1, 2012).

[10] The Participants did not request exemptive relief relating to the reporting of the SRO-Assigned Market Participant Identifier of clearing brokers.

Under the Allocation Alternative, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying he specific customer accounts where the shares/contracts were ultimately allocated. To determine the prime broker for a customer, a regulatory user would query the customer and account database using the customer's CCID to obtain all DVP accounts for the CCID at broker-dealers. The Participants state that when a customer maintains relationships with multiple prime brokers, the customer typically has a separate DVP account with each prime broker, and the identities of those prime brokers can be obtained from the customer and account information.

(C) Additional Conditions to Exemptive Relief

In the Exemption Request, the Participants included certain additional conditions for the requested relief. Currently, the definition of Allocation Report in the CAT NMS Plan only refers to shares. To implement the Allocation Alternative, the Participants proposed to require that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Specifically, Participants would require the reporting of the following in each Allocation Report: (1) The FDID for the account receiving the allocation, including subaccounts; (2) the security that has been allocated; (3) the identifier of the firm reporting the allocation; (3) the price per share/contracts of shares/contracts allocated; (4) the side of shares/contracts allocated; (4) the number of shares/contracts allocated; and (5) the time of the allocation.

Furthermore, to implement the Allocation Alternative, the Participants proposed to require the following information on all Allocation Reports: (1) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (2) trade date; (3) settlement date; (4) IB/correspondent CRD Number (if applicable); (5) FDID of new order(s) (if available in the booking system); [11] (6) allocation instruction time (optional); (7) if the account meets the definition of institution under FINRA Rule 4512(c); [12] (8) type of allocation (allocation to a custody account, allocation to a DVP account, step out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (9) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (10) if an allocation was cancelled, a cancel flag, which indicates that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(2) Proposed Rule Changes To Implement Exemptive Relief

On October 29, 2020, the Commission granted the exemptive relief requested in the Exemption Request. The Commission granted the relief conditioned upon the adoption of Compliance Rules that implement the reporting requirements of the Allocation Alternative. Accordingly, the Exchange proposes the following changes to its Compliance Rule to implement the reporting requirements of the Allocation Alternative.

(A) Definition of Allocation

The Exchange proposes to add a definition of ''Allocation'' as new paragraph (c) to Rule 6.6810.[13] Proposed paragraph (c) of Rule 6.6810 would define an ''Allocation'' to mean ''(1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations).'' The SEC stated in the Allocation Exemption that this definition of ''Allocation'' is reasonable.

(B) Definition of Allocation Report

The Exchange proposes to amend the definition of ''Allocation Report'' set forth in Exchange Rule 6.6810(c) to reflect the requirements of the Allocation Exemption. Exchange Rule 6.6810(c) defines the term ''Allocation Report'' to mean:

> a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

The Exchange proposes to amend this definition in two ways: (1) Applying the requirements for Allocation Reports to contracts in addition to shares; and (2) requiring the reporting of additional elements for the Allocation Report.

(i) Shares and Contracts

The requirements for Allocation Reports apply only to shares, as the definition of ''Allocation Report'' in Rule 6.6810(c) refers to shares, not contracts. In the Allocation Exemption, the Commission stated that applying the requirements for Allocation Reports to contracts in addition to shares is appropriate because CAT reporting requirements apply to both options and equities. Accordingly, the SEC stated that the Participants would be required to modify their Compliance Rules such that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Therefore, the Exchange proposes to amend Rule 6.6810(c) (to be renumbered as Rule 6.6810(d)) to apply to contracts, as well as shares. Specifically, the Exchange proposes to add references to contracts to the definition of ''Allocation Report'' to the following phrases: ''the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/contracts are allocated,'' ''the price per share/contract of shares/contracts allocated,'' ''the side of shares/contracts allocated,'' and ''the number of shares/contracts allocated to each account.''

(ii) Additional Elements

The Commission also conditioned the Allocation Exemption on the Participants amending their Compliance

[11] The Participants propose that for scenarios where the Industry Member responsible for reporting the Allocation has the FDID of the related new order(s) available, such FDID must be reported. This would include scenarios in which: (1) The FDID structure of the top account and subaccounts is known to the Industry Member responsible for reporting the Allocation(s); and (2) the FDID structure used by the IB/Correspondent when reporting new orders is known to the clearing firm reporting the related Allocations.

[12] FINRA Rule 4512(c) states the for purposes of the rule, the term ''institutional account'' means the account of: (1) A bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

[13] The Exchange proposes to renumber the definitions in Rule 6.6810 to accommodate the addition of this new definition of ''Allocation'' and the new definition of ''Client Account'' discussed below.

Rules to require the ten additional elements in Allocation Reports described above. Accordingly, the Exchange proposes to require these additional elements in Allocation Reports. Specifically, the Exchange proposes to amend the definition of ''Allocation Report'' in Rule 6.6810(c) (to be renumbered as Rule 6.6810(d)) to include the following elements, in addition to those elements currently required under the CAT NMS Plan:

(6) the time of the allocation; (7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(C) Allocation Reports

(i) Executing Brokers That Do Not Perform Allocations

The Commission granted the Participants an exemption from the requirement that the Participants, through their Compliance Rule, require executing brokers that do not perform Allocations to submit Allocation Reports. The Commission stated that it understands that executing brokers that are not self-clearing do not perform allocations themselves, and such allocations are handled by prime and/or clearing brokers, and these executing brokers therefore do not possess the requisite information to provide Allocation Reports. Accordingly, the Exchange proposes to eliminate Rule 6.6830(a)(2)(A)(i),[14] which requires an Industry Member to record and report to the Central Repository an Allocation Report if the order is executed, in whole or in part, and to replace this provision with proposed Rule 6.6830(a)(2)(F) as discussed below.

(ii) Industry Members That Perform Allocations

The Allocation Exemption requires the Participants to amend their Compliance Rules to require Industry Members to provide Allocation Reports to the Central Repository any time they perform Allocations to a client account, whether or not the Industry Member was the executing broker for the trades. Accordingly, the Commission conditioned the Allocation Exemption on the Participants adopting Compliance Rules that require prime and/or clearing brokers to submit Allocation Reports when such brokers perform allocations, in addition to requiring executing brokers that perform allocations to submit Allocation Reports. The Commission determined that such exemptive relief would improve efficiency and reduce the costs and burdens of reporting allocations for Industry Members because the reporting obligation would belong to the Industry Member with the requisite information, and executing brokers that do not have the information required on an Allocation Report would not have to develop the infrastructure and processes required to obtain, store and report the information. The Commission stated that this exemptive relief should not reduce the regulatory utility of the CAT because an Allocation Report would still be submitted for each executed trade allocated to a client account, which in certain circumstances could still result in multiple Allocation Reports,[15] just not necessarily by the executing broker.

In accordance with the Allocation Exemption, the Exchange proposes to add proposed Rule 6.6830(a)(2)(F) to the Compliance Rule. Proposed Rule 6.6830(a)(2)(F) would require Industry Members to record and report to the Central Repository ''an Allocation Report any time the Industry Member performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.''

(iii) Client Accounts

In the Allocation Exemption, the Commission also exempted the Participants from the requirement that they amend their Compliance Rules to require Industry Members to report Allocations for accounts other than client accounts. The Commission believes that allocations to client accounts, and not allocations to proprietary accounts or events such as step-outs and correspondent flips, provide regulators the necessary information to detect abuses in the allocation process because it would provide regulators with detailed information regarding the fulfillment of orders submitted by clients, while reducing reporting burdens on broker-dealers. For example, Allocation Reports would be required for allocations to registered investment advisor and money manager accounts. The Commission further believes that the proposed approach should facilitate regulators' ability to distinguish Allocation Reports relating to allocations to client accounts from other Allocation Reports because Allocations to accounts other than client accounts would have to be identified as such. This approach could reduce the time CAT Reporters expend to comply with CAT reporting requirements and lower costs by allowing broker-dealers to use existing business practices.

To clarify that an Industry Member must report an Allocation Report solely for Allocations to a client account, proposed Rule 6.6830(a)(2)(F) specifically references ''Client Accounts,'' as discussed above. In addition, the Exchange proposes to add a definition of ''Client Account'' as proposed Rule 6.6810(l). Proposed Rule 6.6810(l) would define a ''Client Account'' to mean ''for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.''

(D) Identity of Prime Broker

The Exchange also proposes to amend Rule 6.6830(a)(2)(A)(ii) to eliminate the requirement for executing brokers to record and report the SRO-Assigned Market Participant Identifier of the prime broker. Rule 6.6830(a)(2)(A)(ii) states that each Industry Member is required to record and report to the Central Repository, if the order is executed, in whole or in part, the ''SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.'' The Exchange proposes to delete the phrase ''or prime broker'' from this provision. Accordingly, each Industry Member that is an executing broker would no longer be required to report the SRO-Assigned Market Participant Identifier of the prime broker.

As the Commission noted in the Allocation Exemption, exempting the

[14] The Exchange proposes to renumber Rule 6.6830(a)(2)(A)(ii) and (iii) as Rules 6.6830(a)(2)(A)(i) and (ii) in light of the proposed deletion of Rule 6.6830(a)(2)(A)(i).

[15] As noted above, under the Allocation Alternative, for certain executions, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

Participants from the requirement that they, through their Compliance Rules, require executing brokers to provide the SRO-Assigned Market Participant Identifier of the prime broker is appropriate because, as stated by the Participants, allocations are done on a post-trade basis and the executing broker will not have the requisite information at the time of the trade. Because an executing broker, in certain circumstances, does not have this information at the time of the trade, this relief relieves executing brokers of the burdens and costs of developing infrastructure and processes to obtain this information in order to meet the contemporaneous reporting requirements of the CAT NMS Plan.

As the Commission noted in the Allocation Exemption, although executing brokers would no longer be required to provide the prime broker information, regulators will still be able to determine the prime broker(s) associated with orders through querying the customer and account information database. If an executing broker has only one prime broker, the identity of the prime broker can be obtained from the customer and account information associated with the executing broker. For customers with multiple prime brokers, the identity of the prime brokers can be obtained from the customer and account information which will list the prime broker, if there is one, that is associated with each account.

2. Statutory Basis

NYSE Chicago believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[16] which require, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,[17] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

NYSE Chicago believes that this proposal is consistent with the Act because it is consistent with, and implements, the Allocation Exemption, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [18] To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Chicago does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. NYSE Chicago notes that the proposed rule changes are consistent with the Allocation Exemption, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. NYSE Chicago also notes that the proposed rule changes will apply equally to all Industry Members. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing and does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSECHX–2020–32 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–NYSECHX–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 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

[16] 15 U.S.C. 78f(b)(6).

[17] 15 U.S.C. 78f(b)(8)

[18] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 15 U.S.C. 78s(b)(2)(B).

filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2020–32, and should be submitted on or before January 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90704; File No. 4–663]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective an Amended Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and Nasdaq GEMX, LLC

December 17, 2020.

Notice is hereby given that the Securities and Exchange Commission (''Commission'') has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] approving and declaring effective an amendment to the plan for allocating regulatory responsibility (''Plan'') filed on November 19, 2020, pursuant to Rule 17d–2 of the Act,[2] by the Financial Industry Regulatory Authority, Inc. (''FINRA'') and Nasdaq GEMX, LLC (''GEMX'') (collectively, ''Participating Organizations'' or ''parties''). This agreement amends and restates the agreement entered into between FINRA and Topaz Exchange, LLC (n/k/a GEMX) on June 21, 2013, entitled ''Agreement Between Financial Industry Regulatory Authority, Inc. and Topaz Exchange Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934,'' and any subsequent amendments thereafter.

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)[4] or Section 19(g)(2)[5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and opportunity for comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On August 19, 2013, the Commission declared effective the Plan entered into between FINRA and GEMX for allocating regulatory responsibility pursuant to Rule 17d–2.[11] The Plan is intended to reduce regulatory duplication for firms that are common members of FINRA and GEMX by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations that are common among them. Included in the Plan is an exhibit that lists every GEMX rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to GEMX members that are also members of FINRA and the associated persons therewith (''Certification'').

III. Proposed Amendment to the Plan

On November 19, 2020, the parties submitted a proposed amendment to the Plan (''Amended Plan''). The primary purpose of the Amended Plan is to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e–4 under the Act and to reflect the name change of Topaz Exchange, LLC to Nasdaq GEMX, LLC. The text of the proposed Amended Plan is as follows

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d).

[5] 15 U.S.C. 78s(g)(2).

[6] 15 U.S.C. 78q(d)(1).

[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[11] *See* Securities Exchange Act Release No. 70228 (August 19, 2013), 78 FR 52587 (August 23, 2013).

(additions are *italicized;* deletions are [bracketed]):

* * * * *

AGREEMENT BETWEEN FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. AND [TOPAZ EXCHANGE]*NASDAQ GEMX,* LLC PURSUANT TO RULE 17d–2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, by and between Financial Industry Regulatory Authority, Inc. (''FINRA'') and [Topaz Exchange, LLC (''Topaz'')]*Nasdaq GEMX, LLC (''GEMX*''), is made this [21st] *16th* day of [June]*November,* 20[13]*20* (the ''Agreement''), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 17d–2 thereunder which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and [Topaz]*GEMX* may be referred to individually as a ''party'' and together as the ''parties.''

This Agreement amends and restates this agreement entered into between FINRA and GEMX on June 21, 2013, entitled ''Agreement between Financial Industry Regulatory Authority, Inc. and Topaz Exchange, LLC Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934,'' and any subsequent amendments thereafter.

Whereas, FINRA and [Topaz]*GEMX* desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, FINRA and [Topaz]*GEMX* desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d–2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, FINRA and [Topaz]*GEMX* hereby agree as follows:

1. *Definitions.* Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) ''[Topaz]*GEMX Rules*'' or ''*FINRA Rules*'' shall mean the rules of [Topaz]*GEMX* or FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) ''*Common Rules*'' shall mean the [Topaz]*GEMX* Rules that are substantially similar to the applicable FINRA Rules in that examination for compliance with such rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member's activity, conduct, or output in relation to such rule.

(c) ''*Dual Members*'' shall mean those [Topaz]*GEMX* members that are also members of FINRA and the associated persons therewith.

(d) ''*Effective Date*'' shall have the meaning set forth in paragraph 13.

(e) ''*Enforcement Responsibilities*'' shall mean the conduct of appropriate proceedings, in accordance with the FINRA Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of pertinent laws, rules or regulations have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under the FINRA's Code of Procedure and sanctions guidelines. *Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from GEMX, (ii) incorporation by reference of GEMX Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority by GEMX, (iv) prior written approval of GEMX and (v) payment of fees or fines to GEMX.*

(f) ''*Regulatory Responsibilities*'' shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto. *The term ''Regulatory Responsibilities'' shall also include the surveillance, investigation and Enforcement Responsibilities relating to compliance by Common Members with Rule 14e–4 of the Securities Exchange Act (''Rule 14e–4''), with a focus on the standardized call option provision of Rule 14e–4(a)(1)(ii)(D).*

2. *Regulatory and Enforcement Responsibilities.* FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as *Exhibit 1* to this Agreement and made part hereof, [Topaz]*GEMX* furnished FINRA with a current list of Common Rules and certified to FINRA that such rules are substantially similar to the corresponding FINRA Rule (the ''Certification''). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the [Topaz]*GEMX* Rules or FINRA Rules, [Topaz]*GEMX* shall submit an updated list of Common Rules to FINRA for review which shall add [Topaz]*GEMX* Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete [Topaz]*GEMX* Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be [Topaz]*GEMX* Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term ''Regulatory Responsibilities'' does not include, and [Topaz]*GEMX* shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following (collectively, the ''Retained Responsibilities''):

(a) Surveillance and enforcement with respect to trading activities or practices involving [Topaz]*GEMX*'s own marketplaces, including without limitation [Topaz]*GEMX*'s Rules relating to the rights and obligations of market makers;

(b) registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) any [Topaz]*GEMX* Rules that are not Common Rules.

3. *Dual Members.* Prior to the Effective Date, [Topaz]*GEMX* shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. *No Charge.* There shall be no charge to [Topaz]*GEMX* by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide [Topaz]*GEMX* with ninety (90) days advance written notice in the

event FINRA decides to impose any charges to [Topaz]*GEMX* for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, [Topaz]*GEMX* shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. *Reassignment of Regulatory Responsibilities.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission, or effective industry agreement, restructuring the regulatory framework of the securities industry or reassigning Regulatory Responsibilities between self-regulatory organizations. To the extent such action is inconsistent with this Agreement, such action shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

6. *Notification of Violations.* In the event that FINRA becomes aware of apparent violations of any [Topaz]*GEMX* Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify [Topaz]*GEMX* of those apparent violations for such response as [Topaz]*GEMX* deems appropriate. In the event [Topaz]*GEMX* becomes aware of apparent violations of the Common Rules, discovered pursuant to the performance of the Retained Responsibilities, [Topaz]*GEMX* shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. Apparent violations of all the Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on [Topaz]*GEMX,* [Topaz]*GEMX* may in its discretion assume concurrent jurisdiction and responsibility. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. *Continued Assistance.* FINRA shall make available to [Topaz]*GEMX* all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder in respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish [Topaz]*GEMX* any information it obtains about Dual Members which reflects adversely on their financial condition. It is understood that such information is of an extremely sensitive nature and, accordingly, [Topaz]*GEMX* acknowledges and agrees to take all reasonable steps to maintain its confidentiality. [Topaz]*GEMX* shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

8. *Dual Member Applications.*

(a) Dual Members subject to this Agreement shall be required to submit, and FINRA shall be responsible for processing and acting upon all applications submitted on behalf of allied persons, partners, officers, registered personnel and any other person required to be approved by the [Topaz]*GEMX* Rules and FINRA Rules or associated with Dual Members thereof. Upon request, FINRA shall advise [Topaz]*GEMX* of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the [Topaz]*GEMX* Rules and FINRA Rules.

(b) Dual Members shall be required to send to FINRA all letters, termination notices or other material respecting the individuals listed in paragraph 8(a).

(c) When as a result of processing such submissions FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep [Topaz]*GEMX* advised of its actions in this regard for such subsequent proceedings as [Topaz]*GEMX* may initiate.

(d) Notwithstanding the foregoing, FINRA shall not review the membership application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or a person associated therewith or other persons required to register or qualify by examination: (i) Meets the [Topaz]*GEMX* requirements for general membership or for specified categories of membership or participation in [Topaz]*GEMX,* such as (A) Primary Market Maker Membership (''PMM''); (B) Competitive Market Maker Membership (''CMM''); (C) Electronic Access Membership (''EAM'') (or any similar type of [Topaz]*GEMX* membership or participation that is created after this Agreement is executed); or (ii) meets the [Topaz]*GEMX* requirements to be associated with, or employed by, a [Topaz]*GEMX* member or participant in any capacity, such a Designated Trading Representative (''DTR'') (or any similar type of participation, employment category or title, or associate-person category or class that is created after this Agreement is executed). FINRA shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 8(d), including termination or limitation on activities, of a member or a participant of [Topaz]*GEMX,* or a person associated with, or requesting association with, a member or participant of [Topaz]*GEMX.*

9. *Branch Office Information.* FINRA shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Dual Members and any other applications required of Dual Members with respect to the Common Rules as they may be amended from time to time. Upon request, FINRA shall advise [Topaz]*GEMX* of the opening, address change and termination of branch and main offices of Dual Members and the names of such branch office managers.

10. *Customer Complaints.* [Topaz]*GEMX* shall forward to FINRA copies of all customer complaints involving Dual Members received by [Topaz]*GEMX* relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

11. *No Restrictions on Regulatory Action.* Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. *Termination.* This Agreement may be terminated by [Topaz]*GEMX* or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party (or such shorter time as may be agreed by the parties), except as provided in paragraph 4.

13. *Effective Date.* This Agreement shall be effective upon approval of the Commission.

14. *Arbitration.* In the event of a dispute between the parties as to the operation of this Agreement,

[Topaz]*GEMX* and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

15. *Separate Agreement.* This Agreement is wholly separate from (1) the multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act among [BATS Exchange, Inc., BOX Options Exchange, LLC, the Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, the New York Stock Exchange, LLC, the NYSE MKT LLC, the NYSE Arca Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., and the NASDAQ OMX PHLX, LLC] *NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, BOX Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC* approved by the Commission on [December 5, 2012]*February 12, 2019* involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants or (2) the multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act among [NYSE MKT LLC, BATS Exchange, Inc., BOX Options Exchange, LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, International Securities Exchange LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc. and Miami International Securities Exchange, LLC,] *NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, BOX Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC* approved by the Commission on [December 5, 2012]*February 11, 2019* involving options-related market surveillance matters and such agreements as may be amended from time to time.

16. *Notification of Members.* [Topaz]*GEMX* and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

17. *Amendment.* This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

18. *Limitation of Liability.* Neither FINRA nor [Topaz]*GEMX* nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or [Topaz]*GEMX* and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or [Topaz]*GEMX* with respect to any of the responsibilities to be performed by each of them hereunder.

19. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

20. *Relief From Responsibility.* Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d–2 thereunder, FINRA and [Topaz]*GEMX* join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve [Topaz]*GEMX* of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

In witness whereof, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

By _____

Name:

Title:

[TOPAZ EXCHANGE]*NASDAQ GEMX,* LLC

By _____

Name:

Title:

NOTE: The entire existing table of rules should be deleted and replaced with the table below.

EXHIBIT 1

[TOPAZ]*GEMX* CERTIFICATION OF COMMON RULES

[Topaz]*GEMX* hereby certifies that the requirements contained in the rules listed below for [Topaz]*GEMX* are identical to, or substantially similar to, the comparable FINRA Rules or SEC Rules identified.

 # Common Rules shall not include provisions regarding (i) notice, reporting or any other filings made directly to or from GEMX, (ii) incorporations by reference to other GEMX Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority, by GEMX, (iv) prior written approval of GEMX, and (v) payment of fees or fines to GEMX.

GEMX RULE	*FINRA or SEC RULE*
General 3, Section 3(b)—Persons Associated with Members; General 4—Nasdaq Stock Market General 4, Rule 1.1250 Electronic Filing Requirements for Uniform Forms incorporated by reference#.	*FINRA Rule 1010 Electronic Filing Requirements for Uniform Forms; FINRA By-Laws Article IV, Sec. 1(c) Application for Membership; FINRA By-Laws, Article V, Section 1 Qualification Requirements; FINRA By-Laws, Article V, Sec. 2 Application for Registration; and FINRA By-Laws Article V, Section 3 Notification by Member to the Corporation and Associated Person of Termination; Amendments to Notification*

GEMX RULE	*FINRA or SEC RULE*
General 4—Nasdaq Stock Market General 4, Section 1.1240 Continuing Education Requirements incorporated by reference#.	*FINRA Rule 1240 Continuing Education Requirements*
Options 9, Nasdaq ISE Options 9, Section 1 Just and Equitable Principles of Trade incorporated by reference[1].	*FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade; FINRA Rule 0140(a) Applicability*
Options 9—Nasdaq ISE Options 9, Section 9(a)(1) Prevention of the Misuse of Material, Nonpublic Information incorporated by reference#.	*Section 15(g) of the Securities Exchange Act of 1934, and FINRA Rule 3110(b)(1), (d) Supervision*
Options 9—Nasdaq ISE Options 9, Section 10 Disciplinary Action by Other Organizations incorporated by reference#.	*FINRA Rule 4530(a)(1)(A) and (2) Reporting Requirements; FINRA By-Laws, Article V, Section 2(c); and FINRA By-Laws, Article V, Section 3*
Options 9—Nasdaq ISE Options 9, Section 21 Anti-Money Laundering Compliance Program incorporated by reference#.	*FINRA Rule 3310 Anti-Money Laundering Compliance Program*
Options 10—Nasdaq ISE Options 10, Section 12 Statements of Financial Condition to Customers incorporated by reference.	*Rule 17a–5 of the Securities Exchange Act of 1934*
Options 10—Nasdaq ISE Options 10, Section 19 Transfer of Accounts incorporated by reference#.	*FINRA Rule 11870 Customer Account Transfer Contracts*
Options 10—Nasdaq ISE Options 10, Section 23 Telemarketing incorporated by reference.	*FINRA Rule 3230 Telemarketing*
Options 6E—Nasdaq ISE Options 6E, Section 1 Maintenance, Retention, and Furnishing of Books, Records and Other Information incorporated by reference#.	*FINRA Rule 4511(a) Books and Records—Requirements*

[1] FINRA shall not have Regulatory Responsibilities with respect to the Supplementary Material to Nasdaq ISE Options 9, Section 1. Responsibility for such shall remain with GEMX.

In addition, the following provisions shall be part of this 17d–2 Agreement:

*SEA Rule 14e–4—Prohibited Transactions in Connection with Partial Tender Offers^*

^FINRA shall perform surveillance, investigation, and Enforcement Responsibilities for SEA Rule 14e–4(a)1)(ii)(D).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 4–663 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 4–663. 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 plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of FINRA and GEMX. 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 4–663 and should be submitted on or before January 13, 2021.

V. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act [12] and Rule 17d–2(c) thereunder [13] in that the proposed Amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by both FINRA and GEMX. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because GEMX and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, GEMX and FINRA have allocated regulatory responsibility for those GEMX rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Common Member's activity, conduct, or output in relation to such rule. In addition, under the Amended Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Amended Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Amended Plan, GEMX will review the Certification at least annually, or more frequently if required by changes in either the rules of GEMX or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add GEMX rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete GEMX

[12] 15 U.S.C. 78q(d).

[13] 17 CFR 240.17d–2(c).

rules included in the then-current list of Common Rules that no longer qualify as common rules; and confirm that the remaining rules on the list of Common Rules continue to be GEMX rules that qualify as common rules.[14] FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Amended Plan. Under the Amended Plan, GEMX also will provide FINRA with a current list of Common Members and will update the list no less frequently than once each quarter.[15] The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all GEMX rules that are substantially similar to the rules of FINRA for Common Members of GEMX and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Amended Plan, provided that the Parties are only adding to, deleting from, or confirming changes to GEMX rules in the Certification in conformance with the definition of Common Rules provided in the Amended Plan. However, should the Parties decide to add a GEMX rule to the Certification that is not substantially similar to a FINRA rule; delete a GEMX rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a GEMX rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan, which must be filed with the Commission pursuant to Rule 17d–2 under the Act.[16]

Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e–4 under the Act, to reflect the name change of Topaz Exchange, LLC to Nasdaq GEMX, LLC. By declaring it effective today, the Amended Plan can become effective and be implemented without undue delay. The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.[17] Furthermore, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4–663. The Parties shall notify all members affected by the Amended Plan of their rights and obligations under the Amended Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Amended Plan in File No. 4–663, between the FINRA and GEMX, filed pursuant to Rule 17d–2 under the Act, hereby is approved and declared effective.

It is further ordered that GEMX is relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4–663.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28309 Filed 12–22–20; 8:45 am]

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[14] *See* paragraph 2 of the Amended Plan.

[15] *See* paragraph 3 of the Amended Plan.

[16] The addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Amended Plan for examining, and enforcing compliance by, Common Members, also would constitute an amendment to the Amended Plan.

[17] *See supra* note 11 (citing to Securities Exchange Act Release No. 70228).

[18] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90709; File No. SR–NYSEARCA–2020–108]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Rule 11.6800 Series

December 17, 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 December 4, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78a.

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 11.6800 Series, the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'')[3] to be consistent with a conditional exemption granted by the Commission from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Allocation Exemption'').[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Rule 11.6800 Series to be consistent with the Allocation Exemption. The Commission granted the relief conditioned upon the Participants' adoption of Compliance Rules that implement the alternative approach to reporting allocations to the Central Repository described in the Allocation Exemption (referred to as the ''Allocation Alternative'').

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[4] *See* Securities Exchange Act Rel. No. 90223 (October 19, 2020), 85 FR 67576 (October 23, 2020) (''Allocation Exemptive Order'').

(1) Request for Exemptive Relief

Pursuant to Section 6.4(d)(ii)(A) of the CAT NMS Plan, each Participant must, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if the order is executed, in whole or in part: (1) An Allocation Report;[5] (2) the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and the (3) CAT-Order-ID of any contra-side order(s). Accordingly, the Exchange and the other Participants implemented Compliance Rules that require their Industry Members that are executing brokers to submit to the Central Repository, among other things, Allocation Reports and the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.

On August 27, 2020, the Participants submitted to the Commission a request for an exemption from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Exemption Request'').[6] In the Exemption Request, the Participants requested that they be permitted to implement the Allocation Alternative, which, as noted above, is an alternative approach to reporting allocations to the Central Repository. Under the Allocation Alternative, any Industry Member that performs an allocation to a client account would be required under the Compliance Rule to submit an Allocation Report to the Central Repository when shares/contracts are allocated to a client account regardless of whether the Industry Member was involved in executing the underlying order(s). Under the Allocation Alternative, a ''client account'' would be any account that is not owned or controlled by the Industry Member.

In addition, under the Allocation Alternative, an ''Allocation'' would be defined as: (1) The placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations). Pursuant to this definition and the proposed Allocation Alternative, an Industry Member that performs an Allocation to an account that is not a client account, such as proprietary accounts and events including step outs,[7] or correspondent flips,[8] would not be required to submit an Allocation Report to the Central Repository for that allocation, but could do so on a voluntary basis. Industry Members would be allowed to report Allocations to accounts other than client accounts; in that instance, such Allocations must be marked as Allocations to accounts other than client accounts.

(A) Executing Brokers and Allocation Reports

To implement the Allocation Alternative, the Participants requested exemptive relief from Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members that are executing brokers, who do not perform Allocations, to record and report to the Central Repository, if the order is executed, in whole or in part, an Allocation Report. Under the Allocation Alternative, when an Industry Member other than an executing broker (*e.g.,* a prime broker or clearing broker) performs an Allocation, that Industry Member would be required to submit the Allocation Report to the Central Repository. When an executing broker performs an Allocation for an order that is executed, in whole or in part, the burden of submitting an Allocation Report to the Central Repository would remain with the executing broker under the Allocation Alternative. In certain circumstances this would result in multiple Allocation Reports—the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

The Participants stated that granting exemptive relief from submitting Allocation Reports for executing brokers who do not perform an Allocation, and requiring the Industry Member other than the executing broker that is performing the Allocation to submit such Allocation Reports, is consistent with the basic approach taken by the Commission in adopting Rule 613 under the Exchange Act. Specifically, the Participants stated that they believe that the Commission sought to require each broker-dealer and exchange that touches an order to record the required data with respect to actions it takes on the order.[9] Without the requested exemptive relief, executing brokers that do not perform Allocations would be required to submit Allocation Reports. In addition, the Participants stated that, because shares/contracts for every execution must be allocated to an account by the clearing broker in such circumstances, there would be no loss of information by shifting the reporting obligation from the executing broker to the clearing broker.

(B) Identity of Prime Broker

To implement the Allocation Alternative, the Participants also requested exemptive relief from Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if an order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the prime broker, if applicable. Currently, under the CAT NMS Plan, an Industry Member is required to report the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker in connection with the execution of an order, and such information would be part of the order's lifecycle, rather than in an Allocation Report that is not linked to the order's lifecycle.[10] Under the Allocation Alternative, the identity of the prime broker would be required to be reported by the clearing broker on the Allocation Report, and, in addition, the prime broker itself would be

[5] Section 1.1 of the CAT NMS Plan defines an ''Allocation Report'' as ''a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.''

[6] *See* letter from the Participants to Vanessa Countryman, Secretary, Commission, dated August 27, 2020 (the ''Exemption Request'').

[7] ''A step-out allows a broker-dealer to allocate all or part of a client's position from a previously executed trade to the client's account at another broker-dealer. In other words, a step-out functions as a client's position transfer, rather than a trade; there is no exchange of shares and funds and no change in beneficial ownership.'' *See* FINRA, Trade Reporting Frequently Asked Questions, at Section 301, available at: *https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq.*

[8] Correspondent clearing flips are the movement of a position from an executing broker's account to a different account for clearance and settlement, allowing a broker-dealer to execute a trade through another broker-dealer and settle the trade in its own account. *See, e.g.,* The Depository Trust & Clearing Corporation, Correspondent Clearing, available at: *https://www.dtcc.com/clearing-services/equities-tradecapture/correspondent-clearing.*

[9] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45748 (August 1, 2012).

[10] The Participants did not request exemptive relief relating to the reporting of the SRO-Assigned Market Participant Identifier of clearing brokers.

required to report the ultimate allocation, which the Participants believe would provide more complete information.

The Participants stated that associating a prime broker with a specific execution, as is currently required by the CAT NMS Plan, does not reflect how the allocation process works in practice as allocations to a prime broker are done post-trade and are performed by the clearing broker of the executing broker. The Participants also stated that with the implementation of the Allocation Alternative, it would be duplicative for the executing broker to separately identify the prime broker for allocation purposes.

The Participants stated that if a particular customer only has one prime broker, the identity of the prime broker can be obtained from the customer and account information through the DVP accounts for that customer that contain the identity of the prime broker. The Participants further stated that Allocation Reports related to those executions would reflect that shares/contracts were allocated to the single prime broker. The Participants believe that there is no loss of information through the implementation of the Allocation Alternative compared to what is required in the CAT NMS Plan and that this approach does not decrease the regulatory utility of the CAT for single prime broker circumstances.

In cases where a customer maintains relationships with multiple prime brokers, the Participants asserted that the executing broker will not have information at the time of the trade as to which particular prime broker may be allocated all or part of the execution. Under the Allocation Alternative, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts where the shares/contracts were ultimately allocated. To determine the prime broker for a customer, a regulatory user would query the customer and account database using the customer's CCID to obtain all DVP accounts for the CCID at broker-dealers. The Participants state that when a customer maintains relationships with multiple prime brokers, the customer typically has a separate DVP account with each prime broker, and the identities of those prime brokers can be obtained from the customer and account information.

(C) Additional Conditions to Exemptive Relief

In the Exemption Request, the Participants included certain additional conditions for the requested relief. Currently, the definition of Allocation Report in the CAT NMS Plan only refers to shares. To implement the Allocation Alternative, the Participants proposed to require that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Specifically, Participants would require the reporting of the following in each Allocation Report: (1) The FDID for the account receiving the allocation, including subaccounts; (2) the security that has been allocated; (3) the identifier of the firm reporting the allocation; (3) the price per share/contracts of shares/contracts allocated; (4) the side of shares/contracts allocated; (4) the number of shares/contracts allocated; and (5) the time of the allocation.

Furthermore, to implement the Allocation Alternative, the Participants proposed to require the following information on all Allocation Reports: (1) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (2) trade date; (3) settlement date; (4) IB/correspondent CRD Number (if applicable); (5) FDID of new order(s) (if available in the booking system); [11] (6) allocation instruction time (optional); (7) if the account meets the definition of institution under FINRA Rule 4512(c); [12] (8) type of allocation (allocation to a custody account, allocation to a DVP account, step out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (9) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (10) if an allocation was cancelled, a cancel flag, which indicates that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(2) Proposed Rule Changes To Implement Exemptive Relief

On October 29, 2020, the Commission granted the exemptive relief requested in the Exemption Request. The Commission granted the relief conditioned upon the adoption of Compliance Rules that implement the reporting requirements of the Allocation Alternative. Accordingly, the Exchange proposes the following changes to its Compliance Rule to implement the reporting requirements of the Allocation Alternative.

(A) Definition of Allocation

The Exchange proposes to add a definition of ''Allocation'' as new paragraph (c) to Rule 11.6810.[13] Proposed paragraph (c) of Rule 11.6810 would define an ''Allocation'' to mean ''(1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations).'' The SEC stated in the Allocation Exemption that this definition of ''Allocation'' is reasonable.

(B) Definition of Allocation Report

The Exchange proposes to amend the definition of ''Allocation Report'' set forth in Exchange Rule 11.6810(c) to reflect the requirements of the Allocation Exemption. Exchange Rule 11.6810(c) defines the term ''Allocation Report'' to mean:

> a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

The Exchange proposes to amend this definition in two ways: (1) Applying the

[11] The Participants propose that for scenarios where the Industry Member responsible for reporting the Allocation has the FDID of the related new order(s) available, such FDID must be reported. This would include scenarios in which: (1) The FDID structure of the top account and subaccounts is known to the Industry Member responsible for reporting the Allocation(s); and (2) the FDID structure used by the IB/Correspondent when reporting new orders is known to the clearing firm reporting the related Allocations.

[12] FINRA Rule 4512(c) states the for purposes of the rule, the term ''institutional account'' means the account of: (1) A bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

[13] The Exchange proposes to renumber the definitions in Rule 11.6810 to accommodate the addition of this new definition of ''Allocation'' and the new definition of ''Client Account'' discussed below.

requirements for Allocation Reports to contracts in addition to shares; and (2) requiring the reporting of additional elements for the Allocation Report.

(i) Shares and Contracts

The requirements for Allocation Reports apply only to shares, as the definition of ''Allocation Report'' in Rule 11.6810(c) refers to shares, not contracts. In the Allocation Exemption, the Commission stated that applying the requirements for Allocation Reports to contracts in addition to shares is appropriate because CAT reporting requirements apply to both options and equities. Accordingly, the SEC stated that the Participants would be required to modify their Compliance Rules such that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Therefore, the Exchange proposes to amend Rule 11.6810(c) (to be renumbered as Rule 11.6810(d)) to apply to contracts, as well as shares. Specifically, the Exchange proposes to add references to contracts to the definition of ''Allocation Report'' to the following phrases: ''the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/contracts are allocated,'' ''the price per share/contract of shares/contracts allocated,'' ''the side of shares/contracts allocated,'' and ''the number of shares/contracts allocated to each account.''

(ii) Additional Elements

The Commission also conditioned the Allocation Exemption on the Participants amending their Compliance Rules to require the ten additional elements in Allocation Reports described above. Accordingly, the Exchange proposes to require these additional elements in Allocation Reports. Specifically, the Exchange proposes to amend the definition of ''Allocation Report'' in Rule 11.6810(c) (to be renumbered as Rule 11.6810(d)) to include the following elements, in addition to those elements currently required under the CAT NMS Plan:

(6) the time of the allocation; (7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(C) Allocation Reports

(i) Executing Brokers That Do Not Perform Allocations

The Commission granted the Participants an exemption from the requirement that the Participants, through their Compliance Rule, require executing brokers that do not perform Allocations to submit Allocation Reports. The Commission stated that it understands that executing brokers that are not self-clearing do not perform allocations themselves, and such allocations are handled by prime and/or clearing brokers, and these executing brokers therefore do not possess the requisite information to provide Allocation Reports. Accordingly, the Exchange proposes to eliminate Rule 11.6830(a)(2)(A)(i),[14] which requires an Industry Member to record and report to the Central Repository an Allocation Report if the order is executed, in whole or in part, and to replace this provision with proposed Rule 11.6830(a)(2)(F) as discussed below.

(ii) Industry Members That Perform Allocations

The Allocation Exemption requires the Participants to amend their Compliance Rules to require Industry Members to provide Allocation Reports to the Central Repository any time they perform Allocations to a client account, whether or not the Industry Member was the executing broker for the trades. Accordingly, the Commission conditioned the Allocation Exemption on the Participants adopting Compliance Rules that require prime and/or clearing brokers to submit Allocation Reports when such brokers perform allocations, in addition to requiring executing brokers that perform allocations to submit Allocation Reports. The Commission determined that such exemptive relief would improve efficiency and reduce the costs and burdens of reporting allocations for Industry Members because the reporting obligation would belong to the Industry Member with the requisite information, and executing brokers that do not have the information required on an Allocation Report would not have to develop the infrastructure and processes required to obtain, store and report the information. The Commission stated that this exemptive relief should not reduce the regulatory utility of the CAT because an Allocation Report would still be submitted for each executed trade allocated to a client account, which in certain circumstances could still result in multiple Allocation Reports,[15] just not necessarily by the executing broker.

In accordance with the Allocation Exemption, the Exchange proposes to add proposed Rule 11.6830(a)(2)(F) to the Compliance Rule. Proposed Rule 11.6830(a)(2)(F) would require Industry Members to record and report to the Central Repository ''an Allocation Report any time the Industry Member performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.''

(iii) Client Accounts

In the Allocation Exemption, the Commission also exempted the Participants from the requirement that they amend their Compliance Rules to require Industry Members to report Allocations for accounts other than client accounts. The Commission believes that allocations to client accounts, and not allocations to proprietary accounts or events such as step-outs and correspondent flips, provide regulators the necessary information to detect abuses in the allocation process because it would provide regulators with detailed information regarding the fulfillment of orders submitted by clients, while reducing reporting burdens on broker-dealers. For example, Allocation Reports would be required for allocations to registered investment advisor and money manager accounts. The Commission further believes that the proposed approach should facilitate regulators' ability to distinguish Allocation Reports relating to allocations to client accounts from other Allocation Reports because Allocations to accounts other than client accounts would have to be identified as such. This approach could reduce the time CAT Reporters expend to comply with

[14] The Exchange proposes to renumber Rule 11.6830(a)(2)(A)(ii) and (iii) as Rules 11.6830(a)(2)(A)(i) and (ii) in light of the proposed deletion of Rule 11.6830(a)(2)(A)(i).

[15] As noted above, under the Allocation Alternative, for certain executions, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

CAT reporting requirements and lower costs by allowing broker-dealers to use existing business practices.

To clarify that an Industry Member must report an Allocation Report solely for Allocations to a client account, proposed Rule 11.6830(a)(2)(F) specifically references ''Client Accounts,'' as discussed above. In addition, the Exchange proposes to add a definition of ''Client Account'' as proposed Rule 11.6810(l). Proposed Rule 11.6810(l) would define a ''Client Account'' to mean ''for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.''

(D) Identity of Prime Broker

The Exchange also proposes to amend Rule 11.6830(a)(2)(A)(ii) to eliminate the requirement for executing brokers to record and report the SRO-Assigned Market Participant Identifier of the prime broker. Rule 11.6830(a)(2)(A)(ii) states that each Industry Member is required to record and report to the Central Repository, if the order is executed, in whole or in part, the ''SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.'' The Exchange proposes to delete the phrase ''or prime broker'' from this provision. Accordingly, each Industry Member that is an executing broker would no longer be required to report the SRO-Assigned Market Participant Identifier of the prime broker.

As the Commission noted in the Allocation Exemption, exempting the Participants from the requirement that they, through their Compliance Rules, require executing brokers to provide the SRO-Assigned Market Participant Identifier of the prime broker is appropriate because, as stated by the Participants, allocations are done on a post-trade basis and the executing broker will not have the requisite information at the time of the trade. Because an executing broker, in certain circumstances, does not have this information at the time of the trade, this relief relieves executing brokers of the burdens and costs of developing infrastructure and processes to obtain this information in order to meet the contemporaneous reporting requirements of the CAT NMS Plan.

As the Commission noted in the Allocation Exemption, although executing brokers would no longer be required to provide the prime broker information, regulators will still be able to determine the prime broker(s) associated with orders through querying the customer and account information database. If an executing broker has only one prime broker, the identity of the prime broker can be obtained from the customer and account information associated with the executing broker. For customers with multiple prime brokers, the identity of the prime brokers can be obtained from the customer and account information which will list the prime broker, if there is one, that is associated with each account.

2. Statutory Basis

NYSE Arca believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[16] which require, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,[17] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

NYSE Arca believes that this proposal is consistent with the Act because it is consistent with, and implements, the Allocation Exemption, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [18] To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Arca does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. NYSE Arca notes that the proposed rule changes are consistent with the Allocation Exemption, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. NYSE Arca also notes that the proposed rule changes will apply equally to all Industry Members. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing and does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[16] 15 U.S.C. 78f(b)(6).

[17] 15 U.S.C. 78f(b)(8).

[18] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 15 U.S.C. 78s(b)(2)(B).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number *SR–NYSEARCA–2020–108 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2020–108. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2020–108, and should be submitted on or before January 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28314 Filed 12–22–20; 8:45 am]

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[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90697; File No. SR–NASDAQ–2020–089]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To No Longer Implement the OTTO Protocol

December 17, 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 December 15, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 remove the protocol ''Ouch to Trade Options'' or ''OTTO'' from The Nasdaq Options Market LLC (''NOM'') Rulebook. The Exchange previously delayed its implementation of the OTTO protocol; the Exchange will no longer implement the OTTO protocol.

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.

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

NOM's proposal seeks to remove the protocol ''Ouch to Trade Options'' or ''OTTO'' from The Nasdaq Options Market LLC (''NOM'') Rulebook. The Exchange previously delayed its implementation of the OTTO protocol; the Exchange will no longer implement the OTTO protocol.

Background

Nasdaq filed a rule change [3] which adopted a new protocol ''Ouch to Trade Options'' or ''OTTO'' [4] and proposed to rename and modify the current OTTO protocol as ''Quote Using Orders'' or ''QUO.'' [5] The Exchange subsequently filed a rule change to amend Options 3, Section 18, titled ''Detection of Loss of Communication'' which describes the impact to NOM protocols in the event of a loss of a communication. The Exchange accounted for both the new OTTO and renamed and modified QUO within this rule. Similarly, the Exchange amended Options 3, Section 8, ''Nasdaq Opening and Halt Cross'' to account for the new OTTO and renamed and modified QUO within this rule. Finally, the Exchange amended Options 3, Section 23, ''Data Feeds and Trade Information'' to amend ''OTTO DROP'' to ''QUO DROP'' and noted within Options 3, Section 15(a)(1) related to Order Price Protection rule or ''OPP''

[3] *See* Securities Exchange Act Release No. 83888 (August 20, 2018), 83 FR 42954 (August 24, 2018) (SR–NASDAQ–2018–069) (''Prior Rule Change''). In the Prior Rule Change the Exchange stated that it would issue an Options Trader Alert introducing the new OTTO protocol in Q4 of 2018. The rule numbers were amended in 2019 when the Rulebook was relocated. *See* Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR–NASDAQ–2019–098).

[4] As modified by the Prior Rule Change, OTTO is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders to and from the Exchange. Features include the following: (1) Options symbol directory messages (*e.g.,* underlying); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; and (6) risk protection triggers and cancel notifications. *See* NOM Rules at Options 3, Section 7(d)(1)(C).

[5] QUO is an interface that allows NOM Market Makers to connect, send, and receive messages related to single-sided orders to and from the Exchange. Order Features include the following: (1) Options symbol directory messages (*e.g.,* underlying); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; and (6) risk protection triggers and cancel notifications. Orders submitted by NOM Market Makers over this interface are treated as quotes. *See* Options 3, Section 7(d)(1)(D).

that OPP shall not apply to orders entered through QUO.[6]

Both the Prior Rule Change and the Subsequent Rule Change indicated the aforementioned rule changes would be implemented for QUO and OTTO in Q4 of 2018 with the date announced via an Options Traders Alert. The Exchange filed a rule change implementing QUO and delaying the introduction of the OTTO functionality until Q3 2019 by announcing the date of implementation via an Options Traders Alert.[7] The Exchange further delayed the implementation of OTTO functionality until Q3 2019 and then Q2 2020, respectively.[8] The last rule change filed with the Commission delayed the implementation of OTTO functionality until Q2 2021 due to market events.[9]

Proposal

At this time, NOM has determined not to implement the OTTO protocol and proposes to remove references to the OTTO protocol within its Rulebook. As noted above, the Exchange delayed the introduction of the OTTO functionality initially until Q3 2019.[10] The Exchange then further delayed the implementation of OTTO functionality until Q3 2019 and then Q2 2020, respectively.[11] There were not a material amount of non-Market Makers interested in the risk enhancements or the OTTO protocol after the first two delays. The last rule change filed with the Commission delayed the implementation of OTTO functionality until Q2 2021 due to market events.[12] Nasdaq was considering enhancing OTTO features to provide Participants with other capabilities that are currently not offered with OTTO, in the area of risk enhancements.[13] Nasdaq has discussed certain enhancements with Participants. The Exchange notes that it did not have a large number of Participants interested in the enhancements it was considering.

There are differences as between the current order entry FIX offering and the delayed OTTO offering. The OTTO offering included options symbol directory messages (*e.g.,* underlying); system event messages (*e.g.,* start of trading hours messages and start of opening); and trading action messages (*e.g.,* halts and resumes). The options symbol directory messages,[14] system event messages and trading action messages may also be obtained through market data feeds offered by the Exchange.[15] Also, OTTO would not offer the ability to route, unlike FIX which does offer the ability to route orders.

The Exchange notes that other Nasdaq markets offer only one order entry protocol.[16] Both Phlx and BX offer only one quoting protocol, SQF, on those markets.

At this time, in light of conversations with Participants, Nasdaq proposes to remove the OTTO protocol from its Rulebook and not implement this protocol. NOM will continue to offer QUO, in addition to its FIX[17] and SQF[18] protocols. The Exchange proposes to make conforming changes to the Rulebook to eliminate references to OTTO.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] 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. While the Exchange will no longer implement the OTTO functionality, it will continue to offer the FIX, QUO, and SQF protocols on NOM.

As noted above, the Exchange delayed the introduction of the OTTO functionality initially until Q3 2019.[21] The Exchange then further delayed the implementation of OTTO functionality until Q3 2019 and then Q2 2020, respectively.[22] There were not a material amount of non-Market Makers interested in the risk enhancements or the OTTO protocol after the first two delays. The last rule change filed with the Commission delayed the implementation of OTTO functionality until Q2 2021 due to market events.[23] Nasdaq was considering enhancing OTTO features to provide Participants with other capabilities that are currently not offered with OTTO, in the area of

[6] *See* Securities Exchange Act Release No. 84559 (November 9, 2018), 83 FR 57774 (November 16, 2018) (SR–NASDAQ–2018–085) (''Subsequent Rule Change'').

[7] *See* Securities Exchange Act Release No. 84723 (December 4, 2018), 83 FR 63692 (December 11, 2018) (SR–NASDAQ–2018–097). The Exchange proposed to immediately implement QUO as of the effectiveness of SR–NASDAQ–2018–097 and delay the implementation of OTTO by issuing an Options Trader Alert announcing the implementation date in Q1 2019. The QUO implementation became effective upon filing on November 26, 2018.

[8] *See* Securities Exchange Act Release Nos. 85386 (March 21, 2019), 84 FR 11597 (March 27, 2019) (SR–NASDAQ–2019–016); and 87160 (September 30, 2019), 84 FR 53186 (October 4, 2019) (SR–NASDAQ–2019–078).

[9] *See* Securities Exchange Act Release Nos. 89077 (June 16, 2020), 85 FR 37486 (June 22, 2020) (SR–NASDAQ–2020–031).

[10] *See* Securities Exchange Act Release No. 84723 (December 4, 2018), 83 FR 63692 (December 11, 2018) (SR–NASDAQ–2018–097). The Exchange proposed to immediately implement QUO as of the effectiveness of SR–NASDAQ–2018–097 and delay the implementation of OTTO by issuing an Options Trader Alert announcing the implementation date in Q1 2019. The QUO implementation became effective upon filing on November 26, 2018.

[11] *See* Securities Exchange Act Release Nos. 85386 (March 21, 2019), 84 FR 11597 (March 27, 2019) (SR–NASDAQ–2019–016); and 87160 (September 30, 2019), 84 FR 53186 (October 4, 2019) (SR–NASDAQ–2019–078).

[12] *See* Securities Exchange Act Release Nos. 89077 (June 16, 2020), 85 FR 37486 (June 22, 2020) (SR–NASDAQ–2020–031).

[13] Of those firms interested in the OTTO protocol in 2018, a very low number of firms were non-market making firms. As noted in the Prior Rule Change, the former OTTO protocol was predominately utilized by NOM Market Makers.

[14] Further, FIX permits Participants to define their orders utilizing industry-wide canonical information (*e.g.* underlying, put/call and strike information) as compared to OTTO which would require a Participant to read symbol directory messages and send orders with Exchange specific instrument IDs.

[15] *See* Options 3, Section 23 for descriptions of the Nasdaq ITCH to Trade Options (''ITTO'') and Best of Nasdaq Options (''BONO'') data feeds. System event messages (*e.g.,* start of trading hours messages and start of opening); and trading action messages (*e.g.,* halts and resumes) are available on both of these data feeds.

[16] Nasdaq Phlx LLC (''Phlx'') and Nasdaq BX, Inc. (''BX'') only offer the FIX protocol for order entry.

[17] ''Financial Information eXchange'' or ''FIX'' is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders 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).

[18] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Market Makers to connect, send, and receive messages related to quotes and Immediate-or- Cancel Orders into and from the Exchange. Features include the following: (1) Options symbol directory messages (e.g underlying instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; and (8) opening imbalance messages. The SQF Purge Interface only receives and notifies of purge request from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. *See* Options 3, Section 7(d)(1)(B).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* Securities Exchange Act Release No. 84723 (December 4, 2018), 83 FR 63692 (December 11, 2018) (SR–NASDAQ–2018–097). The Exchange proposed to immediately implement QUO as of the effectiveness of SR–NASDAQ–2018–097 and delay the implementation of OTTO by issuing an Options Trader Alert announcing the implementation date in Q1 2019. The QUO implementation became effective upon filing on November 26, 2018.

[22] *See* Securities Exchange Act Release Nos. 85386 (March 21, 2019), 84 FR 11597 (March 27, 2019) (SR–NASDAQ–2019–016); and 87160 (September 30, 2019), 84 FR 53186 (October 4, 2019) (SR–NASDAQ–2019–078).

[23] *See* Securities Exchange Act Release Nos. 89077 (June 16, 2020), 85 FR 37486 (June 22, 2020) (SR–NASDAQ–2020–031).

risk enhancements.[24] Nasdaq has discussed certain enhancements with Participants.[25] The Exchange notes that it did not have a large number of Participants interested in the enhancements it was considering. At this time, in light of conversations with Participants, Nasdaq proposes to remove the OTTO protocol from its Rulebook and not implement this protocol.

As noted in the Prior Rule Change, the former OTTO protocol was predominately utilized by NOM Market Makers. NOM Market Makers may elect to utilize either the SQF or QUO [26] quoting protocols to quote on NOM. NOM Market Makers may enter orders to the extent they do not exceed 25 percent of the total number of all contracts executed by the Market Maker in any calendar quarter in options in which the NOM Market Maker is not registered as a Market Maker.[27] As Market Makers primarily make markets on NOM, utilizing the quoting protocols, the FIX offering is primarily utilized for non-market making activities by NOM Market Makers. Further, all NOM Participants have utilized FIX since the inception of NOM to enter orders. The differences as between the current order entry FIX offering and the delayed OTTO offering are not impactful in that the options symbol directory messages (*e.g.,* underlying); [28] system event messages (*e.g.,* start of trading hours messages and start of opening); and trading action messages (*e.g.,* halts and resumes) may also be obtained through market data feeds offered by the Exchange.[29] Today, NOM Participants subscribe to the market data feeds to obtain order book information. Finally, unlike FIX, OTTO would not offer the ability to route to away markets. The Exchange notes that other Nasdaq markets offer only one order entry protocol.[30] Both Phlx and BX offer only one quoting protocol, SQF, on those markets.

Nasdaq will continue its conversations with Participants to understand Participant needs so that it may continue to consider changes to protocols offered on NOM in the future.

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. With this proposal, the Exchange will not implement the OTTO protocol to any NOM Participant. Any Participant may utilize the FIX protocol for order entry on NOM. The Exchange does not believe the proposal imposes an undue burden on intra-market competition. There were not a material amount of non-Market Makers interested in the risk enhancements or the OTTO protocol after the first two delays.

As noted in the Prior Rule Change, the former OTTO protocol was predominately utilized by NOM Market Makers. Non-Market Makers could have elected to utilize OTTO, however it would not offer routing capabilities. While NOM Market Makers may elect to utilize either the SQF or the QUO [31] quoting protocol, non-Market Makers must utilize the FIX protocol. NOM Market Makers, unlike other market participants, are required to provide liquidity to the market and are subject to certain obligations,[32] including a requirement to provide continuous two-sided quotes on a daily basis.[33] Providing multiple protocols for NOM Market Makers to provide liquidity on NOM benefits all market participants through the quality of order interaction.

The Exchange does not believe the proposal imposes an undue burden on inter-market competition because the protocols described herein permit market participants to enter quotes and orders on NOM. Other options exchanges may similarly develop protocols specific to order and quote entry on their markets which are similar to the offerings on NOM. The Exchange notes that other Nasdaq markets offer only one order entry protocol.[34] Both Phlx and BX offer only one quoting protocol, SQF, on those markets. Further, today, all options markets utilize the FIX protocol for order entry.

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

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)(iii) of the Act [35] and subparagraph (f)(6) of Rule 19b–4 thereunder.[36]

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–NASDAQ–2020–089 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–2020–089.* This

[24] Of those firms interested in the OTTO protocol in 2018, a very low number of firms were non-market making firms. As noted in the Prior Rule Change, the former OTTO protocol was predominately utilized by NOM Market Makers.

[25] The Exchange notes that it did not have a large number of Participants interested in the enhancements it was considering.

[26] Orders that NOM Market Makers send through QUO count toward market maker quoting obligations.

[27] *See* Options 2, Section 6(b).

[28] Further, FIX permits Participants to define their orders utilizing industry-wide canonical information (*e.g.* underlying, put/call and strike information) as compared to OTTO which would require a Participant to read symbol directory messages and send orders with Exchange specific instrument IDs.

[29] *See* Options 3, Section 23 for descriptions of the ITTO and BONO data feeds.

[30] *See* note 16 above.

[31] Orders that NOM Market Makers send through QUO count toward market maker quoting obligations.

[32] *See* Options 2, Section 4.

[33] *See* Options 2, Section 5.

[34] *See* note 16 above.

[35] 15 U.S.C. 78s(b)(3)(A)(iii).

[36] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2020–089 and should be submitted on or before January 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28304 Filed 12–22–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90706; File No. SR–NYSE–2020–100]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Rule 6800 Series

December 17, 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 December 4, 2020, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 6800 Series, the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') [3] to be consistent with a conditional exemption granted by the Commission from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Allocation Exemption'').[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Rule 6800 Series to be consistent with the Allocation Exemption. The Commission granted the relief conditioned upon the Participants' adoption of Compliance Rules that implement the alternative approach to reporting allocations to the Central Repository described in the Allocation Exemption (referred to as the ''Allocation Alternative'').

(1) Request for Exemptive Relief

Pursuant to Section 6.4(d)(ii)(A) of the CAT NMS Plan, each Participant must, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if the order is executed, in whole or in part: (1) An Allocation Report; [5] (2) the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and the (3) CAT-Order-ID of any contra-side order(s). Accordingly, the Exchange and the other Participants implemented Compliance Rules that require their Industry Members that are executing brokers to submit to the Central Repository, among other things, Allocation Reports and the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.

On August 27, 2020, the Participants submitted to the Commission a request for an exemption from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Exemption Request'').[6] In the Exemption Request, the Participants requested that they be permitted to implement the Allocation Alternative, which, as noted above, is an alternative approach to reporting allocations to the Central Repository. Under the Allocation Alternative, any Industry Member that performs an allocation to a client account would be required under the Compliance Rule to submit an Allocation Report to the Central Repository when shares/contracts are allocated to a client account regardless of whether the Industry Member was involved in executing the underlying order(s). Under the Allocation Alternative, a ''client account'' would be any account that is not owned or controlled by the Industry Member.

In addition, under the Allocation Alternative, an ''Allocation'' would be defined as: (1) The placement of shares/contracts into the same account for

[37] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78a.

[2] 17 CFR 240.19b–4.

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[4] *See* Securities Exchange Act Rel. No. 90223 (October 19, 2020), 85 FR 67576 (October 23, 2020) (''Allocation Exemptive Order'').

[5] Section 1.1 of the CAT NMS Plan defines an ''Allocation Report'' as ''a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.''

[6] *See* letter from the Participants to Vanessa Countryman, Secretary, Commission, dated August 27, 2020 (the ''Exemption Request'').

which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations). Pursuant to this definition and the proposed Allocation Alternative, an Industry Member that performs an Allocation to an account that is not a client account, such as proprietary accounts and events including step outs,[7] or correspondent flips,[8] would not be required to submit an Allocation Report to the Central Repository for that allocation, but could do so on a voluntary basis. Industry Members would be allowed to report Allocations to accounts other than client accounts; in that instance, such Allocations must be marked as Allocations to accounts other than client accounts.

(A) Executing Brokers and Allocation Reports

To implement the Allocation Alternative, the Participants requested exemptive relief from Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members that are executing brokers, who do not perform Allocations, to record and report to the Central Repository, if the order is executed, in whole or in part, an Allocation Report. Under the Allocation Alternative, when an Industry Member other than an executing broker (*e.g.,* a prime broker or clearing broker) performs an Allocation, that Industry Member would be required to submit the Allocation Report to the Central Repository. When an executing broker performs an Allocation for an order that is executed, in whole or in part, the burden of submitting an Allocation Report to the Central Repository would remain with the executing broker under the Allocation Alternative. In certain circumstances this would result in multiple Allocation Reports—the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

The Participants stated that granting exemptive relief from submitting Allocation Reports for executing brokers who do not perform an Allocation, and requiring the Industry Member other than the executing broker that is performing the Allocation to submit such Allocation Reports, is consistent with the basic approach taken by the Commission in adopting Rule 613 under the Exchange Act. Specifically, the Participants stated that they believe that the Commission sought to require each broker-dealer and exchange that touches an order to record the required data with respect to actions it takes on the order.[9] Without the requested exemptive relief, executing brokers that do not perform Allocations would be required to submit Allocation Reports. In addition, the Participants stated that, because shares/contracts for every execution must be allocated to an account by the clearing broker in such circumstances, there would be no loss of information by shifting the reporting obligation from the executing broker to the clearing broker.

(B) Identity of Prime Broker

To implement the Allocation Alternative, the Participants also requested exemptive relief from Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if an order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the prime broker, if applicable. Currently, under the CAT NMS Plan, an Industry Member is required to report the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker in connection with the execution of an order, and such information would be part of the order's lifecycle, rather than in an Allocation Report that is not linked to the order's lifecycle.[10] Under the Allocation Alternative, the identity of the prime broker would be required to be reported by the clearing broker on the Allocation Report, and, in addition, the prime broker itself would be required to report the ultimate allocation, which the Participants believe would provide more complete information.

The Participants stated that associating a prime broker with a specific execution, as is currently required by the CAT NMS Plan, does not reflect how the allocation process works in practice as allocations to a prime broker are done post-trade and are performed by the clearing broker of the executing broker. The Participants also stated that with the implementation of the Allocation Alternative, it would be duplicative for the executing broker to separately identify the prime broker for allocation purposes.

The Participants stated that if a particular customer only has one prime broker, the identity of the prime broker can be obtained from the customer and account information through the DVP accounts for that customer that contain the identity of the prime broker. The Participants further stated that Allocation Reports related to those executions would reflect that shares/contracts were allocated to the single prime broker. The Participants believe that there is no loss of information through the implementation of the Allocation Alternative compared to what is required in the CAT NMS Plan and that this approach does not decrease the regulatory utility of the CAT for single prime broker circumstances.

In cases where a customer maintains relationships with multiple prime brokers, the Participants asserted that the executing broker will not have information at the time of the trade as to which particular prime broker may be allocated all or part of the execution. Under the Allocation Alternative, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts where the shares/contracts were ultimately allocated. To determine the prime broker for a customer, a regulatory user would query the customer and account database using the customer's CCID to obtain all DVP accounts for the CCID at broker-dealers. The Participants state that when a customer maintains relationships with multiple prime brokers, the customer typically has a separate DVP account with each prime broker, and the identities of those prime

[7] ''A step-out allows a broker-dealer to allocate all or part of a client's position from a previously executed trade to the client's account at another broker-dealer. In other words, a step-out functions as a client's position transfer, rather than a trade; there is no exchange of shares and funds and no change in beneficial ownership.'' *See* FINRA, Trade Reporting Frequently Asked Questions, at Section 301, available at: *https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq.*

[8] Correspondent clearing flips are the movement of a position from an executing broker's account to a different account for clearance and settlement, allowing a broker-dealer to execute a trade through another broker-dealer and settle the trade in its own account. *See, e.g.,* The Depository Trust & Clearing Corporation, Correspondent Clearing, available at: *https://www.dtcc.com/clearing-services/equities-tradecapture/correspondent-clearing.*

[9] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45748 (August 1, 2012).

[10] The Participants did not request exemptive relief relating to the reporting of the SRO-Assigned Market Participant Identifier of clearing brokers.

brokers can be obtained from the customer and account information.

(C) Additional Conditions to Exemptive Relief

In the Exemption Request, the Participants included certain additional conditions for the requested relief. Currently, the definition of Allocation Report in the CAT NMS Plan only refers to shares. To implement the Allocation Alternative, the Participants proposed to require that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Specifically, Participants would require the reporting of the following in each Allocation Report: (1) The FDID for the account receiving the allocation, including subaccounts; (2) the security that has been allocated; (3) the identifier of the firm reporting the allocation; (3) the price per share/contracts of shares/contracts allocated; (4) the side of shares/contracts allocated; (4) the number of shares/contracts allocated; and (5) the time of the allocation.

Furthermore, to implement the Allocation Alternative, the Participants proposed to require the following information on all Allocation Reports: (1) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (2) trade date; (3) settlement date; (4) IB/correspondent CRD Number (if applicable); (5) FDID of new order(s) (if available in the booking system); [11] (6) allocation instruction time (optional); (7) if the account meets the definition of institution under FINRA Rule 4512(c); [12] (8) type of allocation (allocation to a custody account, allocation to a DVP account, step out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (9) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (10) if an allocation was cancelled, a cancel flag, which indicates that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(2) Proposed Rule Changes To Implement Exemptive Relief

On October 29, 2020, the Commission granted the exemptive relief requested in the Exemption Request. The Commission granted the relief conditioned upon the adoption of Compliance Rules that implement the reporting requirements of the Allocation Alternative. Accordingly, the Exchange proposes the following changes to its Compliance Rule to implement the reporting requirements of the Allocation Alternative.

(A) Definition of Allocation

The Exchange proposes to add a definition of ''Allocation'' as new paragraph (c) to Rule 6810.[13] Proposed paragraph (c) of Rule 6810 would define an ''Allocation'' to mean ''(1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations).'' The SEC stated in the Allocation Exemption that this definition of ''Allocation'' is reasonable.

(B) Definition of Allocation Report

The Exchange proposes to amend the definition of ''Allocation Report'' set forth in Exchange Rule 6810(c) to reflect the requirements of the Allocation Exemption. Exchange Rule 6810(c) defines the term ''Allocation Report'' to mean:

> a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

The Exchange proposes to amend this definition in two ways: (1) Applying the requirements for Allocation Reports to contracts in addition to shares; and (2) requiring the reporting of additional elements for the Allocation Report.

(i) Shares and Contracts

The requirements for Allocation Reports apply only to shares, as the definition of ''Allocation Report'' in Rule 6810(c) refers to shares, not contracts. In the Allocation Exemption, the Commission stated that applying the requirements for Allocation Reports to contracts in addition to shares is appropriate because CAT reporting requirements apply to both options and equities. Accordingly, the SEC stated that the Participants would be required to modify their Compliance Rules such that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Therefore, the Exchange proposes to amend Rule 6810(c) (to be renumbered as Rule 6810(d)) to apply to contracts, as well as shares. Specifically, the Exchange proposes to add references to contracts to the definition of ''Allocation Report'' to the following phrases: ''the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/contracts are allocated,'' ''the price per share/contract of shares/contracts allocated,'' ''the side of shares/contracts allocated,'' and ''the number of shares/contracts allocated to each account.''

(ii) Additional Elements

The Commission also conditioned the Allocation Exemption on the Participants amending their Compliance Rules to require the ten additional elements in Allocation Reports described above. Accordingly, the Exchange proposes to require these additional elements in Allocation Reports. Specifically, the Exchange proposes to amend the definition of ''Allocation Report'' in Rule 6810(c) (to be renumbered as Rule 6810(d)) to include the following elements, in addition to those elements currently required under the CAT NMS Plan:

> (6) the time of the allocation; (7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-

[11] The Participants propose that for scenarios where the Industry Member responsible for reporting the Allocation has the FDID of the related new order(s) available, such FDID must be reported. This would include scenarios in which: (1) The FDID structure of the top account and subaccounts is known to the Industry Member responsible for reporting the Allocation(s); and (2) the FDID structure used by the IB/Correspondent when reporting new orders is known to the clearing firm reporting the related Allocations.

[12] FINRA Rule 4512(c) states the for purposes of the rule, the term ''institutional account'' means the account of: (1) A bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

[13] The Exchange proposes to renumber the definitions in Rule 6810 to accommodate the addition of this new definition of ''Allocation'' and the new definition of ''Client Account'' discussed below.

reportable transactions (*e.g.,* option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(C) Allocation Reports

(i) Executing Brokers That Do Not Perform Allocations

The Commission granted the Participants an exemption from the requirement that the Participants, through their Compliance Rule, require executing brokers that do not perform Allocations to submit Allocation Reports. The Commission stated that it understands that executing brokers that are not self-clearing do not perform allocations themselves, and such allocations are handled by prime and/or clearing brokers, and these executing brokers therefore do not possess the requisite information to provide Allocation Reports. Accordingly, the Exchange proposes to eliminate Rule 6830(a)(2)(A)(i),[14] which requires an Industry Member to record and report to the Central Repository an Allocation Report if the order is executed, in whole or in part, and to replace this provision with proposed Rule 6830(a)(2)(F) as discussed below.

(ii) Industry Members That Perform Allocations

The Allocation Exemption requires the Participants to amend their Compliance Rules to require Industry Members to provide Allocation Reports to the Central Repository any time they perform Allocations to a client account, whether or not the Industry Member was the executing broker for the trades. Accordingly, the Commission conditioned the Allocation Exemption on the Participants adopting Compliance Rules that require prime and/or clearing brokers to submit Allocation Reports when such brokers perform allocations, in addition to requiring executing brokers that perform allocations to submit Allocation Reports. The Commission determined that such exemptive relief would improve efficiency and reduce the costs and burdens of reporting allocations for Industry Members because the reporting obligation would belong to the Industry Member with the requisite information, and executing brokers that do not have the information required on an Allocation Report would not have to develop the infrastructure and processes required to obtain, store and report the information. The Commission stated that this exemptive relief should not reduce the regulatory utility of the CAT because an Allocation Report would still be submitted for each executed trade allocated to a client account, which in certain circumstances could still result in multiple Allocation Reports,[15] just not necessarily by the executing broker.

In accordance with the Allocation Exemption, the Exchange proposes to add proposed Rule 6830(a)(2)(F) to the Compliance Rule. Proposed Rule 6830(a)(2)(F) would require Industry Members to record and report to the Central Repository ''an Allocation Report any time the Industry Member performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.''

(iii) Client Accounts

In the Allocation Exemption, the Commission also exempted the Participants from the requirement that they amend their Compliance Rules to require Industry Members to report Allocations for accounts other than client accounts. The Commission believes that allocations to client accounts, and not allocations to proprietary accounts or events such as step-outs and correspondent flips, provide regulators the necessary information to detect abuses in the allocation process because it would provide regulators with detailed information regarding the fulfillment of orders submitted by clients, while reducing reporting burdens on broker-dealers. For example, Allocation Reports would be required for allocations to registered investment advisor and money manager accounts. The Commission further believes that the proposed approach should facilitate regulators' ability to distinguish Allocation Reports relating to allocations to client accounts from other Allocation Reports because Allocations to accounts other than client accounts would have to be identified as such. This approach could reduce the time CAT Reporters expend to comply with CAT reporting requirements and lower costs by allowing broker-dealers to use existing business practices.

To clarify that an Industry Member must report an Allocation Report solely for Allocations to a client account, proposed Rule 6830(a)(2)(F) specifically references ''Client Accounts,'' as discussed above. In addition, the Exchange proposes to add a definition of ''Client Account'' as proposed Rule 6810(l). Proposed Rule 6810(l) would define a ''Client Account'' to mean ''for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.''

(D) Identity of Prime Broker

The Exchange also proposes to amend Rule 6830(a)(2)(A)(ii) to eliminate the requirement for executing brokers to record and report the SRO-Assigned Market Participant Identifier of the prime broker. Rule 6830(a)(2)(A)(ii) states that each Industry Member is required to record and report to the Central Repository, if the order is executed, in whole or in part, the ''SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.'' The Exchange proposes to delete the phrase ''or prime broker'' from this provision. Accordingly, each Industry Member that is an executing broker would no longer be required to report the SRO-Assigned Market Participant Identifier of the prime broker.

As the Commission noted in the Allocation Exemption, exempting the Participants from the requirement that they, through their Compliance Rules, require executing brokers to provide the SRO-Assigned Market Participant Identifier of the prime broker is appropriate because, as stated by the Participants, allocations are done on a post-trade basis and the executing broker will not have the requisite information at the time of the trade. Because an executing broker, in certain circumstances, does not have this information at the time of the trade, this relief relieves executing brokers of the burdens and costs of developing infrastructure and processes to obtain this information in order to meet the contemporaneous reporting requirements of the CAT NMS Plan.

As the Commission noted in the Allocation Exemption, although executing brokers would no longer be required to provide the prime broker information, regulators will still be able to determine the prime broker(s) associated with orders through querying the customer and account information

[14] The Exchange proposes to renumber Rule 6830(a)(2)(A)(ii) and (iii) as Rules 6830(a)(2)(A)(i) and (ii) in light of the proposed deletion of Rule 6830(a)(2)(A)(i).

[15] As noted above, under the Allocation Alternative, for certain executions, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

database. If an executing broker has only one prime broker, the identity of the prime broker can be obtained from the customer and account information associated with the executing broker. For customers with multiple prime brokers, the identity of the prime brokers can be obtained from the customer and account information which will list the prime broker, if there is one, that is associated with each account.

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[16] which require, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,[17] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

NYSE believes that this proposal is consistent with the Act because it is consistent with, and implements, the Allocation Exemption, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [18] To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. NYSE notes that the proposed rule changes are consistent with the Allocation Exemption, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. NYSE also notes that the proposed rule changes will apply equally to all Industry Members. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing and does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–100 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–2020–100. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–100, and should be submitted on or before January 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28311 Filed 12–22–20; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78f(b)(6).

[17] 15 U.S.C. 78f(b)(8)

[18] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–418, OMB Control No. 3235–0485]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From:, Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 15c2–1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15c2–1, (17 CFR 240.15c2–1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15c2–1 prohibits the commingling under the same lien of securities of margin customers (a) with other customers without their written consent, and (b) with the broker-dealer. The rule also prohibits the re-hypothecation of customers' margin securities for a sum in excess of the customer's aggregate indebtedness. Pursuant to Rule 15c2–1, respondents must collect information necessary to prevent the re-hypothecation of customer securities in contravention of the rule, issue and retain copies of notices of hypothecation of customer securities in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protections.

There are approximately 48 respondents (*i.e.,* broker-dealers that conducted business with the public, filed Part II or Part IICSE of the FOCUS Report, did not claim an exemption from the Rule 15c3–3 reserve formula computation, and reported that they had a bank loan during at least one quarter of the current year) that require an aggregate total of approximately 1,080 hours to comply with the rule. Each of these approximately 48 registered broker-dealers makes an estimated 45 annual responses. Each response takes approximately 0.5 hours to complete. Thus, the total burden per year is approximately 1,080 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 18, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28424 Filed 12–22–20; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 11287]

Sudan; Determination Under Presidential Proclamation

I hereby determine, in accordance with section 5 of Presidential Proclamation No. 6958, of November 22, 1996, that the suspension of entry into the United States of members or officials of the Government of Sudan (GOS) and members of the Sudanese armed forces is no longer necessary and should be terminated given the termination of the restrictive measures in UN Security Council Resolution 1054 and its successor resolution UNSCR 1070, and the significant shift in U.S. foreign policy toward Sudan following the installation of the new Sudanese Civilian-Led Transitional Government. Restrictions imposed in said proclamation, pursuant to Section 212(f) and 215 of the Immigration and Nationality Act of 1952 as amended (8 U.S.C. 1182(f) and section 301 of title 3, United States Code shall therefore lapse, and said proclamation shall terminate effective immediately.

This determination will be reported to Congress and published in the **Federal Register**.

Dated: December 15, 2020.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2020–28271 Filed 12–22–20; 8:45 am]

BILLING CODE 4710–26–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36456]

Dutchtown Southern Railroad, L.L.C.—Lease and Operation Exemption—Illinois Central Railroad Company

Dutchtown Southern Railroad, L.L.C. (DUSR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Illinois Central Railroad Company (IC) and operate approximately 9,285 feet of track known as the Rubber Lead Track, extending from a point on the Line roughly adjacent to milepost 386 + 1636.15' on IC's parallel main line, extending southeastward to a point proximate to milepost 388 + 357' on the aforementioned, parallel-running IC main line in Geismar, Ascension Parish, La. (the Line).[1]

This transaction is related to a concurrently filed verified notice of exemption in *Watco Holdings, Inc.—Continuance in Control Exemption—Dutchtown Southern Railroad, L.L.C.,* Docket No. FD 36457, in which Watco Holdings, Inc., seeks to continue in control of DUSR upon DUSR's becoming a Class III rail carrier.

DUSR states that it and IC will shortly execute agreements pursuant to which DUSR will lease the Line from IC and will be the operator of the Line. DUSR further states that the proposed agreements between DUSR and IC do not contain any provision limiting DUSR's future interchange of traffic on the Line with a third-party connecting carrier.

DUSR certifies that its projected annual revenues as a result of this transaction will not result in DUSR's becoming a Class II or Class I rail carrier. DUSR further certifies that its projected annual revenue will not exceed $5 million.

The transaction may be consummated on or after January 8, 2021, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption

[1] The verified notice indicates that DUSR also will secure rights to operate into IC's Geismar storage yard for purposes of interchanging rail cars there with IC.

is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 31, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36456, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on DUSR's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to DUSR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: December 17, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2020–28274 Filed 12–22–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36452]

Wisconsin & Southern Railroad, L.L.C.—Acquisition and Operation Exemption—Soo Line Railroad Company

On November 17, 2020, Wisconsin & Southern Railroad, L.L.C. (WSOR), a Class II rail carrier, filed a petition under 49 U.S.C. 10502 for an exemption from the prior approval requirements of 49 U.S.C. 10902 to acquire and operate over approximately 4.79 miles of rail line owned by Soo Line Railroad Company (Soo Line). The rail line extends from milepost 93.20 (at Hampton Avenue) to milepost 88.41 (south of State Street) in the City of Milwaukee, Milwaukee County, Wis. (the Line). WSOR concurrently filed a petition for waiver of the 60-day advance notice requirement of 49 CFR 1121.4(h). For the reasons discussed below, the Board will grant the petition for exemption and the petition for waiver.

Background

In 2007, WSOR received Board authority to lease and operate over the Line. *Wis. & S. R.R.—Lease & Operation Exemption—Soo Line R.R.* (*Lease Decision*), FD 35012, slip op. at 1, 3 (STB served July 17, 2007).[1] According to WSOR, it has continued to lease, maintain, dispatch, and operate over the Line since 2007, but now seeks to purchase the Line from Soo Line.[2] (Pet. for Exemption 1–2.) WSOR states that, through ownership of the Line, it ''will be able to exercise more complete control over investment decisions, and will be better positioned to offer responsive and efficient rail service into the future.'' (*Id.* at 3.) WSOR states that the parties hope to close on their transaction before the end of the year and asks the Board, at Soo Line's request, for expedited consideration of its petition for exemption. (*Id.* at 2.)

WSOR also petitions the Board for a waiver of the 60-day notice requirement under 49 CFR 1121.4(h). Unless waived, section 1121.4(h) would require WSOR, at least 60 days before the exemption becomes effective, to post a notice of its intent to undertake the proposed transaction setting forth certain information at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. WSOR argues that the notice requirement would serve no useful purpose under the circumstances, pointing out that no Soo Line employees have worked on the Line for more than 13 years and that, because WSOR has operated the Line during that time, there is no new carrier. (Pet. for Waiver 3.) WSOR states that it ''has no plans to modify its operation of the Line once its leasehold interest is converted to ownership,'' and, therefore, no employees would be adversely affected by the proposed acquisition. (*Id.* at 2.)

No opposition to either the petition for exemption or the petition for waiver has been filed.

Discussion and Conclusions

Exemption from 49 U.S.C. 10902. Under 49 U.S.C. 10902, the acquisition of a rail line by a Class II rail carrier requires the prior approval of the Board. Under 49 U.S.C. 10502(a), however, the Board must exempt a transaction or service from regulation when it finds that: (1) Regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

In this case, an exemption from the prior approval requirements of section 10902 is consistent with section 10502(a). Detailed scrutiny of the proposed transaction under section 10902 is not necessary to carry out the RTP. An exemption from the application process would minimize the need for federal regulatory control, reduce regulatory barriers to entry, and result in the expeditious handling of this proceeding. *See* 49 U.S.C. 10101(2), (7), (15). Other aspects of the RTP would not be adversely affected by use of the exemption process.

Moreover, regulation of the proposed transaction under section 10902 is not needed to protect shippers from the abuse of market power.[3] There would be no loss of rail competition and no adverse change in the competitive balance in the transportation market, as WSOR has been the carrier providing service over the Line since 2007. Nor would there be a change in the level of service to any shippers because ''WSOR does not intend as a result of the proposed transaction to change materially its existing operations over the Line.'' (Pet. for Exemption 3.)

Waiver of 49 CFR 1121.4(h). As noted, WSOR has petitioned for waiver of the 60-day notification requirement under 49 CFR 1121.4(h). The purpose of that requirement is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. The Board takes seriously the requirements of the regulation, but it does not appear that the purpose behind the notice requirement would be thwarted if the requested waiver is granted in this case.

The record indicates that no railroad employees would be adversely affected by waiver of the requirement here. As WSOR explains, ''[n]o Soo [Line] employees have worked on any portion of the Line in more than 13 years, and they (and the unions representing them) were advised of the transition to WSOR operation of the Line in connection with the *Lease Decision* transaction as of May 24, 2007.'' (Pet. for Waiver 3.) WSOR

[1] The petition for exemption notes that the *Lease Decision* listed the Line's southern limit as milepost 88.4, whereas the Asset Purchase Agreement governing the sale of the Line here lists it as milepost 88.41. WSOR states that this ''minimal difference in mileposts—less than 53 feet—is believed to be a rounding error, and was not intended to signify a different point on the Line.'' (Pet. for Exemption 1 n.1.)

[2] WSOR states that its proposed transaction with Soo Line also includes the transfer of a portion of Soo Line's Glendale Yard known as the ''B'' yard. (Pet. for Exemption 1.) The 2007 transaction also included the ''B'' yard. *Lease Decision,* FD 35012, slip op. at 1.

[3] Because the Board concludes that regulation is not needed to protect shippers from the abuse of market power, it is unnecessary to determine whether the proposed transaction is limited in scope. *See* 49 U.S.C. 10502(a).

also states that ''[n]o Soo [Line] employees will be displaced[,]'' and that WSOR ''will continue in [its] capacity'' as the operator of the Line following the proposed transaction. (*Id.*) Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the waiver. *See, e.g., Wis. & S. R.R.—Acquis. & Operation Exemption—City of Fitchburg, Wis.,* FD 35838, slip op. at 4 (STB served Nov. 18, 2014).

Employee Protection. Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Section 10902(d) provides for labor protection in line acquisitions by Class II rail carriers. As a condition to this exemption, any employees affected by the acquisition will be protected as required by 49 U.S.C. 10902(d), subject to the standards and procedures established in *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad,* 2 S.T.B. 218 (1997), *aff'd in relevant part sub nom. Association of American Railroads* v. *STB,* 162 F.3d 101 (DC Cir. 1998).

Environmental and Historic Review. Under 49 CFR 1105.6(c)(1), this action, which will not result in significant changes in carrier operations, is categorically excluded from environmental review. Similarly, under 49 CFR 1105.8(b)(1), no historic report is required because the subject transaction is for continued rail service, WSOR has indicated no plans to alter railroad properties 50 years old or older, and any abandonment would be subject to Board jurisdiction.

Effective Date. WSOR requests authority to acquire and operate the Line by December 28, 2020, so that the parties may close the transaction before the end of the year. The exemption will take effect on December 28, 2020, unless it is stayed.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10902 WSOR's acquisition of and operation over the Line, subject to the employee protective conditions implementing 49 U.S.C. 10902(d) as provided in this decision.

2. Notice of the exemption will be published in the **Federal Register**.

3. WSOR's request for a waiver of the advance notice requirement under 49 CFR 1121.4(h) is granted.

4. This exemption will become effective on December 28, 2020.

5. Petitions to stay must be filed by December 22, 2020. Petitions to reopen must be filed by January 4, 2021.

Decided: December 14, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2020–28395 Filed 12–22–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36462]

Patriot Rail Transportation Company, LLC, Patriot Rail Company LLC, SRTV Holdings LLC, SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP, First State Infrastructure Managers (International) Limited, and Mitsubishi UFJ Financial Group, Inc.—Control Exemption—Salt Lake Garfield and Western Railway Company

Patriot Rail Transportation Company, LLC (Patriot), Patriot Rail Company LLC (PRC), SRTV Holdings LLC, SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP, First State Infrastructure Managers (International) Limited, and Mitsubishi UFJ Financial Group, Inc. (collectively, Applicants), all noncarriers, have filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to acquire control of Salt Lake Garfield and Western Railway Company (SLGW), a Class III rail carrier operating in Utah.

According to the verified notice, PRC, on behalf of its subsidiary, Patriot, has entered into a Purchase and Sale Agreement with SLGW, Caballero, L.L.C., and Caballero 2 LLC.[1] Applicants state that Patriot will acquire a 100% controlling interest in SLGW. The verified notice states that Patriot currently controls 14 class III railroads.[2]

The verified notice indicates that: (1) SLGW will not connect with any of the Subsidiary Railroads; (2) the acquisition of control is not part of a series of anticipated transactions that would connect SLGW or any of the Subsidiary Railroads with each other; and (3) the proposed transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

The verified notice states that Applicants intend to control SLGW on or before December 15, 2020. However, the earliest this transaction may be consummated is January 9, 2021, the effective date of the exemption (30 days after the verified notice was filed).[3]

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than December 31, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36462, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on Applicants' representative, Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

According to the verified notice, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: December 17, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2020–28286 Filed 12–22–20; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted version of the agreement was filed with the verified notice of exemption. Applicants simultaneously filed a motion for protective order under 49 CFR 1104.14(b). That motion will be addressed in a separate decision.

[2] The verified notice lists the railroads as follows: (1) The Tennessee Southern Railroad Company, LLC; (2) Rarus Railway, LLC, d/b/a Butte, Anaconda & Pacific Railway Co.; (3) Utah Central Railway Company, LLC; (4) Sacramento Valley Railroad, LLC; (5) The Louisiana and North West Railroad Company LLC; (6) Temple & Central Texas Railway, LLC; (7) the Columbia & Cowlitz Railway, LLC; (8) the DeQueen and Eastern Railroad, LLC; (9) the Golden Triangle Railroad, LLC; (10) the Patriot Woods Railroad, LLC; (11) the Texas, Oklahoma & Eastern Railroad, LLC; (12) Georgia Northeastern Railroad Company, LLC; (13) the Kingman Terminal Railroad, LLC; and (14) West Belt Railway LLC (collectively, the Subsidiary Railroads).

[3] The verified notice was initially submitted on November 17, 2020. Applicants filed supplements on November 18, December 1, and December 10, 2020. December 10, 2020, therefore, is deemed the filing date of the verified notice.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36457]

Watco Holdings, Inc.—Continuance in Control Exemption—Dutchtown Southern Railroad, L.L.C.

Watco Holdings, Inc. (Watco), a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Dutchtown Southern Railroad, L.L.C. (DUSR), a noncarrier controlled by Watco, upon DUSR's becoming a Class III rail carrier.

This transaction is related to a verified notice of exemption filed concurrently in *Dutchtown Southern Railroad, L.L.C.—Lease & Operation Exemption—Illinois Central Railroad Company,* Docket No. FD 36456, in which DUSR seeks to lease from Illinois Central Railroad Company and operate approximately 9,285 feet of track known as the Rubber Lead Track, in Geismar, Ascension Parish, La.

The transaction may be consummated on or after January 8, 2021, the effective date of the exemption (30 days after the verified notice was filed).

According to the verified notice of exemption, Watco currently controls indirectly 38 Class III railroads and one Class II railroad, collectively operating in 27 states. For a complete list of these rail carriers and the states in which they operate, see the Appendix to Watco's December 9, 2020 verified notice of exemption. The verified notice is available at *www.stb.gov.*

Watco represents that: (1) The rail line to be leased and operated by DUSR does not connect with the rail lines of any of the rail carriers controlled by Watco; (2) this transaction is not part of a series of anticipated transactions that would connect DUSR with any railroad in the Watco corporate family; and (3) the transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2). Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves the control of one Class II and one or more Class III rail carriers, the transaction is subject to the labor protection requirements of 49 U.S.C. 11326(b) and *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad,* 2 S.T.B. 218 (1997).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 31, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36457, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, one copy of each pleading must be served on Watco's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to Watco, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: December 17, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2020–28275 Filed 12–22–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[FAA–2020–0441]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: National Airspace System (NAS) Data Release Request

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 22, 2020. The collection is an application form, and collection frequency is on occasion, depending on how often requests for National Airspace System (NAS) data are submitted to the FAA. The information to be collected will be used to evaluate the validity of a user's request for NAS data from FAA systems and equipment.

DATES: Written comments should be submitted by January 22, 2021.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Damon Thomas by email at: *damon.thomas@faa.gov*; phone: 202.267.5300.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0668.

Title: NAS Data Release Request.

Form Numbers: FAA Form 1200–5.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 22, 2020 (85 FR 59600).

This information collection is required to obtain or retain a benefit, which is to obtain NAS data from the FAA. The information submitted includes: whether the requestor currently receives NAS data, the authority to access NAS data, the type of data requested, the proposed method for acquiring data, the purpose of the request, the process for filtering sensitive data, and who at the requestor's organization will be used for the data request, including the scope and nature of work the individual will perform.

This information must be collected to enable the FAA to evaluate the validity of a user's request for NAS data from FAA systems and equipment. The information provided by the requestor is used by the FAA NAS Data Release

Board (NDRB) to approve or disapprove individual requests for NAS data, consistent with FAA Order 1200.22E External Requests for National Airspace System (NAS) Data.

Respondents: Approximately 15 requests submitted annually to the FAA by requestors of NAS data.

Frequency: On occasion.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 15 hours total.

Issued in Washington, DC, on December 18, 2020.

Virginia T. Boyle,

Vice President (Acting), System Operations Services.

[FR Doc. 2020–28368 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by the California department of transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, the Interstate 680 (I–680) Express Lanes from State Route 84 (SR 84) to Alcosta Boulevard Project in the Cities of Sunol, Pleasanton, Dublin, and San Ramon, in the Counties of Alameda and Contra Costa, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 24, 2021. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Brian Gassner, Environmental Branch Chief, 111 Grand Avenue MS 8B, Oakland, CA 94612, at (510) 506–0372 or email *brian.gassner@dot.ca.gov*. For FHWA: David Tedrick at (916) 498–5024 or email *david.tedrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and the Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The project would construct High Occupancy Vehicle/express lanes (HOV/express lanes) on northbound and southbound I–680 from SR 84 (Vallecitos Road) in Alameda County to north of Alcosta Boulevard in Contra Costa County. The proposed project extends for approximately 9 miles along I–680 from post mile (PM) R10.6 to R21.9 in Alameda County and from PM R0.0 to R1.1 in Contra Costa County. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the project, approved on November 9, 2020, and in other documents in the FHWA project records. The EA, FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans EA and FONSI can be viewed and downloaded from the project website at *https://dot.ca.gov/caltrans-near-me/district-4/d4-popular-links/d4-environmental-docs* and *www.alamedactc.org/680gapclosure.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA)
2. Fixing America's Surface Transportation Act (Fast Act)
3. Clean Air Act
4. Federal-Aid Highway Act
5. Clean Water Act
6. Historic Sites Act
7. Section 106 of the National Historic Preservation Act
8. Archeological Resources Protection Act
9. Archeological and Historic Preservation Act
10. Antiquities Act
11. Endangered Species Act
12. Migratory Bird Treaty Act
13. Fish and Wildlife Coordination Act
14. Magnuson-Stevens Fishery Conservation and Management Act
15. Section 4(f) of the Department of Transportation Act
16. Civil Rights Act, Title VI
17. Uniform Relocation Assistance and Real Property Acquisition Policies Act
18. Rehabilitation Act
19. Americans with Disabilities Act
20. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
21. Resource Conservation and Recovery Act (RCRA)
22. Safe Drinking Water Act
23. Occupational Safety and Health Act
24. Atomic Energy Act
25. Toxic Substances Control Act
26. Federal Insecticide, Fungicide and Rodenticide Act
27. E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management
28. E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
29. E.O. 12088, Federal Compliance with Pollution Control Standards

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: December 17, 2020.

Rodney Whitfield,

Director, Financial Services, Federal Highway Administration, California Division.

[FR Doc. 2020–28433 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0171]

Hours of Service of Drivers: Association of American Railroads and American Short Line and Regional Railroad Association; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of exemption.

SUMMARY: FMCSA announces its decision to grant the application submitted by the Association of American Railroads and the American Short Line and Regional Railroad Association and member railroads (collectively ''the Associations'') for an exemption from the prohibition against driving after the 14th hour from the beginning of the work shift (the 14-hour rule) and the prohibition against driving after accumulating 60 hours of on duty time within seven consecutive days, or 70 hours of on duty time within 8 consecutive days (the 60-hour/70-hour

rule). The exemption will enable railroad employees subject to the hours-of-service (HOS) rules to respond to unplanned events that occur outside of or extend beyond an employee's normal work hours. FMCSA concluded that granting the Associations' application is likely to achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: The exemption is effective December 23, 2020 and expires December 18, 2025.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Dockets Operations, U.S. Department of Transportation, Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

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

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366–4325; *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this notice as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2020–0171 in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency's decision must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Under 49 CFR 395.3(a) a property carrying commercial motor vehicle (CMV) driver may not drive without first taking 10 consecutive hours off duty. Additionally, the driver may only drive a total of 11 hours during a period of 14 consecutive hours after coming on duty following 10 consecutive hours off duty. Under 49 CFR 395.3(a)(3)(ii) driving is not permitted if more than 8 hours of driving time have passed without at least a consecutive 30-minute interruption in driving status. The 30-minute break may be taken as off-duty, on-duty/not-driving, or sleeper-berth time, or any combination thereof. Under 49 CFR 395.3(b) no motor carrier shall permit or require a driver of a property-carrying CMV to drive, nor shall any driver drive a property-carrying CMV, regardless of the number of motor carriers using the driver's services, for any period after having been on duty 60 hours in any period of 7 consecutive days or having been on duty 70 hours in any period of 8 consecutive days.

IV. Request for Exemption

The Associations believe the HOS prohibitions on driving after the 14th hour after coming on duty, and after 60 or 70 hours on duty in a moving 7- or 8-day ''week,'' inhibit the ability of a railroad to respond expeditiously to certain types of emergency situations. The Associations requested that a railroad employee responding to an unplanned event that affects railroad operations, including passenger rail operations, and that occurs outside of or extends beyond the employee's normal shift, be exempt from those requirements. Unplanned events include the following: A derailment; a rail failure or other report of dangerous track condition; a disruption to the electric propulsion system; a bridge-strike; a disabled vehicle on the track; a train collision; weather- and storm-related events; a matter of national security; a matter concerning public safety; and a blocked grade crossing.

The Associations' request mirrors the request submitted by R.J. Corman Railroad Services, Cranemasters, Inc., and the National Railroad Construction and Maintenance Association, Inc. (the Contractors), which FMCSA granted on March 4, 2020 (85 FR 12818). The Associations' request provides that, while operating under this exemption, drivers and carriers would be allowed to extend the 14-hour duty period in § 395.3(a)(2) to no more than 17 hours; would not be allowed to exceed 11 hours of driving time following 10 consecutive hours off duty; would be allowed to extend the 60- and 70-hour rule in § 395.3(b) by no more than 6 hours; and, drivers would not be allowed to travel more than 300 air miles from their normal work-reporting location or terminal.

In addition, drivers covered by the Associations' request would comply with the applicable HOS limits after arriving at the site and would record all time working to restore rail service as on duty, not driving. Drivers would also have the benefit of FMCSA's personal conveyance guidance when travelling between the unplanned event work site and nearby lodging or dining facilities. To the extent that guidance is not applicable, CMV drivers who have reached the HOS limits would be transported from the work site after on-site duties are completed by an individual who is not subject to HOS restrictions, or would use a vehicle that does not meet FMCSA's definition of a CMV at § 390.5.

Furthermore, drivers operating under the exemption would receive resources on fatigue management appropriate to the rail working environment and emergency response to unplanned events. Specifically, drivers would complete the Driver Education Module

3 and Driver Sleep Disorders and Management Module 7 of the North American Fatigue Management Program (NAFMP).

FMCSA notes that the rail industry already utilizes many resources to educate and assist its workforce, including its CMV drivers, about preventing operator fatigue. The DOT's Federal Railroad Administration hosts a website, the ''Railroaders Guide to Healthy Sleep'' (*https://railroadersleep.fra.dot.gov/*) which provides information, strategies, and resources to help railroad employees manage fatigue. Railroads subject to this exemption request could direct their employee CMV drivers to that railroad-specific and existing FRA fatigue-management resource as another method of compliance under an exemption.

The Associations requested the exemption be granted for 5 years. The exemption would cover 20,000 drivers and 11,000 CMVs.

A copy of the exemption application is available for review in the docket for this notice.

V. Public Comments

On August 20, 2020, FMCSA published a notice seeking public comment on the exemption application (85 FR 51546). The Agency received nine comments from the following respondents: The Brotherhood of Maintenance of Way Employees Division (BMWED); Commercial Vehicle Safety Alliance (CVSA); Justin Fowler; Michael Millard; National Railroad Construction and Maintenance Association, Inc. (NRC); Lisa and Lee Schmidt *(joint submission of comments);* MJ Thorne; Transportation Trades Department, AFL–CIO; and the Truckload Carriers Association (TCA).

The NRC and one individual supported the request for an exemption. The NRC commented:

> The drivers fulfill a critical safety function where it is often difficult to know how long a job will take or when such duties might need to occur. Safety will not be negatively impacted as these employees typically drive for a small percentage of their on-duty time and often only drive short distances. Further, the drivers who have reached the HOS limits would not drive a CMV after the on-site work was completed. The driving in these instances is just incidental to the actual railroad work performed by the employees to clear rail incidents and restore essential rail transportation services, which presents its own set of safety benefits.

Four organizations and three individuals opposed the request for an exemption. The BMWED discussed several research studies and reports, concluding that a substantial body of evidence indicates that a chronic reduction in sleep time is associated with many long-term health problems. They also argued that ''scientific studies have established that driver fatigue and performance are dynamically influenced by the regulation of sleep, including the need to obtain enough sleep to ensure recovery from work schedules that might induce either acute or chronic sleep deprivation.''

CVSA registered its opposition by noting:

> The FMCSRs are put into place to provide a framework of the minimum requirements to operate commercial motor vehicles safely. An exemption to those safety regulations should not be granted simply because they don't fit a particular industry's business model. If an expedited response to these 'unplanned events' are as critical as AAR and ASLRRA suggest in their application, then their member companies should design their business models to respond quickly while still operating within the safety regulations.

TCA opposed the exemption and wrote:

> Adding another exemption to the already over-regulated CMV sphere would only serve to muddy the waters and confuse drivers who may not be familiar with the nuances of the federal regulations. Furthermore, increasing the number of HOS exemptions also increases the opportunities for them to be abused, leading to a decrease in overall safety. TCA encourages the Agency to consider these potentially unintended consequences that may correspond with adding to the already large number of HOS exemptions.

VI. FMCSA Response to Comments and Decision

The Agency believes there is a public interest in ensuring that railroads clear blocked tracks and rights-of-way and restore service as quickly as possible. The exemption would provide flexibility for the Associations to address urgent situations that disrupt rail services.

The Agency acknowledges the safety concerns raised by the BMWED, CVSA, TCA, and other organizations and individuals opposing the exemption. However, the Agency does not believe the requested relief would compromise safety when used occasionally to respond to unplanned events. The exemption would enable the Associations to reach the site of such events within a limited distance from their drivers' normal work-reporting location. Once the crews arrive at the scene, all CMV operations would be conducted in full compliance with the applicable HOS regulations. Likewise, when normal rail operations have been restored, drivers would be required to comply with the HOS requirements during the return trip.

Because the relief is limited to the trip to the scene of the unplanned event and such events would happen only occasionally and not during a predictable number of times per week or per month, drivers would not operate CMVs after the 14th hour of coming on duty as a regular part of their schedules. Similarly, drivers would not regularly operate CMVs after accumulating 60 or 70 hours of on-duty time during 7 or 8 consecutive days. Drivers' standard schedules would include adherence to the 14-hour rule and the 60- and 70-hour rules.

The exemption would not decrease drivers' responsibility under 49 CFR 392.3 to cease operations if their ability to safely operate a CMV is impaired by illness or fatigue.

FMCSA Decision

FMCSA grants the exemption because it will provide needed flexibility without compromising highway safety; the terms and conditions of the exemption would likely achieve the requisite level of safety.

VIII. Terms and Conditions of the Exemption

A. This exemption is restricted to individuals employed by the Associations while driving CMVs to the site of an ''unplanned event'' which includes the following:

- A derailment;
- A rail failure or other report of a dangerous track condition;
- A track occupancy light;
- A disruption to the electric propulsion system;
- A bridge-strike;
- A disabled vehicle on the train tracks;
- A train collision;
- Weather- and storm-related events including, fallen trees and other debris on the tracks, snow, extreme cold or heat, rock and mud slides, track washouts, and earthquakes; and
- A matter concerning national security or public safety, including a blocked grade crossing.

B. When operating under this exemption, drivers and carriers:

- May extend the 14-hour duty period in § 395.3(a)(2) to no more than 17 hours;
- May not exceed 11 hours of driving time, following 10 consecutive hours off duty;
- May extend the 60- and 70-hour rule in § 395.3(b) by no more than 6 hours; and
- May not travel more than 300 air miles from the normal work-reporting location or terminal.

C. Drivers must comply with the applicable HOS limits after arriving at the site—drivers must record all time working to restore rail service as on duty, not driving.

D. Drivers may take advantage of the Agency's personal conveyance regulatory guidance when traveling between the unplanned event work site and nearby lodging or dining facilities (June 7, 2018; 83 FR 26377). If that guidance is not applicable to the trip, CMV drivers who have reached the HOS limits must be transported from the work site by an individual who is not subject to HOS restrictions or use a vehicle that does not meet FMCSA's definition of a CMV (49 CFR 390.5) when they leave the site.

E. Drivers must complete the Driver Education Module 3 and the Driver Sleep Disorders and Management Module 8 of the NAFMP) (*www.nafmp.org*) prior to operating under the exemption; railroads subject to the exemption could direct CMV drivers to the DOT's Federal Railroad Administration's website, the ''Railroaders' Guide to Healthy Sleep'' (*https://railroadersleep.fra.dot.gov/*) as an alternative resource if NAFMP's website is unavailable; and

F. Motor carriers and drivers must comply with all other provisions of the Federal Motor Carrier Safety Regulations.

Preemption

In accordance with 49 U.S.C.31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Notification to FMCSA

Under the exemption, the Associations must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the CMVs operating under the terms of this exemption. The notification must include the following information:

a. Identifier of the Exemption: ''The Associations;''

b. Name of operating carrier and USDOT number;

c. Date of the accident;

d. City or town, and State, in which the accident occurred, or closest to the accident scene;

e. Driver's name and license number;

f. Co-driver's name (if any) and license number;

g. Vehicle number and state license number;

h. Number of individuals suffering physical injury;

i. Number of fatalities;

j. The police-reported cause of the accident, if provided by the enforcement agency.

k. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations; and

l. The records of duty status for date of the accident and the 7 consecutive days prior to the date of the accident, accompanied by a summary statement of the total on-duty time accumulated during the 7 consecutive days prior to the date of the accident, and the total on-duty time and driving time in the work shift prior to the accident.

IX. Termination

FMCSA does not believe the motor carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

James W. Deck,

Deputy Administrator.

[FR Doc. 2020–28341 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0168]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ONE TUSK (Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 22, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0168 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0168 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0168, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, Email *Russell.Haynes@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ONE TUSK is:

—*Intended Commercial Use of Vessel:* ''Sailing Charter and Video Production''

—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Sarasota, FL)

—*Vessel Length and Type:* 45' Catamaran

The complete application is available for review identified in the DOT docket as MARAD–2020–0168 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses

U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0168 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

Dated: December 18, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–28462 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2020–0166]

Waiver Request for Aquaculture Support Operations for the 2021 Calendar Year: COLBY PERCE, RONJA CARRIER, SADIE JANE, MISS MILDRED 1, KC COMMANDER

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: Pursuant to a delegation of authority from the Secretary of Transportation, the Maritime Administrator is authorized to issue waivers allowing documented vessels with only registry endorsements or foreign flag vessels to be used in operations that treat aquaculture fish or protect aquaculture fish from disease, parasitic infestation, or other threats to their health when suitable vessels of the United States are not available that could perform those services. A request for such a waiver has been received by the Maritime Administration (MARAD). This notice is being published to solicit comments intended to assist MARAD in determining whether suitable vessels of the United States are available that could perform the required services. If no suitable U.S.-flag vessels are available, the Maritime Administrator may issue a waiver necessary to comply with USCG Aquaculture Support regulations. A brief description of the proposed aquaculture support service is listed in the **SUPPLEMENTARY INFORMATION** section.

DATES: Submit comments on or before January 22, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0166 by any of the following methods:

- *On-line via the Federal Electronic Portal: http://www.regulations.gov.* Search using ''MARAD–2020–0166'' and follow the instructions for submitting comments.
- *Mail/Hand-Delivery/Courier:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590. Submit comments in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying and electronic filing.

Note: To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact Russel Haynes as provided in the **FOR FURTHER INFORMATION CONTACT** section for alternate submission instructions.

Reference Materials and Docket Information: You may view the complete application, including the aquaculture support technical service requirements, and all public comments at the DOT Docket on-line via *http://www.regulations.gov.* Search using ''MARAD–2020–0166.'' All comments received will be posted without change to the docket, including any personal information provided. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, Email *Russell.Haynes@dot.gov.* If you have questions on viewing the Docket, call Docket Operations, telephone: (800) 647–5527.

SUPPLEMENTARY INFORMATION: As a result of the enactment of the Coast Guard Authorization Act of 2010, codified at 46 U.S.C. 12102, the Secretary of Transportation has the discretionary authority to issue waivers allowing documented vessels with registry endorsements or foreign flag vessels to be used in operations that treat aquaculture fish for or protect aquaculture fish from disease, parasitic infestation, or other threats to their health when suitable vessels of the

United States are not available that could perform those services. The Secretary has delegated this authority to the Maritime Administrator. Pursuant to this authority, MARAD is providing notice of the service requirements proposed by Cooke Aquaculture (Cooke) in order to make a U.S.-flag vessel availability determination. Specifics can be found in Cooke's application letter posted in the docket.

To comply with USCG Aquaculture Support regulations at 46 CFR part 106, Cooke is seeking a MARAD Aquaculture Waiver to operate the vessels, COLBY PERCE, RONJA CARRIER, SADIE JANE, MISS MILDRED 1, KC COMMANDER, as follows:

Intended Commercial Use of Vessel: ''to use highly-specialized foreign-flag vessels referred to as a ''wellboat'' (or ''live fish carrier'') to treat Cooke's swimming inventory of farmed Atlantic salmon in the company's salt-water grow-out pens off Maine's North Atlantic Coast. This treatment prevents against parasitic infestation by sea lice that is highly destructive to the salmon's health.''

Geographic Region: ''off Maine's North Atlantic Coast''

Requested Time Period: ''2021 calendar year, from January 1, 2021 to December 31, 2021''

Interested parties may submit comments providing detailed information relating to the availability of U.S.-flag vessels to perform the required aquaculture support services. If MARAD determines, in accordance with 46 U.S.C. 12102(d)(1) and MARAD's regulations at 46 CFR part 388, that suitable U.S.-flag vessels are available to perform the required services, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria set forth in 46 CFR 388.4.

Privacy Act

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

Authority: (Authority: 49 CFR 1.93(w))

* * * * *

Dated: December 18, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–28459 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0167]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel BOLERO (Sailing Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 22, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0167 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0167 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0167, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, Email *Russell.Haynes@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BOLERO is:

—*Intended Commercial Use Of Vessel:* ''Day time Sailing Tours, Sunset tours in the San Carlos Bay and local waters of Fort Myers Beach, and the Gulf of Mexico. 6 pack tours for local entertainment.''

—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Fort Myers Beach, FL)

—*Vessel Length and Type:* 39.2' Sailing Catamaran

The complete application is available for review identified in the DOT docket as MARAD–2020–0167 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0167 or visit the Docket Management Facility (see **ADDRESSES** for

hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

Dated: December 18, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–28460 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0170]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PRESTIGE WORLDWIDE (Motor Yacht); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 22, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0170 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0170 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0170, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, Email *Russell.Haynes@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PRESTIGE WORLDWIDE is:

—*Intended Commercial Use of Vessel:* ''The vessel may at times be used for charters.''

—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Anna Maria, FL)

—*Vessel Length and Type:* 63' Motor Yacht

The complete application is available for review identified in the DOT docket as MARAD–2020–0170 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0170 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal

identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

Dated: December 18, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–28463 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0169]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LEILANI (Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 22, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0169 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0169 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0169, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Russell Haynes, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone 202–366–3157, Email *Russell.Haynes@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LEILANI is:

—*INTENDED COMMERCIAL USE OF VESSEL:* ''Private Charter touring. Scenery. Tourist excursions.''

—*GEOGRAPHIC REGION INCLUDING BASE OF OPERATIONS:* ''Hawaii'' (Base of Operations: Kewalo Basin Honolulu, Hawaii)

—*VESSEL LENGTH AND TYPE:* 51' Catamaran

The complete application is available for review identified in the DOT docket as MARAD–2020–0169 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0169 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible,

a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

Dated: December 18, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–28461 Filed 12–22–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Bank Secrecy Act Regulations Requiring Reports of Certain Domestic Transactions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, of a currently approved information collection found in existing Bank Secrecy Act regulations. Specifically, if the Secretary of the Treasury finds that reasonable grounds exist for concluding that additional recordkeeping and/or reporting requirements are necessary to carry out the purposes of Bank Secrecy Act, or prevent evasion thereof, the Secretary may issue an order that imposes certain additional recordkeeping and reporting requirements on one or more domestic financial institutions or nonfinancial trades or businesses in a geographic area. This request for comments is made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome, and must be received on or before February 22, 2021.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2020–0019 and the specific Office of Management and Budget (OMB) control number 1506–0056.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2020–0019 and OMB control number 1506–0056.

Please submit comments by one method only. Comments will also be incorporated into FinCEN's review of existing regulations, as provided by Treasury's 2011 Plan for Retrospective Analysis of Existing Rules. Comments will generally become a matter of public record. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. Given the nature of GTOs and their law enforcement purposes, any information that concerns confidential matters involving specific GTOs should be marked 'confidential' and include the specific name of the GTO..

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825, or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Public Law 107–56) and other legislation. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement anti-money laundering (AML) programs and compliance procedures.[1] Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.[2]

Congress amended the BSA in 1988 to give the Secretary the authority to issue orders under 31 U.S.C. 5326 by passing Public Law 100–690, Title VI, § 6185(c). This provision was later amended to permit issuance of confidential orders, lengthen the effective period of orders to 180 days, cover transactions involving transfers of funds, and to clarify that orders can be issued upon reasonable grounds for concluding that additional requirements are necessary to carry out the purposes of the subtitle of which 31 U.S.C. 5326 is a part, or to prevent evasions thereof. *See* Public Law 102–550, Title XV, § 1514; Public Law 107–56, 353(d); Public Law 115–44, 275.

Under 31 U.S.C. 5326(a), if the Secretary finds that reasonable grounds exist for concluding that additional recordkeeping and reporting are necessary to carry out the purpose of the BSA or to prevent evasions thereof, the Secretary may issue an order requiring any domestic financial institution or nonfinancial trade or business or group of domestic financial institutions or nonfinancial trades or businesses in a geographic area to obtain such information as the Secretary may describe in such order concerning certain transactions.

The authority set forth in 31 U.S.C. 5326 to impose reporting and recordkeeping requirements is self-implementing.[3] Section 5326(a) generally requires domestic financial institutions or nonfinancial trades or businesses in a geographic area that receive an order to report, in the manner and to the extent specified in an order, information concerning any transaction in which such financial institution or nonfinancial trade or business is involved for the payment, receipt, or transfer of funds (as the Secretary may describe in such order). An order typically will include the following terms: (i) The dollar amount of

[1] Section 358 of the USA PATRIOT Act added language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism.

[2] Treasury Order 180–01 (re-affirmed Jan. 14, 2020).

[3] Although 31 U.S.C. 5326 does not mention the need for a prescribing regulation, a rule corresponding to section 5326 is set forth at 31 CFR 1010.370. Among other things, the rule defines a geographic area.

transactions subject to the reporting requirement; (ii) the type of transactions subject to or exempt from the reporting requirement; (iii) the appropriate form for reporting and the method for form submission; (iv) the starting and ending dates by which the transactions specified in the order are to be reported; (v) a point of contact at FinCEN for questions; (vi) the amount of time the reports and records of reports generated are required to be retained; and (vii) any other information deemed necessary to carry out the purpose of the order. Pursuant to 31 U.S.C. 5326(d), no order will prescribe a reporting period of more than 180 days unless it is renewed pursuant to 31 U.S.C. 5326(a). These orders are commonly referred to as geographic targeting orders (GTOs).

31 CFR 1010.410(d) requires each financial institution or nonfinancial trade or business to retain the original or a copy or reproduction of a record of the information required to be reported in a GTO for the period of time specified in the order, not to exceed five years.

II. Paperwork Reduction Act of 1995 (PRA) [4]

Title: Reports and records of certain domestic transactions (31 U.S.C. 5326; 31 CFR 1010.370 and 1010.410(d)).

OMB Control Number: 1506–0056.

Report Number: Not applicable.

Abstract: FinCEN is issuing this notice to renew the OMB control number for statutes and regulations requiring reports and records of certain domestic transactions.

Affected Public: Businesses or other for-profit institutions, and non-profit institutions.

Type of Review: Renewal without change of a currently approved information collection.

Frequency: As required.

Estimated Number of Respondents: 353 domestic financial institutions and/or nonfinancial trades or businesses.[5]

Estimated Total Annual Responses: 13,719 responses.[6]

Estimated Reporting and Recordkeeping Burden:

Generally the information required to be recorded and reported as a result of a GTO is basic information to which a domestic financial institution or nonfinancial trade or business would have access in the normal course of doing business. For instance, a domestic financial institution or nonfinancial trade or business involved in a payment, receipt or transfer of funds, would have access to the information required to be reported. The information required to be reported for a GTO, generally, includes the following: (i) The dollar amount of the transaction; (ii) the type of transaction; (iii) information identifying a party to the transaction, such as name, address, date of birth, and tax identification number; (iv) the role of a party in the transaction (*i.e.,* originator or beneficiary); and (v) the name, address, and contact information for the domestic financial institution or nonfinancial trade or business.

As noted above, FinCEN will specify the form and method for reporting. For GTOs, FinCEN has used modified currency transaction reports and Form 8300s, and has also created reports unique to the GTO when appropriate. All responses to GTOs are submitted to FinCEN electronically, such as through the BSA E-Filing System.

Because the information to be reported is readily available to a domestic financial institution or nonfinancial trade or business, FinCEN estimates that reporting this information will take 20 minutes on average. Additionally, the GTO information is filed electronically, which allows the filer to save an electronic version of the form and satisfy the recordkeeping requirement. Therefore, FinCEN estimates that the recordkeeping requirement will take 5 minutes on average. FinCEN estimates the total hourly burden of reporting and recordkeeping for each reportable transaction under a GTO is 25 minutes.

Estimated Total Annual Reporting and Recordkeeping Burden: The average number of reportable transactions under GTOs is 13,719 responses. 13,719 responses multiplied by 25 minutes per response and converted to hours equals 5,716 hours.[7]

Estimated Total Annual Reporting and Recordkeeping Cost: 5,716 hours × $30.60 per hour [8] = $174,909.60.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

General Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (i) Whether the recordkeeping of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (v) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Michael Mosier,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2020–28431 Filed 12–22–20; 8:45 am]

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Regulations Requiring Records to be Made and Retained by Financial Institutions, Banks, and Providers and Sellers of Prepaid Access

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, of currently approved information collections found in existing Bank Secrecy Act regulations. Specifically,

[4] Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

[5] The number of respondents, 353, is the average for 2018 (377), 2019 (259), and 2020 (424). Note that FinCEN may issue a GTO to any business in the United States. Generally, a GTO is issued to a specific sector or business type.

[6] The number of responses, 13,719, is the average number of responses for 2018 (12,866), 2019 (14,046), and 2020 (14,244).

[7] Although the burden is stated as an annual burden in accordance with the PRA, the estimated annual burden is not intended to indicate that there is a GTO in effect throughout a year or in each year.

[8] The U.S. Bureau of Labor Statistics, Occupational Employment Statistics-National, May 2019, available at *https://www.bls.gov/oes/tables.htm.* The most recent data from the BLS corresponds to May 2019. For the benefits component of total compensation, see U.S. Bureau of Labor Statistics, Employer's Cost per Employee Compensation as of December 2019, available at *https://www.bls.gov/oes/tables.htm.* The ratio between benefits and wages for financial activities is $15.95 (hourly benefits)/$32.05 (hourly wages) = 0.50. The benefit factor is 1 plus the benefit/wages ratio, or 1.50. Multiplying each hourly wage by the benefit factor produces the fully-loaded hourly wage per position. The May 2019 Bureau of Labor Statistics average hourly wage for ''43–3099 Financial Clerk'' is $20.40. ($20.40 × 1.50 = $30.60). The Financial Clerk average hourly wage is being used here because there is a great deal of variation across industries and geographies in who is responsible for responding to a GTO.

the regulations covered by this notice and request for comments require certain financial institutions to make and retain records associated with certain types of transactions, including funds transfers, transmittals of funds, and prepaid access transactions, among other types of transactions. Although no changes are proposed to the information collections themselves, this request for comments covers a future expansion of the scope of the annual hourly burden and cost estimates associated with these regulations. This request for comments is made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome, and must be received on or before February 22, 2021.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2020–0016 and the specific Office of Management and Budget (OMB) control numbers 1506–0058 and 1506–0059.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2020–0016 and OMB control number 1506–0058 and 1506–0059.

Please submit comments by one method only. Comments will also be incorporated into FinCEN's review of existing regulations, as provided by Treasury's 2011 Plan for Retrospective Analysis of Existing Rules. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825, or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Public Law 107–56) and other legislation. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement anti-money laundering (AML) programs and compliance procedures.[1] Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury (the ''Secretary'') to administer the BSA has been delegated to the Director of FinCEN.[2]

The Annunzio-Wylie Anti-Money Laundering Act of 1992 (Public Law 102–550) (Annunzio-Wylie) amended the BSA framework. Annunzio-Wylie authorizes the Secretary and the Board of Governors of the Federal Reserve System (the ''Board'') to jointly issue regulations requiring insured depository institutions to maintain records of domestic funds transfers.[3] The Secretary, but not the Board, is authorized to promulgate recordkeeping requirements for domestic wire transfers by nonbank financial institutions.[4] In addition, Annunzio-Wylie authorizes the Secretary and the Board, after consultation with state banking supervisors, to jointly issue regulations requiring insured depository institutions and certain nonbank financial institutions to maintain records of international funds transfers and transmittals of funds.[5]

A. Information Required To Be Collected, Retained, and Transmitted under the Recordkeeping and Travel Rules (31 CFR 1020.410(a) and 31 CFR 1010.410(e) and (f)).

On January 3, 1995, Treasury and the Board jointly issued a recordkeeping rule (the ''Recordkeeping Rule'') that requires banks and nonbank financial institutions to collect and retain information related to funds transfers and transmittals of funds in amounts of $3,000 or more.[6] The Recordkeeping Rule is intended to help law enforcement and regulatory authorities to detect, investigate, and prosecute money laundering, and other financial crimes by preserving an information trail about persons sending and receiving funds through the funds transfer system.

At the same time, FinCEN issued a separate rule—the ''Travel Rule''—that requires banks and nonbank financial institutions to transmit information on certain funds transfers and transmittals of funds to other banks or nonbank financial institutions participating in the transfer or transmittal.[7] The Travel Rule and the Recordkeeping Rule complement each other. Generally, as noted below, the Recordkeeping Rule requires financial institutions to collect and retain the information that, under the Travel Rule, must be included with transmittal orders, although the Recordkeeping Rule also has other applications apart from ensuring that information is available to include with funds transfers. FinCEN issued the Travel Rule pursuant to statutory authority that permits the Treasury to require domestic financial institutions or nonfinancial trades or businesses to maintain appropriate procedures to ensure compliance with the BSA or to guard against money laundering, and to establish AML programs.[8]

The Recordkeeping Rule is codified at 31 CFR 1020.410(a) and 1010.410(e), and the Travel Rule is codified at 31 CFR 1010.410(f).[9] This notice proposes to renew the regulations that implement the Recordkeeping Rule and the Travel Rule, along with all of the other regulatory requirements under 31 CFR 1010.410, 1020.410, and 1022.420.[10,11]

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[1] 31 U.S.C. 5311. Section 358 of the USA PATRIOT Act added language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism.

[2] Treasury Order 180–01 (re-affirmed Jan. 14, 2020).

[3] 12 U.S.C. 1829b(b)(2).

[4] 12 U.S.C. 1953.

[5] 12 U.S.C. 1829b(b)(3). The terms ''funds transfer,'' ''originator,'' ''beneficiary,'' and ''payment order'' apply only in the context of banks. The term ''transmittal of funds'' includes a funds transfer and is its counterpart in the context of nonbank financial institutions. *See* 31 CFR 1010.100(ddd). Transmittors, recipients, and transmittal orders in the context of nonbank financial institutions play the same role as originators, beneficiaries, and payment orders in the context of banks.

[6] 60 FR 220 (Jan. 3, 1995).

[7] 60 FR 234 (Jan. 3, 1995).

[8] *Id.; see also* 31 U.S.C. 5218(a)(2) and (h).

[9] Recordkeeping requirements for banks are set forth in 31 CFR 1020.410(a). Recordkeeping requirements for nonbank financial institutions are set forth in 31 CFR 1010.410(e). The Travel Rule—codified at 31 CFR 1010.410(f)—applies by its terms to both bank and nonbank financial institutions.

[10] OMB control number 1506–0058 applies to 31 CFR 1010.410 and 31 CFR 1022.420. OMB control number 1506–0059 applies to 31 CFR 1020.410.

[11] On October 27, 2020, the Board and FinCEN (collectively, the ''Agencies'') issued a joint notice of proposed rulemaking to modify the thresholds in the Recordkeeping Rule and the Travel Rule The proposed modification would reduce these thresholds from $3,000 to $250 for funds transfers and transmittals of funds that begin or end outside the United States. The proposed modification would also clarify the meaning of ''money'' as used in the Recordkeeping Rule and Travel Rule to ensure that the rules apply to domestic and cross-border transactions involving convertible virtual currency (CVC), which is a medium of exchange (such as cryptocurrency) that either has an

The Recordkeeping Rule and Travel Rule collectively require banks and nonbank financial institutions to collect, retain, and transmit information on funds transfers and transmittals of funds in amounts of $3,000 or more.

Under the Recordkeeping Rule, the originator's bank or transmittor's financial institution must collect and retain the following information: (a) Name and address of the originator or transmittor; (b) the amount of the payment or transmittal order; (c) the execution date of the payment or transmittal order; (d) any payment instructions received from the originator or transmittor with the payment or transmittal order; and (e) the identity of the beneficiary's bank or recipient's financial institution. In addition, the originator's bank or transmittor's financial institution must retain the following information if it receives that information from the originator or transmittor: (a) Name and address of the beneficiary or recipient; (b) account number of the beneficiary or recipient; and (c) any other specific identifier of the beneficiary or recipient. The originator's bank or transmittor's financial institution is required to verify the identity of the person placing a payment or transmittal order if the order is made in person and the person placing the order is not an established customer.[12] Similarly, should the beneficiary's bank or recipient's financial institution deliver the proceeds to the beneficiary or recipient in person, the bank or nonbank financial institution must verify the identity of the beneficiary or recipient—and collect and retain various items of information identifying the beneficiary or recipient—if the beneficiary or recipient is not an established customer. Finally, an intermediary bank or financial institution—and the beneficiary's bank or recipient's financial institution—must retain originals or copies of payment or transmittal orders.

Under the Travel Rule, the originator's bank or transmittor's financial institution is required to include information, including all information required under the Recordkeeping Rule, in a payment or transmittal order sent by the bank or nonbank financial institution to another bank or nonbank financial institution in the payment chain. An intermediary bank or financial institution is also required to transmit this information to other banks or nonbank financial institutions in the payment chain, to the extent the information is received by the intermediary bank or financial institution.

B. Additional Records To Be Made and Retained by Financial Institutions (31 CFR 1010.410(a) Through (c))

31 CFR 1010.410(a) through (c)[13] require financial institutions[14] to retain either the original or a copy of the following:

- A record of each extension of credit in excess of $10,000, except if the extension of credit is secured by an interest in real property. The record must include the name and address of the person to whom the extension of credit is made, and the amount, purpose, and date of the extension of credit.[15]
- A record of each request received or given regarding any transaction resulting in, or intended to result in but later canceled if such a record is normally made, the transfer of currency or other monetary instruments, funds, checks, investment securities, or credit of more than $10,000 to or from any person, account, or place outside the United States.[16]
- A record of each request given to another financial institution or other person located in or outside of the United States, regarding a transaction intended to result in a transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account, or place outside the United States.[17]

C. Additional Records To Be Made and Retained by Banks (31 CFR 1020.410 (c))

31 CFR 1020.410(c), requires banks to retain either the original or a copy of the following:[18]

- Each document granting signature authority over each deposit or share account, including any notations, if such are normally made, of specific identifying information to verify the identity of the signer.[19]
- A record on each deposit or share account, showing each transaction in, or with respect to, that account.[20]
- Each check, clean draft, or money order drawn on the bank or issued and payable by it, with certain exceptions.[21]
- A record of each item in excess of $100 comprising a debit to a customer's deposit or share account, with certain exceptions.[22]
- A record of each item, including checks, drafts, or transfers of credit of more than $10,000 remitted or transferred to a person, account, or place outside the United States.[23]
- A record of each remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States.[24]
- Each check or draft in excess of $10,000 drawn on or issued by a foreign bank which the domestic bank has paid or presented to a nonbank drawee for payment.[25]
- Each item, including checks, drafts or transfers of credit of more than $10,000 received directly and not through a domestic financial institution, by letter, cable or any other means, from a bank, broker or dealer in foreign exchange outside the United States.[26]
- A record of each receipt of currency, other monetary instruments, investment securities or checks, and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from a

equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status. The Agencies further proposed to clarify that these rules apply to domestic and cross-border transactions involving digital assets that have legal tender status. See 85 FR 68005 (October 27, 2020).

[12] The term ''established customer'' is defined at 31 CFR 1010.100(p).

[13] 31 CFR 1010.410(d) requires the retention of a record of information for a period of time as the Secretary may require in an order issued under 31 CFR 1010.370(a), not to exceed five years. The recordkeeping burden for 31 CFR 1010.410(d) is accounted for under OMB control number 1506–0056, which applies to 31 CFR 1010.370(a).

[14] Except for 31 CFR 1010.410(e), which only applies to financial institutions other than banks, each of the requirements of 31 CFR 1010.410 applies to ''financial institutions'' as defined in 31 CFR 1010.100(t). This provision defines a financial institution to include each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the following capacities: (1) A bank (except bank credit card systems); (2) a broker or dealer in securities; (3) a money services business as defined in 31 CFR 1010.100(ff); (4) A telegraph company; (5) a casino; (6) a card club; (7) a person subject to supervision by any state or Federal bank supervisory authority; (8) a futures commission merchant; (9) an introducing broker in commodities; or (10) a mutual fund.

[15] 31 CFR 1010.410(a).

[16] 31 CFR 1010.410(b).

[17] 31 CFR 1010.410(c).

[18] Note that 31 CFR 1020.410(b) is obsolete on its face because the recordkeeping requirements apply to requirements that apply within 30 days of the sale or redemption of certificates of deposit after May 31, 1978 and before October 1, 2003, or the opening of deposit or share account after June 30, 1972 and before October 1, 2003.

[19] 31 CFR 1020.410(c)(1).

[20] 31 CFR 1020.410(c)(2).

[21] 31 CFR1020.410(c)(3). See a list of exceptions to the recordkeeping requirement at 31 CFR 1020.410(c)(3).

[22] 31 CFR 1020.410(c)(4).

[23] 31 CFR 1020.410(c)(5).

[24] 31 CFR 1020.410(c)(6).

[25] 31 CFR 1020.410(c)(7).

[26] 31 CFR 1020.410(c)(8).

bank, broker or dealer in foreign exchange outside the United States.[27]

- Records prepared or received by a bank in the ordinary course of business, which would be needed to reconstruct a transaction account and to trace a check in excess of $100 deposited in such account through its domestic processing system or to supply a description of a deposited check in excess of $100. This requirement is only applicable to demand deposits.[28]
- A record containing the name, address, and taxpayer identification number (TIN), if available, of the purchaser of each certificate of deposit, as well as a description of the instrument, notation of the method of payment, and the date of the transactions.[29]
- A record containing the name, address, and TIN, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and the date of the transaction.[30]
- Each deposit slip or credit ticket reflecting a transaction in excess of $100 or the equivalent record for direct deposit or other wire transfer deposit transactions. The record must include the amount of any currency involved.[31]

D. Additional Records To Be Maintained by Providers and Sellers of Prepaid Access (31 CFR 1022.420)

Providers and sellers of prepaid access are a type of money services business (MSB), as defined in § 1010.100(ff)(4). BSA regulations specific to MSBs are found at 31 CFR Chapter X. Providers and sellers of prepaid access must maintain access to transactional records generated in the ordinary course of business that would be needed to reconstruct prepaid access activation, loads, reloads, purchases, withdrawals, transfers, or other prepaid-related transactions.

[27] 31 CFR 1020.410(c)(9).

[28] 31 CFR 1020.410(c)(10).

[29] 31 CFR 1020.410(c)(11).

[30] 31 CFR 1020.410(c)(12).

[31] 31 CFR 1020.410(c)(13).

II. Paperwork Reduction Act of 1995 (PRA)[32]

Title: Records to be made and retained by financial institutions (31 CFR 1010.410), records to be made and retained by banks (31 CFR 1020.410), and additional records to be maintained by providers and sellers of prepaid access (31 CFR 1022.420).[33]

OMB Control Number: 1506–0058 and 1506–0059.[34]

Report Number: Not applicable.

Abstract: FinCEN is issuing this notice to renew the OMB control numbers for regulations requiring certain financial institutions to make and retain records associated with certain types of transactions, including funds transfers, transmittals of funds, and prepaid access transactions, among other types of transactions.

Affected Public: Businesses or other for-profit institutions, and non-profit institutions.

Type of Review:

- Renewal without change of a currently approved information collections.
- Propose for review and comment a renewal of the portion of the PRA burden that has been subject to notice and comment in the past (the ''traditional annual PRA burden'').
- Propose for review and comment a future expansion and clarification of the scope of the PRA burden (the ''future annual PRA burden'').

Frequency: As required.

Estimated Number of Respondents: 28,567 financial institutions.[35]

Estimated Recordkeeping Burden: In Part 1 of this notice, FinCEN describes the breakdown of the estimated number of financial institutions, by type, impacted by each regulatory requirement. In Part 2, FinCEN proposes for review and comment a renewal of the estimate of the traditional annual PRA hourly burden, which includes an annual hourly burden estimate per financial institution similar to that used in the past, with the incorporation of a more robust cost estimate. The scope and methodology used in the past assigned a total annual hourly burden estimate, per financial institution, to multiple recordkeeping requirements within the regulations, and did not assign an annual hourly burden estimate, per financial institution, to each recordkeeping requirement. The prior renewals also did not include an estimate of the number of transactions, by type, for which records are required to be made and retained. FinCEN assesses that the volume of a given type of transaction by financial institution, for which a record is required to be made and retained, would be the best indication of the annual hourly burden estimate per financial institution. In Part 3, FinCEN proposes for review and comment a methodology to estimate the hourly burden and the cost of a future estimate of an annual PRA burden that includes the burden and cost broken down by each type of recordkeeping requirement covered by the regulations being renewed. The methodology also includes identifying estimates for the number of transactions conducted annually per financial institution, which would trigger each recordkeeping requirement. Finally, in Part 4, FinCEN solicits input from the public about: (a) The accuracy of the estimate of the traditional annual PRA burden; (b) a more granular proposed method to estimate a future annual PRA burden by calculating the burden per recordkeeping requirement; (c) the criteria, metrics, and most appropriate questions FinCEN should consider when researching the information to estimate the future annual PRA burden, according to the methodology proposed; and (d) any other comments about the regulations and the current and proposed future hourly burden and cost estimates of these requirements.

Part 1. Breakdown of the Financial Institutions Covered by This Notice

The breakdown of financial institutions, by type, covered by this notice is reflected in Table 1 below:

[32] Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

[33] All of the records required to be made and retained under 31 CFR 1010.410, 1020.410, and 1022.420 are required to be retained for five years pursuant to 31 CFR 1010.430(d).

[34] OMB control number 1506–0058 applies to 31 CFR 1010.410 and 31 CFR 1022.420. OMB control number 1506–0059 applies to 31 CFR 1020.410.

[35] Table 1 below sets forth a breakdown of the types of financial institutions covered by this notice.

TABLE 1—BREAKDOWN, BY TYPE, OF FINANCIAL INSTITUTIONS COVERED BY THIS NOTICE

Type of financial institution	Number of financial institutions
Banks	[36] 10,542
Brokers or dealers in securities	[37] 3,640
Futures commission merchants	[38] 61
Money services businesses (MSBs) that conduct money transmission	[39] 12,692
MSBs that are providers and sellers of prepaid access	[40] 1,632
Total number of financial institutions	28,567

31 CFR 1010.410(a) Through (c)

Description of Recordkeepers: Financial institutions providing extensions of credit in excess of $10,000 (other than those secured by real property), and engaging in transfers of funds, currency, other monetary instruments, checks, investment securities, or credit of more than $10,000 to or from the United States. Although the regulations on their face would apply to all financial institutions, only banks, credit unions, brokers or dealers in securities, futures commission merchants (FCMs), and money transmitters would be likely to issue extensions of credit in excess of $10,000, or transfer funds, currency, monetary instruments, checks, investment securities, or credit of more than $10,000 to or from the United States.

31 CFR 1010.410(d)

As noted above, the recordkeeping burden for 31 CFR 1010.410(d) is accounted for under OMB control number 1506–0056, which applies to 31 CFR 1010.370(a). A notice to renew OMB control number 1506–0056 will also be published in the **Federal Register** in December 2020.

31 CFR 1010.410(e)

Description of Recordkeepers: Financial institutions other than banks that conduct transmittals of funds, including funds transfers, in the amount of $3,000 or more. Although the regulation on its face would apply to all nonbank financial institutions, mostly money transmitters that conduct transmittals of funds would be impacted.

31 CFR 1010.410(f)

Description of Recordkeepers: Financial institutions that are the transmitting or intermediary financial institution in a funds transfer or transmittal of funds. Although the regulation on its face would apply to all financial institutions, only banks, including credit unions, and money transmitters that conduct funds transfers or transmittals of funds would be impacted.

31 CFR 1020.410

Description of Recordkeepers: Banks, including credit unions, that conduct funds transfers by acting as the transmitting, intermediary, or recipient bank outlined in 31 CFR 1020.410(a), and banks that conduct transactions outlined in 31 CFR 1020.410(c).

31 CFR 1022.420

Description of Recordkeepers: MSBs that are provider and sellers of prepaid access, as defined in 31 CFR 1010.100(ff)(4) and (7), that conduct prepaid access-related transactions.

Part 2. Traditional Annual PRA Burden and Cost

OMB Control Number 1506–0058

31 CFR 1010.410(a) Through (c)

Each financial institution must retain an original or a copy of records related to extensions of credit in excess of $10,000 (other than those secured by real property), and an original or copy of records related to transfers of funds, currency, other monetary instruments, checks, investment securities, or credit of more than $10,000 to or from the United States.[41] Due to the challenges of obtaining the total number of such records required to be maintained per financial institution, in its most recent control number renewal, FinCEN estimated that the annual recordkeeping burden per financial institution for these requirements was 50 hours.[42] FinCEN continues to estimate that the annual hourly burden of complying with 31 CFR 1010.410(a) through (c) is 50 hours per financial institution.

26,935 financial institutions[43] multiplied by 50 hours, results in a total annual hourly burden estimate of 1,346,750 hours.

31 CFR 1010.410(e)

Each nonbank financial institution must collect and retain information related to transmittals of funds in amounts of $3,000 or more. Due to the challenges of obtaining the total number of transmittals of funds of $3,000 or more conducted per nonbank financial institution, FinCEN estimated, in its most recent control number renewal, that the annual recordkeeping burden per financial institution was 16 hours.[44] FinCEN continues to estimate that the annual hourly burden to comply with 31 CFR 1010.410(e) is 16 hours per financial institution.

12,692 MSBs[45] providing money transmission services multiplied by 16 hours, results in a total annual hourly burden estimate of 203,072 hours.

31 CFR 1010.410(f)

Each financial institution must transmit information on funds transfers and transmittals of funds when acting as the transmitting or intermediary financial institution. Due to the challenges of obtaining the total number of funds transfers or transmittals of funds for which a financial institution was acting as the transmitting or intermediary financial institution, FinCEN estimated, in its most recent control number renewal, that the annual recordkeeping burden per financial institution was 12 hours.[46] FinCEN continues to estimate that the annual hourly burden to comply with 31 CFR 1010.410(f) is 12 hours per financial institution.

[36] According to the Federal Deposit Insurance Corporation (FDIC) there were 5,103 FDIC-insured banks as of March 31, 2020. According to the Federal Reserve Board (FRB), there were 203 other entities supervised by the FRB, as of June 16, 2020, that fall within the definition of bank (20 Edge Act institutions, 15 agreement corporations (as defined in 12 CFR 28.2), and 168 foreign banking organizations). According to the National Credit Union Administration there were 5,236 federally regulated credit unions as of December 31, 2019.

[37] According to the Securities and Exchange Commission (SEC), there were 3,640 brokers or dealers in securities registered with the SEC, as of March 31, 2020.

[38] According to the Commodities and Futures Trading Commission (CFTC), there were 61 futures commission merchants registered with the CFTC, as of March 31, 2020.

[39] As of June 2020, there were 12,692 MSBs registered with FinCEN that indicated they were conducting money transmission.

[40] FinCEN's MSB registration database. See *https://www.fincen.gov/msb-state-selector.*

[41] 31 CFR 1010.410(a) through (c).

[42] 82 FR 31686, 31688 (July 7, 2017).

[43] See Table 1, *supra.* 26,935 represents the number of financial institutions listed in the title of this notice, other than MSBs that are providers and sellers of prepaid access, because such MSBs would not conduct transactions described in 31 CFR 1010.410(a) through (c).

[44] 82 FR 31686, 31688 (July 7, 2017). Note that, due to an administrative error, the 2017 control number renewal inadvertently describes this 16 hour burden as applicable to the requirements of both 31 CFR 1010.410(e) and 31 CFR 1010.410(f).

[45] See Table 1 *supra* for the estimated number of MSBs that provide money transmission services.

[46] 82 FR 31686, 31688 (July 7, 2017). Note that, due to an administrative error, the 2017 control number renewal inadvertently describes this 12 hour burden as applicable to the requirements of 31 CFR 1010.410(g) rather than 31 CFR 1010.410(f).

23,234 banks and MSBs conducting money transmission,[47] multiplied by 12 hours, results in a total annual hourly burden estimate of 278,808 hours.

31 CFR 1022.420

Each provider or seller of prepaid access is required to maintain access to transactional records generated in the ordinary course of business that would be needed to reconstruct prepaid access activation, loads, reloads, purchases, withdrawals, transfers, or other prepaid-related transactions. Due to the challenges of obtaining the total number of prepaid access transactions, FinCEN estimated, in its most recent control number renewal, that the annual recordkeeping burden per financial institution was 16 hours. FinCEN continues to estimate that the annual hourly burden to comply with 31 CFR 1022.420 is 16 hours per financial institution.

1,632 MSBs which are providers or sellers of prepaid access,[48] multiplied by 16 hours, results in a total annually hourly burden estimate of 26,112 hours.

Total Annual Traditional PRA Hourly Burden for OMB Control Number 1506–0058: 1,854,742 hours (1,346,750 + 203,072 + 278,808 + 26,112).[49]

OMB Control Number 1506–0059

31 CFR 1020.410

Banks, including credit unions, are required to (i) collect and retain information on funds transfers when acting as the transmitting, intermediary, or recipient bank, and (ii) retain an original or copy of records, when conducting transactions outlined in 31 CFR 1020.410(c). Due to the challenges of obtaining the total number of funds transfers of $3,000 or more conducted by each bank acting as the transmitting, intermediary, or recipient bank, and the challenges of obtaining the total number of transactions that would trigger each of the recordkeeping requirements per bank, as required by 31 CFR 1020.410(c), FinCEN estimated, in its most recent control number renewal, that the annual recordkeeping burden per bank was 100 hours. FinCEN continues to estimate that the annual hourly burden to comply with all of the recordkeeping requirements in 31 CFR 1020.410 is 100 hours per bank.

10,542 banks [50] multiplied by 100 hours results in a total annual hourly burden estimate of 1,054,200 hours.

Total Annual Traditional PRA Hourly Burden for OMB Control Number 1506–0059: 1,054,200 hours.

Total Annual Traditional PRA Hourly Burden for OMB Control Numbers 1506–0058 and 1506–0059.

FinCEN's estimate of the total traditional annual PRA burden for each of the recordkeeping requirements being renewed in this notice is 2,908,942 hours, as detailed in Table 2 below:

TABLE 2—BREAKDOWN OF FINANCIAL INSTITUTIONS IMPACTED BY EACH REGULATORY REQUIREMENT, AND THE ESTIMATED TOTAL ANNUAL BURDEN HOURS PER REQUIREMENT

Regulatory requirement	Type of financial institution impacted by the requirement	Number of financial institutions	Traditional annual burden estimate per financial institution (hours)	Total annual burden hours per regulatory requirement
31 CFR 1010.410(a)–(c)	Banks, brokers or dealers in securities, FCMs, and MSBs that conduct money transmission.	26,935	50	1,346,750
31 CFR 1010.410(e)	MSBs that conduct money transmission	12,692	16	203,072
31 CFR 1010.410(f)	Banks and MSBs the conduct money transmission	23,234	12	278,808
31 CFR 1022.420	MSBs that are providers or sellers of prepaid access	1,632	16	26,112
31 CFR 1020.410	Banks	10,542	100	1,054,200
Total annual hour burden hours				2,908,942

To calculate the hourly costs of the burden estimate, FinCEN identified three roles and corresponding staff positions involved in maintaining records as required by 31 CFR 1010.410, 1020.410, and 1022.420: (i) General supervision (providing process oversight); (ii) direct supervision (reviewing operational-level work and cross-checking all or a sample of the work product against supporting documentation); and (iii) clerical work (engaging in recordkeeping).

FinCEN calculated the fully-loaded hourly wage for each of these three roles by using the median wage estimated by the U.S. Bureau of Labor Statistics (BLS),[51] and computing an additional benefits cost as follows:

TABLE 3—FULLY-LOADED HOURLY WAGE BY ROLE AND BLS JOB POSITION FOR ALL FINANCIAL INSTITUTIONS COVERED BY THIS NOTICE

Role	BLS-code	BLS-name	Median hourly wage	Benefit factor	Fully-loaded hourly wage
General supervision	11–3031	Financial Manager	$62.45	1.50	$93.68
Direct supervision	13–1041	Compliance Officer	33.20	1.50	49.80
Clerical work (research, review, and recordkeeping).	43–3099	Financial Clerk	20.40	1.50	30.60

[47] See Table 1 *supra.* 23,234 equates to 10,542 banks and 12,692 MSBs that provide money transmission services.

[48] See Table 1 *supra* for the total number of MSBs that are providers or sellers of prepaid access.

[49] 1,346,750 hours (31 CFR 1010.410(a)–(c)) + 203,072 hours (31 CFR 1010.410(e)) + 278,808 hours (31 CFR 1010.410(f)) + 26,112 hours (31 CFR 1022.420) = 1,854,742 hours.

[50] See Table 1 *supra* for the total number of banks.

[51] The U.S. Bureau of Labor Statistics, Occupational Employment Statistics-National, May 2019, available at *https://www.bls.gov/oes/tables.htm.* The most recent data from the BLS corresponds to May 2019. For the benefits component of total compensation, see U.S. Bureau of Labor Statistics, Employer's Cost per Employee Compensation as of December 2019, available at *https://www.bls.gov/news.release/ecec.nr0.htm.* The ratio between benefits and wages for financial activities is $15.95 (hourly benefits)/$32.05 (hourly wages) = 0.50. The benefit factor is 1 plus the benefit/wages ratio, or 1.50. Multiplying each hourly wage by the benefit factor produces the fully-loaded hourly wage per position.

FinCEN estimates that, *in general and on average,*[52] each role would spend different amounts of time on each portion of the traditional annual PRA burden, as follows:

The cost of each hour of burden, broken down by role, to produce and maintain records as outlined in 31 CFR 1010.410, 1020.410, and 1022.420 would be $37.00 as set out in Table 4 below:

TABLE 4—WEIGHTED AVERAGE HOURLY COST OF MAKING AND MAINTAINING THE RECORDS

General supervision		Direct supervision		Clerical work		Weighted average hourly cost
% Time	Hourly cost	% Time	Hourly cost	% Time	Hourly cost	
5	$4.68	15	$7.47	80	$24.48	$37.00

$36.63 rounded to $37.00.

The total estimated cost of the traditional annual PRA burden for the regulatory requirements being renewed in this notice is $107,630,854, as reflected in Table 5 below:

TABLE 5—TOTAL COST OF TRADITIONAL ANNUAL PRA BURDEN

OMB control No.	Hourly burden	Hourly cost	Total Cost
1506–0058	1,854,742	$37	$68,625,454
1506–0059	1,054,200	37	39,005,400
Total cost	.....	.....	107,630,854

Part 3—Future Annual PRA Burden

In the future, FinCEN will include the burden and cost for each type of recordkeeping requirement covered by the regulations being renewed. The future burden estimate will also include estimates of the number of transactions conducted annually per financial institution, which trigger each recordkeeping requirement.

31 CFR 1010.410(a) Through (c)

As noted above, each financial institution must retain an original or a copy of records related to extensions of credit in excess of $10,000 (other than those secured by real property), and an original or copy of records related to transfers of funds, currency, other monetary instruments, checks, investment securities, or credit of more than $10,000 to or from the United States. In order to more accurately estimate the related PRA burden in the future, FinCEN intends to obtain a better understanding of how many types of financial institutions conduct these transactions, and the average volume of such transactions per financial institution.

31 CFR 1010.410(e)

As described in greater detail in Section I above, each nonbank financial institution must collect and retain information related to transmittals of funds in amounts of $3,000 or more. In order to more accurately estimate the related PRA burden in the future, FinCEN intends to obtain a better understanding of the volume of transmittals of funds conducted by MSBs, and determine the average volume of transmittals of funds per the transmitting, intermediary, or recipient MSB.

31 CFR 1010.410(f)

As described in greater detail in Section I above, each financial institution must transmit information on funds transfers and transmittals of funds when acting as the transmitting or the intermediary financial. In order to more accurately estimate the related PRA burden in the future, FinCEN intends to obtain a better understanding of the volume of funds transfers and transmittals of funds conducted by banks and MSBs, and determine the average volume of funds transfer per bank and transmittals of funds per transmitting or intermediary bank or MSB.

31 CFR 1022.420

Each provider or seller of prepaid access is required to maintain access to transactional records generated in the ordinary course of business that would be needed to reconstruct prepaid access activation, loads, reloads, purchases, withdrawals, transfers, or other prepaid-related transactions. In order to more accurately estimate the related PRA burden in the future, FinCEN intends to obtain a better understanding of the volume of prepaid access transactions conducted by MSBs, and determine the average volume of prepaid transactions per MSB.

31 CFR 1020.410(a)

As described in greater detail in Section I above, banks, including credit unions, are required to collect and retain information on funds transfers in amounts of $3,000 or more, conducted by the bank acting as the transmitting, intermediary, or recipient bank. In order to more accurately estimate the PRA burden in the future, FinCEN intends to obtain a better understanding of the volume of funds transfers conducted by banks, and determine the average volume of funds transfer per transmitting, intermediary, or recipient bank.

31 CFR 1020.410(c)

As described in greater detail in Section I, banks, including credit unions, are required to retain an original or copy of the records outlined in 31 CFR 1020.410(c). In order to more accurately estimate the PRA burden in the future, FinCEN intends to obtain a better understanding of how many banks conducted each of the 13 types of transactions described in 31 CFR

[52] By ''in general,'' FinCEN means without regard to outliers (*e.g.,* financial institutions that conduct transactions that trigger the recordkeeping requirements described in this notice with complexities or volumes that are uncommonly higher or lower than those of the population at large). By ''on average,'' FinCEN means the mean of the distribution of each subset of the population.

1020.410(c), and determine the average volume of these transactions per bank.

FinCEN does not have the information needed to estimate the number of annual transactions that trigger each recordkeeping requirement being renewed in this notice. For that reason, FinCEN is relying on estimates used in prior renewals of these OMB control numbers and the applicable regulations. FinCEN further recognizes that after receiving public comments as a result of this notice, future annual PRA hourly burden and cost estimates may vary significantly. In order to arrive at more precise estimates of net BSA hourly burden and cost, FinCEN intends to conduct more granular studies in the near future, regarding the types and volume of transactions conducted annually, which trigger each recordkeeping requirement, and the time it takes to collect and record the information required for each recordkeeping requirement.[53] The data obtained in these studies also may result in a significant variation of the estimated annual PRA burden.

Estimated Number of Respondents: 28,567, as set out in Table 1.

Estimated Total Annual Recordkeeping Burden: The estimated total annual PRA burden is 2,908,942 hours, as set out in Table 2.

Estimated Total Annual Recordkeeping Cost: The estimated total annual PRA cost is $107,630,854, as set out in Table 5.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

[53] Net hourly burden and cost are the burden and cost a financial institution incurs to comply with requirements that are unique to the BSA, and that do not support any other business purpose or regulatory obligation of the financial institution. Burden for purposes of the PRA does not include the time and financial resources needed to comply with an information collection, if the time and resources are for things a business (or other person) does in the ordinary course of its activities if the agency demonstrates that the reporting activities needed to comply are usual and customary. 5 CFR 1320.3(b)(2). For example, depending on the nature of the transaction, a financial institution may be collecting and maintaining some of the same information on funds transfers, transmittals of funds, prepaid access transactions, as well as other transactions that are required to be recorded in 31 CFR 1010.410, 1020.410, and 1022.420 in order to satisfy other obligations. Those obligations may include (i) protecting the financial institution from fraud against itself or its customers, (ii) complying with other non-BSA regulatory requirements such as those imposed by the specific Federal functional regulator, or (iii) maintaining proper accounting information.

Part 4—Request for Comments

(a) Specific Request for Comments on the Traditional Annual PRA Hourly Burden and Cost

FinCEN invites comments on any aspect of the traditional annual PRA burden, as set out in Part 2 of this notice. In particular, FinCEN seeks comments on the adequacy of: (i) FinCEN's assumptions underlying its estimate of the burden; (ii) the estimated number of hours required by each portion of the burden; and (iii) the organizational levels of the financial institution engaged in each portion of the burden, their estimated hourly remuneration, and the estimated proportion of participation by each role. FinCEN encourages commenters to include any publicly available sources for alternative estimates or methodologies.

(b) Specific Request for Comments on the Proposed Criteria for Determining the Scope of the Future Annual PRA Hourly Burden and Cost Estimate

FinCEN invites comments on any aspect of the criteria for a future estimate of the annual PRA burden, as set out in Part 3 of this notice.

(c) Specific Request for Comments on the Appropriate Criteria, Methodology, and Questionnaire Required To Obtain Information to More Precisely Estimate the Future Annual PRA Hourly Burden and Cost

FinCEN invites comments on the most appropriate and comprehensive means to question financial institutions about the annual hourly burden and cost attributable solely to the regulations covered by this notice (*i.e.,* the hourly burden and cost of complying with the recordkeeping requirements imposed exclusively by the BSA, which are not used to satisfy contractual obligations, other regulatory requirements, or business purposes of the financial institution). The future annual PRA hourly burden and cost estimate must take into consideration only the information collected and recorded that is used exclusively to comply with requirements under 31 CFR 1010.410, 1020.410, and 1022.420.

FinCEN seeks comments from the public regarding any questions we should consider posing in future notices, in addition to the specific questions for comment outlined directly below. Also, due to the difficulty involved in estimating the number of transmittals of funds conducted by MSBs, the number of funds transfers conducted by banks, and the number of prepaid transactions conducted by MSBs, along with the number of other types of transactions conducted financial institutions, as described in this notice, FinCEN welcomes any suggestions as to how to derive these estimates by using publicly available financial information.

(d) Specific Questions for Comment Associated With Making and Retaining Records Required by the Regulations Described in This Notice

(1) Complying With 31 CFR 1010.410(a) Through (c)

- Is FinCEN's assertion correct that banks, credit unions, FCMs, and MSBs are the only financial institutions that conduct extensions of credit in excess of $10,000 (other than those secured by real property)?
- On average, how many extensions of credit in excess of $10,000 (other than those secured by real property) does your financial institution issue annually, which trigger the recordkeeping requirement in 31 CFR 1010.410(a)?
- Is FinCEN's assertion correct that banks, credit unions, FCMs, and MSB are the only financial institutions that conduct transactions which trigger the recordkeeping requirements in 31 CFR 1010.410(b) and (c)?
- On average, how many transfers does your financial institution conduct annually which trigger the recordkeeping requirements in 31 CFR 1010.410(b) and (c)?

(2) Complying With 31 CFR 1010.410(e)

- Is FinCEN's assertion correct that money transmitters are the only nonbank financial institutions that conduct transmittals of funds in the amount of $3,000 or more?
- On average, how many transmittals of funds in the amount of $3,000 or more does your MSB conduct annually when acting as the transmitting, intermediary, or recipient MSB in a transmittal of funds?
- On average, how long does it take your MSB to collect and retain the records required to be maintained when you are acting as the transmitting, intermediary, or recipient MSB in the transmittal of funds?

(3) Complying With 31 CFR 1010.410(f)

- Is FinCEN's assertion correct that banks, credit unions, and money transmitters are the only financial institutions that act as an intermediary financial institution in a funds transfer or transmittal of funds?
- On average, how often is your financial institution the intermediary in a funds transfer or transmittal of funds?

• On average, how long does it take your financial institution to record and transmit the required information on a funds transfer or transmittal of funds?

(4) Complying With 31 CFR 1020.410(a)

• On average, how many funds transfers in the amount of $3,000 or more does your bank conduct annually as the transmitting, intermediary, or recipient bank in a funds transfer?

• On average, how long does it take your financial institution to collect and retain the records required to be maintained when you are acting as the transmitting, intermediary, or recipient bank in a funds transfer?

(5) Complying With 31 CFR 1020.410(c)

• On average, how often does you bank conduct each of the transactions described in 31 CFR 1020.410(c) as explained in further detail in Section I?

• On average, how long does it take your bank to collect and retain the records required to be maintained when you conduct one of the transactions described in 31 CFR 1020.410(c)?

(6) Complying With 31 CFR 1022.420

• On average, how many of the following prepaid transactions does your financial institution conduct: Access activations, loads, reloads, purchases, withdrawals, transfers, and other prepaid access-related transactions?

(e) General Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (i) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (v) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Michael Mosier,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2020–28364 Filed 12–22–20; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions Imposed on Persons Identified by the Secretary of State Pursuant to the Countering America's Adversaries Through Sanctions Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's action to impose sanctions on persons identified by the Secretary of State pursuant to the Countering America's Adversaries Through Sanctions Act. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

Notice of OFAC Actions

Background: Section 106(a) of the Countering America's Adversaries Through Sanctions Act (CAATSA) requires the Secretary of State to submit to the appropriate congressional committees, no later than 90 days after August 2, 2017, the date of enactment of CAATSA, and annually thereafter, a list of each person the Secretary determines, based on credible evidence, on or after August 2, 2017: (1) Is responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals in Iran who seek (A) to expose illegal activity carried out by officials of the Government of Iran; or (B) to obtain, exercise, defend, or promote internationally recognized human rights and freedoms, such as the freedoms of religion, expression, association, and assembly, and the rights to a fair trial and democratic elections; or (2) acts as an agent of or on behalf of a foreign person in a matter relating to an activity described in paragraph (1) above. Section 106(b) of CAATSA authorizes the Secretary of the Treasury, in consultation with the Secretary of State, pursuant to authority delegated by the President, to block all transactions in all property and interests in property of a person on the list required by section 106(a) of CAATSA in accordance with the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

The Secretary of State has identified the following persons in a list submitted to the appropriate congressional committees pursuant to section 106(a) of CAATSA. Accordingly, on September 24, 2020, the Director of OFAC, acting pursuant to delegated authority, has taken the actions described below to impose the sanctions set forth in Section 106(b)(1) of CAATSA with respect to the persons listed below.

Entities

1. ADEL ABAD PRISON (a.k.a. ADELABAD PRISON; a.k.a. SHIRAZ CENTRAL PRISON; a.k.a. ''PROSPEROUS PLACE OF JUSTICE''), Shiraz, Fars Province, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [CAATSA—IRAN].

2. BRANCH 1 OF THE SHIRAZ REVOLUTIONARY COURT (a.k.a. FIRST BRANCH OF THE REVOLUTIONARY COURT OF SHIRAZ; a.k.a. FIRST BRANCH OF THE SHIRAZ REVOLUTIONARY COURT), New Quran Boulevard, District 3, Shiraz City, Fars Province, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [CAATSA—IRAN].

3. ORUMIYEH PRISON (a.k.a. URMIA CENTRAL PRISON; a.k.a. URMIA PRISON), Orumiyeh City, West Azerbaijan Province, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [CAATSA—IRAN].

4. VAKILABAD PRISON (a.k.a. MASHHAD CENTRAL PRISON; a.k.a. MASHHAD PRISON; a.k.a. VAKIL ABAD PRISON), Mashhad City, Mashhad Province, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [CAATSA—IRAN].

Individuals

1. SADATI, Seyyed Mahmoud (Arabic: سيد محمود ساداتی), Shiraz, Iran; DOB 1958; alt. DOB 1959; POB Estahaban, Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Judge, Revolutionary Court of Shiraz (individual) [CAATSA - IRAN].

2. SOLTANI, Mohammad, Mashhad, Iran; DOB 1958; alt. DOB 1959; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Judge, Revolutionary Court of Mashhad (individual) [CAATSA - IRAN].

The Director of OFAC has blocked all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any overseas branch, and which may not be transferred, paid, exported, withdrawn, or otherwise dealt in, of all above named persons. These persons have been added to OFAC's List of Specially Designated Nationals and Blocked Persons and include the identifying tag ''CAATSA—IRAN.''

Dated: September 24, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2020–24076 Filed 12–22–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a Modified System of Records.

SUMMARY: As required by the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled ''Veterans Health Information Systems and Technology Architecture (VistA) Records-VA'' (79VA10P2) as set forth in 77 FR 65939. VA is amending the system by revising the System Number, System Location, System Manager, Records Source Categories, Routine Uses of Records Maintained in the System, Policies and Practices for Retention and Disposal of Records, Physical, Procedural and Administrative Safeguards. VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than January 22, 2021. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new system will become effective January 22, 2021.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Veterans Health Information Systems and Technology Architecture (VistA) Records-VA (79VA10P2)''. Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (704) 245–2492 (Note: not a toll-free number).

SUPPLEMENTARY INFORMATION: The system number is being updated from 79VA10P2 to 79VA10 to reflect the current VHA organizational routing symbol. The System Manager is being updated to reflect organization changes.

The System Location is being updated to reflect electronic records being located at VA Enterprise Cloud Data Centers/Amazon Web Services and contracted data repository sites, such as the Cerner Technology Centers (CTC): Primary Data Center in Kansas City, MO and Continuity of Operations/Disaster Recovery (COOP/DR) Data Center in Lee Summit, MO.

The Records Source Categories is being updated to include other VA information technology (IT) systems, including but not limited to, Master Person Index and Enrollment.

Routine Use twenty-nine (29) is being added to state, ''VA may disclose health care information to DoD for the purpose of VHA health care operations as defined in the HIPAA Privacy Rule, 45 CFR parts 160 and 164 and to the Defense Health Agency (DHA), as a health care provider, for the purpose of DHA heath care operations.'' VHA, as a health care provider, must be able to share health care information with other entities and health care providers for VA to perform certain health care operations, such as quality assessment and improvement activities and medical reviews.

Routine Use thirty (30) is being added to state, ''VA may disclose information from this system of records to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach. VA needs this routine use for the data breach response and remedial efforts with another Federal agency.

Routine Use thirty-one (31) is being added to state, ''VA may disclose relevant health care information to (a) a Federal agency or non-VA health care provider or institution when VA refers a patient for hospital or nursing home care or medical services, or authorizes a patient to obtain non-VA medical services, and the information is needed by the Federal agency or non-VA institution or provider to perform the services, or (b) a Federal agency or a non-VA hospital (Federal, State and local, public, or private) or other medical institution having hospital facilities, blood banks, or similar institutions, medical schools or clinics, or other groups or individuals that have contracted or agreed to provide medical services or share the use of medical resources under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement, or the issuance of an authorization, and the information is needed for purposes of medical treatment and/or follow-up, determining entitlement to a benefit, or recovery of the costs of the medical care.

Policies and Practices for Retention and Disposal of Records is being updated to remove, ''Paper records and information stored on electronic storage media are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.'' This section will

state, Record Control Schedule (RCS) 10–1, Item 2000.2 Information Technology Operations and Maintenance Records destroy 3 years after agreement, control measures, procedures, project, activity, or when transaction is obsolete, completed, terminated or superseded, but longer retention is authorized if required for business use (DAA–GRS–2013–0005–0004, item 020). RCS 10–1, Item 2100.3 2100.3, System Access Records destroy 6 years after password is altered or user account is terminated, but longer retention is authorized if required for business use (DAA–GRS–2013–0006–0004, item 31).

The Physical, Procedural and Administrative Safeguards section is being amended to add, ''Access to Cerner Technology Centers is generally restricted to Cerner employees, contractors or associates with a Cerner issued ID badge and other security personnel cleared for access to the data center. Access to computer rooms housing Federal data, hence Federal enclave, is restricted to persons Federally cleared for Federal enclave access through electronic badge entry devices. All other persons, such as custodians, gaining access to Federal enclave are escorted.''

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary of Information and Technology and Chief Information Officer, approved this document on November 10, 2020 for publication.

Dated: December 18, 2020.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Veterans Health Information Systems and Technology Architecture (VistA) Records-VA (79VA10).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at VA health care facilities, Regional Data Processing Centers and (in most cases), archival storage of the VistA data to back up tapes are maintained at off-site locations. Address locations for VA facilities are listed in VA Appendix 1. In addition, information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC; VA Data Processing Centers, VA Office of Information & Technology (OI&T) Field Offices; Veterans Integrated Service Network (VISN) Offices; Employee Education Systems and VA Enterprise Cloud Data Centers/Amazon Web Services, 1915 Terry Avenue, Seattle, WA 98101 and contracted data repository sites, such as the Cerner Technology Centers (CTC): Primary Data Center in Kansas City, MO and Continuity of Operations/Disaster Recovery (COOP/DR) Data Center in Lees Summit, MO.

SYSTEM MANAGER(S):

The official responsible for policies and procedures is the Director, Health Information Governance (HIG), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Toll-free telephone number 1–877–461–5038.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, section 7301(a).

PURPOSE(S) OF THE SYSTEM:

The records and information may be used for statistical analysis to produce various management, workload tracking and follow-up reports; to track and evaluate the ordering and delivery of equipment, services and patient care; the planning, distribution and utilization of resources; the possession and use of equipment or supplies; the performance of vendors, equipment, and employees; and to provide clinical and administrative support to patient medical care. The data may be used for research purposes. The data may be used also for such purposes as assisting in the scheduling of tours of duties and job assignments of employees; the scheduling of patient treatment services, including nursing care, clinic appointments, surgery, diagnostic and therapeutic procedures; the repair and maintenance of equipment and for follow-up activities to determine that the actions were accomplished and to evaluate the results; the registration of vehicles and the assignment and utilization of parking spaces; to plan, schedule, and maintain rosters of patients, employees and others attending or participating in sports, recreational or other events (*e.g.,* National Wheelchair Games, concerts, picnics); for audits, reviews and investigations conducted by staff of the health care facility, the Network Directors Office, VA Central Office, and the VA Office of Inspector General (OIG); for quality assurance audits, reviews, investigations and inspections; for law enforcement investigations; and for personnel management, evaluation and employee ratings, and performance evaluations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning current and former employees, applicants for employment, trainees, contractors, sub-contractors, contract personnel, students, providers and consultants, patients and members of their immediate family, volunteers, maintenance personnel, as well as individuals working collaboratively with VA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to:

1. Workload such as orders entered, verified, and edited (*e.g.,* engineering work orders, doctors' orders for patient care including nursing care, the scheduling and delivery of medications, consultations, radiology, laboratory and other diagnostic and therapeutic examinations); results entered; items checked out and items in use (*e.g.,* library books, keys, x-rays, patient medical records, equipment, supplies, reference materials); work plans entered and the subsequent tracking (*e.g.,* construction projects, engineering work orders and equipment maintenance and repairs assigned to employees and status, duty schedules, work assignments, work requirements); reports of contact with individuals or groups; employees' (including volunteers) work performance information (*e.g.,* duties and responsibilities assigned and completed, amount of supplies used, time used, quantity and quality of output, productivity reports, schedules of patients assigned and treatment to be provided);

2. Administrative procedures, duties, and assignments of certain personnel;

3. Computer access authorizations, computer applications available and used, information access attempts,

frequency and time of use; identification of the person responsible for, currently assigned, or otherwise engaged in various categories of patient care or support of health care delivery; vehicle registration (motor vehicles and bicycles) and parking space assignments; community and special project participants and attendees (*e.g.,* sports events, concerts, National Wheelchair Games); employee work related accidents. The record may include identifying information (*e.g.,* name, date of birth, age, sex, Social Security number, taxpayer identification number); address information (*e.g.,* home and mailing address, home telephone number, emergency contact information such as name, address, telephone number, and relationship); information related to training (*e.g.,* security, safety, in-service), education and continuing education (*e.g.,* name and address of schools and dates of attendance, courses attended and scheduled to attend, type of degree, certificate, grades etc.); information related to military service and status; qualifications for employment (*e.g.,* license, degree, registration or certification, experience); vehicle information (*e.g.,* type make, model, license and registration number); evaluation of clinical and technical skills; services or products purchased (*e.g.,* vendor name and address, details about evaluation of service or product, price, fee, cost, dates purchased and delivered, employee workload and productivity data); employee work relate injuries (cause, severity, type of injury, body part affected);

4. Financial information, such as service line and clinic budgets, projected and actual costs;

5. Supply information, such as services, materials and equipment ordered; and

6. Abstract information (*e.g.,* data warehouses, environmental and epidemiological registries, etc.) is maintained in auxiliary paper and automated records;

7. Electronic messages;

8. The Social Security number and universal personal identification number of health care providers;

9. Practitioner DEA registration numbers; and

10. The Integration Control Number or Veterans Administration Person Identifier.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual, supervisors, other employees, personnel records, or obtained from their interaction with the system, and from other VA information technology (IT) systems, including but not limited to, Master Person Index and Enrollment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority permitting disclosure. VA may disclose protected health information pursuant to the following routine uses where required by law or permitted by 45 CFR parts 160 and 164.

1. In the event that a record maintained by VA to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, information may be disclosed to the appropriate agency whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

2. Disclosure may be made to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefits.

3. Disclosure may be made to an agency in the executive, legislative, or judicial branch, or the District of Columbia government in response to its request or at the initiation of VA, in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

4. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

5. Disclosure may be made to National Archives and Records Administration (NARA) and the General Services Administration in records management inspections and other activities conducted under Title 44.

6. Disclosure may be made to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

7. Hiring, performance, or other personnel-related information may be disclosed to any facility with which there is or there is proposed to be an affiliation, sharing agreement, contract, or similar arrangement for purposes of establishing, maintaining, or expanding any such relationship.

8. Disclosure may be made to a Federal, State or local government licensing board and to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning individual employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty; in order for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee; or to inform a Federal agency, licensing boards or the appropriate nongovernment entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

9. For program review purposes, and the seeking of accreditation and/or certification, disclosure may be made to survey teams of The Joint Commission, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has

a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

10. Disclosure may be made to a State or local government entity or national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

11. Any information which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature, and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, rule or order issued pursuant thereto.

12. Disclosure may be made to officials of labor organizations recognized under 5

U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

13. Disclosure may be made to the VA-appointed representative of an employee, including all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for duty) examination procedures or Department-filed disability retirement procedures.

14. Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

15. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

16. Disclosure may be made to the Federal Labor Relations Authority, including its General Counsel, when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

17. Disclosure may be made in consideration and selection of employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee awards or honors.

18. Disclosure may be made to consider employees for recognition through administrative and quality step increases and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

19. Identifying information such as name, address, Social Security number and other information as is reasonably necessary to identify such individual, may be disclosed to the National Practitioner Data Bank at the time of hiring or clinical privileging/re-privileging of health care practitioners, and at other times as deemed necessary by VA in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/re-privileging, retention or termination of the applicant or employee.

20. Disclosure of relevant information may be made to the National Practitioner Data Bank or to a State or local government licensing board which maintains records concerning the issuance, retention or revocation of licenses, certifications, or registrations necessary to practice an occupation, profession or specialty when under the following circumstances, through a peer review process that is undertaken pursuant to VA policy, negligence, professional incompetence, responsibility for improper care, or professional misconduct has been assigned to a physician or licensed or certified health care practitioner: (1) On any payment in settlement (or partial settlement) of, or in satisfaction of a judgment in a medical malpractice action or claim; or, (2) on any final decision that adversely affects the clinical privileges of a physician or practitioner for a period of more than 30 days. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

21. Disclosure of medical record data, excluding name and address, unless name and address is furnished by the requester, may be made to epidemiological and other research facilities for research purposes determined to be necessary and proper and approved by the Under Secretary for Health.

22. Disclosure of names and addresses of present or former personnel of the Armed Services, and their dependents, may be made to: (a) A Federal department or agency, at the written request of the head or designee of that agency; or (b) directly to a contractor or subcontractor of a Federal department or agency, for the purpose of conducting Federal research necessary to accomplish a statutory purpose of an agency. When disclosure of this information is made directly to a contractor, VA may impose applicable conditions on the department, agency, or contractor to insure the appropriateness of the disclosure to the contractor.

23. The Social Security number, universal personal identification number and other identifying information of a health care provider may be disclosed to a third party where the third party requires the agency to provide that information before it will pay for medical care provided by VA.

24. Relevant information may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practical for the purposes of laws administered by VA, in order for the contractor to perform the services of the contract or agreement.

25. Disclosure of relevant health care information may be made to individuals or organizations (private or public) with whom VA has a contract or sharing agreement for the provision of health care or administrative or financial services.

26. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

27. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been

compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

28. VA may disclose relevant provider information to a state prescription drug monitoring program, or similar program, for the purpose of submitting to or receiving from the program information regarding prescriptions to an individual for controlled substances, as required under the applicable state law.

29. VA may disclose health care information to DoD for the purpose of VA health care operations as defined in the HIPAA Privacy Rule, 45 CFR parts 160 and 164 and to the Defense Health Agency (DHA), as a health care provider, for the purpose of DHA heath care operations.

30. VA may disclose information from this system of records to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

31. VA may disclose relevant health care information to (a) a Federal agency or non-VA health care provider or institution when VA refers a patient for hospital or nursing home care or medical services, or authorizes a patient to obtain non-VA medical services, and the information is needed by the Federal agency or non-VA institution or provider to perform the services, or (b) a Federal agency or a non-VA hospital (Federal, State and local, public, or private) or other medical institution having hospital facilities, blood banks, or similar institutions, medical schools or clinics, or other groups or individuals that have contracted or agreed to provide medical services or share the use of medical resources under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement, or the issuance of an authorization, and the information is needed for purposes of medical treatment and/or follow-up, determining entitlement to a benefit, or recovery of the costs of the medical care.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records maintained on paper, microfilm, magnetic tape, disk, or laser optical media. In most cases, archival storage of the VistA data to backup tapes are maintained at off-site locations.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, Social Security number or other assigned identifiers of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

RCS 10–1, Item 2000.2 Information Technology Operations and Maintenance Records destroy 3 years after agreement, control measures, procedures, project, activity, or when transaction is obsolete, completed, terminated or superseded, but longer retention is authorized if required for business use (DAA–GRS–2013–0005–0004, item 020). RCS10–1, Item 2100.3 2100.3, System Access Records destroy 6 years after password is altered or user account is terminated, but longer retention is authorized if required for business use (DAA–GRS–2013–0006–0004, item 31).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA employees on a ''need- to-know'' basis. Strict physical security control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to computer rooms at health care facilities and regional data processing centers is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated Data Processing (ADP) peripheral devices are placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in VistA may be accessed by authorized VA employees. Access to file information is controlled at two levels. The systems recognize authorized employees by series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on laptops and other approved government equipment is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes.

Access by Office of Inspector General (OIG) staff conducting an audit, investigation, or inspection at the health care facility, or an OIG office location remote from the health care facility, is controlled in the same manner.

3. Information downloaded from VistA and maintained by the OIG headquarters and Field Offices on automated storage media is secured in storage areas for facilities to which only OIG staff have access. Paper documents are similarly secured. Access to paper documents and information on automated storage media is limited to OIG employees who have a need for the information in the performance of their official duties. Access to information stored on automated storage media is controlled by individually unique passwords/codes.

4. Access to Cerner Technology Centers is generally restricted to Cerner employees, contractors or associates with a Cerner issued ID badge and other security personnel cleared for access to the data center. Access to computer rooms housing Federal data, hence Federal enclave, is restricted to persons Federally cleared for Federal enclave access through electronic badge entry devices. All other persons, such as custodians, gaining access to Federal enclave are escorted.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they are or were employed or made contact.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility location at which they are or were employed or made contact. Inquiries should include the person's full name, Social Security number, dates of employment, date(s) of contact, and return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last full publication provided in 69 FR 5667.

[FR Doc. 2020–28340 Filed 12–22–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0500]

Agency Information Collection Activity Under OMB Review: Mandatory Verification of Dependents

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to ''OMB Control No. 2900–0500.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov.* Please refer to ''OMB Control No. 2900–0500'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 501.

Title: Mandatory Verification of Dependents (VA Form 21–0538).

OMB Control Number: 2900–0500.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–0538 is used to request verification of the status of dependents for whom additional compensation is being paid to veterans. Without this information, continued entitlement to the benefits for dependents could not be determined.

VA Form 21–0538 has been revised; (1) letter template removed as it was a duplicate of a VA cover letter already in use, (2) the title has been changed from 'Mandatory Status of Dependents' to Mandatory Verification of Dependents, (3) Section II: Status Certification, was added to help delineate whether the veteran is needed to provide additional information on the status of their dependents, or not, (4) the form was changed to include removals only as these are dependents that have already been previously added to the veteran's benefits, as another collection is used to add dependents, and (5) an e-signature has been added to provide a digital format for online signatures. The burden estimate has also been decreased.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 85 FR 196 on October 8, 2020, pages 63661 and 63662.

Affected Public: Individuals or Households.

Estimated Annual Burden: 29,233 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 175,400.

By direction of the Secretary:

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–28344 Filed 12–22–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Veterans Health Administration (VHA).

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974 notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled, ''Consolidated Data Information System-VA'' (97VA10P1) as set forth in the **Federal Register** 80 FR 11524. VA is amending the system of records by revising the System Number; Categories of Individuals Covered By the System; Categories of Records in the System; Record Source Categories; Routine Uses of Records Maintained in the System and Policies; Policies and Practices for Storage of Records; Policies and Practices for Retrieval of Records; Policies and Practices for Retention and Disposal of Records; Administrative, Technical, and Physical Safeguards; Record Access Procedure; and Appendix. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than January 22, 2021. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the amended system will become effective January 22, 2021.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Consolidated Data Information System-VA (97VA10P1)''. Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (704) 245–2492.

SUPPLEMENTARY INFORMATION: The System Number will be changed from 97VA10P1 to 97VA10 to reflect the current VHA organizational routing symbol.

The Categories of Individuals Covered by the System is being amended to include VA-enrolled Veterans. This section will remove individuals who are not beneficiaries.

The Categories of Records in the System is being amended to change ''VHA Survey of Veteran Enrollees' Health and Reliance Upon VA'' to ''VA Survey of Veteran Enrollees' Health and Use of Health Care''. This section will include prescription drugs along with patient assessments for patients receiving care from CMS certified facilities. The records also include data from United States Renal Data Systems (USRDS) for patients with chronic and end-stage renal disease. This section will remove records including information on Medicaid beneficiaries' utilization and enrollment from state databases. Also being removed is assessment files including Veteran and non-Veteran data.

The Records Source Categories is being amended to change Patient Medical Records System (24VA136) to Patient Medical Records-VA (24VA10A7), Patient Fee Basis Medical and Pharmacy Records (23VA136) change to Non-VA Care (Fee) Records-VA (23VA10NB3), and 38VA23 change to 38VA21.

The Routine Uses of Records Maintained in the System is amending the language in Routine Use #5 which states that disclosure of the records to the Department of Justice (DoJ) is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. This routine use will now state that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation.

Routine Use #7 has been amended by clarifying the language to state, ''VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.''

Routine use #13 is being added to state, ''VA may disclose information from this system of records to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.''

Policies and Practices for Storage of Records section is being amended to remove that Data are maintained on magnetic tape, disk, or laser optical media. This section will now state that the data is maintained on VA approved removable media, VA approved and audited external servers and VA controlled systems.

Policies and Practices for Retrieval of Records is being amended to remove VA claim number, name, name and one or more criteria (*e.g.,* dates of birth, death and service). This section will include system beneficiary identifier.

Policies and Practices for Retention and Disposal of Records is being amended to remove that records will be maintained and disposed of in accordance with the records disposal authority approved by the Archivist of the United States, the National Archives and Records Administration, and published in Agency Records Control Schedules. This section will now state that in accordance with Records Control Schedule 10–1, 2201.2: Records that are intermediary and temporary can be destroyed upon verification of successful creation of the final document or file, or when no longer needed for business use, whichever is later. (GRS 5.2 item 020, DAA–GRS–2017–0003–0001).

Administrative, Technical, and Physical Safeguards section is being amended to remove 2. Access to Automated Data Processing files is controlled at two levels: (1) Terminals, central processing units, and peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected; and (2) the system recognizes authorized users by means of an individually unique password entered in combination with an individually unique user identification code. 3. Access to automated records concerning identification codes and codes used to access various VA automated communications systems and records systems, as well as security profiles and possible security violations is limited to designated automated systems security personnel who need to know the information in order to maintain and monitor the security of VA's automated communications and Veterans' claim records systems. Access to these records in automated form is controlled by individually unique passwords and codes. Agency personnel may have access to the information on a need to know basis when necessary to advise agency security personnel or for use to suspend or revoke access privileges or to make disclosures authorized by a routine use. This section will now replace number 2 with: Access to VA computer systems and data stored within these systems is restricted through secure username/or electronic access card and password requirements.

Record Access Procedure is being amended to remove name or other personal identifier. This section will include the SSN.

VA Appendix 5 is amending number 1 to replace of Office of the Assistant Deputy Under Secretary for Health (ADUSH) for Policy and Planning with Office of Policy and Planning/Chief Strategy Office. Being deleted are items 2. VA Information Resource Center (VIReC), Hines VA Medical Center, 5th Ave & Roosevelt Ave, Hines, IL 60141. Veterans Health Administration (VHA), 810 Vermont Avenue NW, Washington, DC 20420 and items 3. Office of the Assistant Deputy Under Secretary for Health (ADUSH) for Policy and Planning, 811 Vermont Avenue NW, Washington, DC 20420, Silver Spring, MD, and/or Martinsburg, WV. Item 5 which is now number 3 is replacing VA facilities with ''Other VA controlled systems''.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary of Information and Technology and Chief Information Officer, approved this document on November 10, 2020 for publication.

Dated: December 18, 2020.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

''Consolidated Data Information System-VA'' (97VA10)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records will be maintained at Department of Veteran Affairs (VA) Veterans Health Administration (VHA) sites for the Centers for Medicare and Medicaid Services (CMS) data (see VA Appendix 5).

SYSTEM MANAGER(S):

Manager, Medicare and Medicaid Analysis Center, 100 Grandview Road, Suite 114, Braintree, MA 02184.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 527 of 38 U.S.C. and the Government Performance and Results Act of 1993, Public Law 103–62.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to conduct statistical studies and analyses which will support the formulation of Departmental policies and plans by identifying the total current health care usage of the VA patient population. The records and information may be used by VA in evaluation of Department programs. The information may be used to conduct research.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Records include information concerning VA-enrolled Veterans, their spouses and their dependents, family members, active duty military personnel, individuals who are not VA enrollees but who receive health care services from VHA and other non-Veterans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system will include Veterans' names, addresses, dates of birth, VA claim numbers, Social Security numbers (SSN), and military service information, medical benefit application and eligibility information, code sheets and follow-up notes, sociological, diagnostic, counseling, rehabilitation, drug and alcohol, dietetic, medical, surgical, dental, psychological, and/or psychiatric medical information, prosthetic, pharmacy, nuclear medicine, social work, clinical laboratory and radiology information, patient scheduling information, family information such as next of kin, spouse and dependents' names, addresses, Social Security numbers and dates of birth, family medical history, employment information, financial information, third-party health plan information, information related to registry systems, date of death, VA claim and insurance file numbers, travel benefits information, military decorations, disability or pension payment information, amount of indebtedness arising from 38 U.S.C. benefits, applications for compensation, pension, education and rehabilitation benefits, information related to incarceration in a penal institution, medication profile such as name, quantity, prescriber, dosage, manufacturer, lot number, cost and administration instruction, pharmacy dispensing information such as pharmacy name and address.

The records will include information on Medicare and Medicaid beneficiaries from CMS databases including information related to health care usage, demographics, enrollment, prescription drugs and survey files. The records also include patient assessments for patients receiving care from CMS certified facilities. The records also include data from United States Renal Data Systems (USRDS) for patients with chronic and end-stage renal disease.

The records include information on Veterans enrolled for VA health care who have participated in the periodic ''VA Survey of Veteran Enrollees' Health and Use of Health Care''.

The records also include information on: Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), VA/DOD Identity Repository (VADIR), as well as the Operations Enduring Freedom and Operations Iraqi Freedom (OEF/OIF) roster (Defense Manpower Data Center).

RECORD SOURCE CATEGORIES:

Information may be obtained from the Patient Medical Records-VA (24VA10A7), Non-VA Care (Fee) Records-VA (23VA10NB3), Veterans and Beneficiaries Identification and Records Location Subsystem (38VA21), Compensation, Pension, Education and Rehabilitation Records (58VA21/22), all other potential VA and non-VA sources of Veteran demographic information, and CMS databases. The records also include information from: CHAMPVA, VADIR, as well as the OEF/OIF roster (Defense Manpower Data Center), and USRDS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

VA may disclose protected health information pursuant to the following routine uses where required by law, or required or permitted by 45 CFR parts 160 and 164.

1. VA may disclose any information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

2. Disclosure may be made, excluding name and address (unless name and address are furnished by the requestor) for research purposes determined to be necessary and proper to epidemiological and other research facilities approved by the System Manager or the Under Secretary for Health, or designee.

3. Any record in the system of records may be disclosed to a Federal agency for the conduct of research and data analysis to perform a statutory purpose of that Federal agency upon the prior written request of that agency, provided that there is legal authority under all applicable confidentiality statutes and regulations to provide the data and VHA Medicare and Medicaid Analysis Center (MAC) has determined prior to the disclosure that VA data handling requirements are satisfied. MAC may disclose limited individual identification information to another Federal agency for the purpose of matching and acquiring information held by that agency for MAC to use for the purposes stated for this system of records.

4. Disclosure may be made to National Archives and Records Administration (NARA) in records management inspections conducted under authority of title 44 United States Code.

5. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the

information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation.

6. Disclosure may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

7. VA may disclose any information or records to appropriate agencies, entities, and persons when: (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

8. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the member, when the member or staff person requests the record on behalf of and at the written request of the individual.

9. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

10. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or the other functions of the Commission as authorized by law or regulation.

11. To disclose information to officials of the Merit Systems Protection Board, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

12. To disclose to the Federal Labor Relations Authority (including its General Counsel) information related: (1) To the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; (2) to disclose information in matters properly before the Federal Service Impasses Panel; and (3) to investigate representation petitions and conduct or supervise representation elections.

13. VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Data is maintained on VA approved removable media, VA approved and audited external servers and VA controlled systems.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by SSN or system beneficiary identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Copies of back-up computer files will be maintained at primary and secondary VA recipient sites for CMS data (see Appendix 5). In accordance with Records Control Schedule 10–1, 2201.2: Records that are intermediary and temporary can be destroyed upon verification of successful creation of the final document or file; or when no longer needed for business use, whichever is later. (GRS 5.2 item 020, DAA–GRS–2017–0003–0001).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Access to and use of these records is limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

2. Access to VA computer systems and data stored within these systems is restricted through secure username/or electronic access card and password requirements.

3. Access to VA facilities where identification codes, passwords, security profiles and possible security violations are maintained is controlled at all hours by the Federal Protective Service, VA or other security personnel and security access control devices.

RECORD ACCESS PROCEDURE:

An individual who seeks access to records maintained under his/her SSN may write the System Manager named above and specify the information being contested.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures).

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should submit a signed written request to the Manager, Medicare and Medicaid Analysis Center, 100 Grandview Road, Suite 114, Braintree, MA 02184.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last full publication provided in 76 FR 25409 dated May 4, 2011.

VA Appendix 5

1. VA Medicare and Medicaid Analysis Center, field unit of Office of Policy and Planning/Chief Strategy Office, 100 Grandview Road, Suite 114, Braintree, MA 02184.

2. Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.

3. Other VA controlled systems.

[FR Doc. 2020–28342 Filed 12–22–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0215]

Agency Information Collection Activity: Request for Information To Make Direct Payment to Child Reaching Majority

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including a reinstatement of a previously approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 22, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0215'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 1310, 1313, 1542, and 101(4).

Title: Request for Information to Make Direct Payment to Child Reaching Majority (Form Letter 21–863).

OMB Control Number: 2900–0215.

Type of Review: Reinstatement of a previously approved collection.

Abstract: Form Letter 21–863 is used to gather the necessary information to determine a schoolchild's continued eligibility to VA death benefits and eligibility to direct payment at the age of majority. No change in burden and no changes were made to the form.

Affected Public: Individuals and households.

Estimated Annual Burden: 3 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20.

By direction of the Secretary:

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–28343 Filed 12–22–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Debt Management Center, Department of Veterans Affairs (VA).

ACTION: Notice of a new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 522a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is creating a new system of records entitled ''PayVA (QCR) Debt Management Center System of Records Notice'' (194VA189).

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to ''PayVA (QCR) Debt Management Center''. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Chief, Support Services Division, Debt Management Center (189/00), U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111. The internet email address for Debt Management Center is: *SUPPORTSER.VAVBASPL@va.gov.*

SUPPLEMENTARY INFORMATION: PayVA is a custom-developed application (which is a website; *https://www.pay.va.gov*) that is used by the Debt Management Center (DMC) to verify debts are active at DMC before the Veteran makes a payment to *pay.gov.* PayVA collects basic debt information from users, redirects them to *pay.gov* (Department of Treasury) for online payments and collects responses from *pay.gov.* The production site with a secure certificate has already been created.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary of Information and Technology and Chief Information Officer, approved this document on November 15, 2020 for publication.

Dated: December 18, 2020.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

PayVA (QCR) Debt Management Center System of Records Notice 194VA189.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

PayVA is a custom-developed application (which is a website; *https://www.pay.va.gov*) that is used by the Debt Management Center (DMC) to verify debts are active at DMC before the Veteran makes a payment. PayVA collects basic debt information from users, redirects them to *pay.gov* (Department of Treasury) for online payments and collects responses from *pay.gov.* PayVA prevents DMC from over-collecting and/or creating more refunds than necessary. The production site has a valid secure certificate. PayVA is housed in the WebOps server farm at the Capital Region Readiness Center (CRRC) in Martinsburg, WV. The system is currently owned by Enterprise Product Management Office (EPMO), Corporate Product Support (CPS) and is developing the Assessment and Authorization. DMC will take ownership of Assessment and Authorization activities once developed and in sustainment. The estimated number of Veterans whose financial information is stored in the system is 100,000 or more. PayVA receives information (a table containing PII) from the Centralized Accounts Receivable System/Central Accounts Receivable On-Line System (CARS/CAROLS) an internal VA system, via a SQL job 3 times a week. PayVA also receives information each time a payment is completed via a form submission from *Pay.Gov* which is owned by the Department of Treasury.

SYSTEM MANAGER(S):

Joseph Schmitt, Executive Director, Debt Management Center (189/00), U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111. Email: *SUPPORTSER.VAVBASPL@va.gov*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 United States Code (U.S.C.) Chapters 106a, 510, 1606 and 1607 and Title 38, U.S.C., section 501(a) and Chapters 11, 13, 15, 18, 23, 30, 31, 32, 33, 34, 35, 36, 39, 51, 53, and 55. The following notice is provided on the PayVA website: The information you furnish on this form, including your Social Security Number, is used to associate your payment with your accounts receivable record so that we may properly credit your account. Disclosure is voluntary. However, without disclosure, a credit card transaction or direct debit transaction cannot be processed. The responses you submit are confidential and protected from unauthorized disclosure by 38 U.S.C. 5701. The information may be disclosed outside the Department of Veterans Affairs (VA) only when authorized by the Privacy Act of 1974, as amended. The routine uses for which VA may disclose the information can be found in VA systems of records, including 58VA21/22, Compensation, Pension, Education and Rehabilitation Records-VA, and 88VA244.

PURPOSE(S) OF THE SYSTEM:

The information collected from the PayVA user is needed to verify the information entered is applied to the correct debt.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons indebted to the United States Government as a result of their participation in benefit programs (including health care programs) administered by VA under title 38, United States Code, chapters 11, 13, 15, 17, 18, 21, 30, 31, 32, 33, 34, 35, 36 and 37, including persons indebted to the United States Government by virtue of their ownership, contractual obligation or rental of property owned by the Government or encumbered by a VA-guaranteed, insured, direct or vendee loan. The individuals covered are persons indebted to the United States Government as a result of their participation in a benefit program administered by VA, but who did not meet the requirements for receipt of such benefits or services. Persons indebted to the United States, a State or local government whose debts are referred to the Department of Veterans Affairs for Government-wide cross-servicing under 31 U.S.C. 3711(g)(4) or any valid interagency agreement. Persons indebted to the United States as the result of erroneous payment of pay or allowances or as the result of erroneous payment of travel, transportation or relocation expenses and allowances (previously and hereinafter referred to as ''pay administration'') under the provisions of title 5, United States Code, part III, subpart D.

CATEGORIES OF RECORDS IN THE SYSTEM:

The following information is collected from the user: File Number (which is sometimes the SSN and sometimes the SSN, reformatted); Payee Number; Deduction Code (which can be found in a letter the user received from the DMC). PayVA then verifies the information entered by the user against a table provided by CARS/CAROLS (an internal VA system). If the information entered is correct the user is directed to the Department of Treasury's *Pay.Gov* where payment is made, and then a form submission with the user's partial bank account number/credit card number and payer name is provided to PayVA and stored in its database.

RECORD SOURCE CATEGORIES:

PayVA receives the following information from the user, directly, First Name, Last Name, Daytime Phone, File Number, Payee Number, Person Entitled, Deduction Code, and Payment Amount. PayVA, then checks whether the information entered by the user matches what is in the CARS/CAROLS table that is received by PayVA, 3 times a week; each time the table is refreshed the former table is deleted (no historical data from CARS/CAROLS is stored in PayVA). If the information entered by the User matches what is in the table received from CARS/CAROLS the user is transferred to *Pay.Gov* (which is managed by the Department of Treasury), where the payment is made. The only information PayVA shares with *Pay.Gov* is the first name, last name, and debt amount. The user then enters the following information to *Pay.Gov,* the Payment Amount, Account Type, Routing Number, and Account Number (which would be covered by the Department of Treasury's accreditation documentation). Once the payment is completed *Pay.Gov* passes payment results including partial bank account number, credit card number, and payer name which is stored in PayVA's Database.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. Congress: VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

2. Data breach response and remedial efforts: VA may disclose information

from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), and (3) the Federal Government, or national security; and the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. Data breach response and remedial efforts with another Federal agency: VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. Law Enforcement: VA may, disclose information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

VA must be able to provide information that pertains to a violation of laws to law enforcement authorities in order for them to investigate and enforce those laws. Under 38 U.S.C. 5701(a) and (f), VA may disclose the names and addresses of veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 U.S.C. 552a(b)(7).

5. Litigation: VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation.

To determine whether to disclose records under this routine use, VA will comply with the guidance promulgated by the Office of Management and Budget in a May 24, 1985, memorandum entitled ''Privacy Act Guidance—Update,'' currently posted at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/inforeg/guidance1985.pdf.*

VA must be able to provide information to DoJ in litigation where the United States or any of its components is involved or has an interest. A determination would be made in each instance that under the circumstances involved, the purpose is compatible with the purpose for which VA collected the information. This routine use is distinct from the authority to disclose records in response to a court order under subsection (b)(11) of the Privacy Act, 5 U.S.C. 552(b)(11), or any other provision of subsection (b), in accordance with the court's analysis in *Doe* v. *DiGenova,* 779 F.2d 74, 78–85 (D.C. Cir. 1985) and *Doe* v. *Stephens,* 851 F.2d 1457, 1465–67 (D.C. Cir. 1988).

6. Contractors: VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.

This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with OMB guidance in OMB Circular A–130, App. I, paragraph 5a(1)(b) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors in order to perform the services contracts for the agency.

7. Equal Employment Opportunity Commission (EEOC): VA may disclose information from this system to the EEOC when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

8. Federal Labor Relations Authority (FLRA): VA may disclose information from this system to the FLRA, including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Service Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.

VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

9. Merit Systems Protection Board (MSPB): VA may disclose information from this system to the MSPB, or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

VA must be able to provide information to MSPB to assist it in

fulfilling its duties as required by statute and regulation.

10. National Archives and Records Administration (NARA) and General Services Administration (GSA): VA may disclose information from this system to NARA and GSA in records management inspections conducted under title 44, U.S.C.

NARA is responsible for archiving old records which are no longer actively used but may be appropriate for preservation, and for the physical maintenance of the Federal government's records. VA must be able to provide the records to NARA in order to determine the proper disposition of such records.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Payment results are provided by *Pay.Gov* (system owned by the Department of Treasury) upon payment completion. The payment results contain the following PII which is stored indefinitely in PayVA's Database is: Partial bank account number/credit card number, and the payer name. PayVA also receives a table from CARS/CAROLS (an internal system to VA) 3 times a week via a SQL job that contains the following PII, File Number (which is sometimes the SSN), Payee Number and Deduction Code.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Automated records of VA claims and debts are indexed by VA claim number, Social Security account number, name and loan account number in appropriate circumstances. Paper documents, microfilm, microfiche and automated records of pay administration debts and debts referred to VA for cross servicing are indexed by Social Security account number or Taxpayer Identification Number. Records in CAIVRS may only be retrieved by Social Security number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are retained and disposed of in accordance with the General Records Schedule 3.1 010–020, approved by National Archives and Records Administration (NARA) *https://www.archives.gov/files/records-mgmt/grs/grs03-1.pdf.* A retention policy specific to PayVA is being drafted. This PIA will be updated with that information upon completion; until that time, PayVA is retaining all records indefinitely.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Physical Security:

(a) Access to working spaces and document storage areas in DMC is restricted by cipher locks and to VA employees on a need-to-know basis. Generally, document storage areas in VA offices other than DMC are restricted to VA employees on a need-to-know basis. VA offices are generally protected from outside access by the Federal Protective Service or other security personnel. Strict control measures are enforced to ensure that access to and disclosure from documents, microfilm and microfiche are limited to a need-to-know basis.

(b) Access to PayVA data telecommunications terminals is by authorization controlled by the site security officer. The security officer is assigned responsibility for privacy-security measures, especially for review of violation logs, information logs and control of password distribution.

(c) Access to data processing centers is generally restricted to center employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other personnel gaining access to computer rooms are escorted.

2. PayVA and Personal Computer Local Area Network (LAN) Security:

(a) Usage of PayVA and LAN terminal equipment is authenticated by Single-Sign-On (SSOI) Two Factor Authentication (2FA). Electronic keyboard locks are activated on security errors.

(b) At the data processing centers, identification of magnetic media containing data is rigidly enforced using labeling techniques. Automated storage media which are not in use are stored in tape libraries which are secured in locked rooms. Access to programs is controlled at three levels: Programming, auditing and operations.

(c) Department of the Treasury Security: Access to the system is on a need-to-know basis, only, as authorized by the system manager. Procedural and physical safeguards are utilized to include accountability, receipt records and specialized communications security. The data system has an internal mechanism to restrict access to authorized officials. The building is patrolled by uniformed security guards.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of records maintained by VA may write, call or visit the nearest VA regional office. Address locations are listed in VA Appendix 1 of 58VA21/22/28.

CONTESTING RECORD PROCEDURES:

See record access procedures above.

NOTIFICATION PROCEDURES:

A Privacy Notice is available for the user to click on via a link entitled, ''Read Important Privacy Information.'' A copy of the Privacy Information is included as Appendix A.

The legal authorities are provided in the first paragraph of the PayVA Privacy Information (38.U.S.C.5701; Privacy Act of 1974; A new SORN is being drafted and its number is 194VA189. SORNs 58VA21/22 Compensation, Pension, Education and Rehabilitation Records-VA, and 88VA244, Accounts Receivable Records-VA (as can be seen below and in Appendix A).

''Privacy Act Information: The information you furnish on this form, including your Social Security Number, is used to associate your payment with your accounts receivable record so that we may properly credit your account. Disclosure is voluntary. However, without disclosure, a credit card transaction or direct debit transaction cannot be processed. The responses you submit are confidential and protected from unauthorized disclosure by 38 U.S.C. 5701. The information may be disclosed outside the Department of Veterans Affairs (VA) only when authorized by the Privacy Act of 1974, as amended. The routine uses for which VA may disclose the information can be found in VA systems of records, including 58VA21/22, Compensation, Pension, Education and Rehabilitation Records-VA, and 88VA244, Accounts Receivable Records-VA. VA systems of records and alterations to the systems are published in the **Federal Register**. Any information provided by you, including your Social Security Number, may be used in computer matching programs conducted in connection with any proceeding for the collection of an amount owed by virtue of your participation in any benefit program administered by VA.''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2020–28337 Filed 12–22–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Medical Care or Services; v4.215 Calendar Year (CY) 2021 Update

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice.

SUMMARY: This VA notice updates the data for calculating what VA refers to as the Reasonable Charges collected or recovered by VA for medical care or services provided or furnished by VA to a Veteran.

DATES: This change is effective January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Romona Greene, Office of Community Care, Revenue Operations, Payer Relations and Services, Rates and Charges (13RO1), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone: 202–382–2521 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 17.101(a)(1) of title 38 CFR sets forth the Reasonable Charges, relating to collection or recovery by VA, under § 1729 of title 38 U.S.C., for medical care or services provided or furnished by VA to a Veteran for: a nonservice-connected disability for which the Veteran is entitled to care (or the payment of expenses for care) under a health plan contract; a nonservice-connected disability incurred incident to the Veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or, for a nonservice-connected disability incurred as a result of a motor vehicle accident in a state that requires automobile accident reparations insurance. Section 17.101 provides the methodologies for establishing billed amounts for several types of charges; however, this notice will only address partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by Healthcare Common Procedure Coding System (HCPCS) Level II codes.

Section 17.101(a)(2) provides that the actual charge amounts at individual VA medical facilities are based on these methodologies and the data sources used for calculating those actual charge amounts will either be published in a notice in the **Federal Register** or will be posted on VA's Office of Community Care (OCC) website at: *https://www.va.gov/communitycare/revenue_ops/payer_rates.asp.*

Certain charges are updated as stated in this notice and will be effective on January 1, 2021.

In cases where VA has not established charges for medical care or services provided or furnished at VA expense (by either VA or non-VA providers) under other provisions or regulations, the method for determining VA's charges is set forth at 38 CFR 17.101(a)(8).

Based on the methodologies set forth in § 17.101, this notice provides an update to charges for CY 2021 HCPCS Level II and Current Procedural Terminology codes. Charges are also being updated based on more recent versions of data sources for the following charge types: partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables and other medical services, items, and supplies identified by HCPCS Level II codes. As of the date of this notice, the actual charge amounts at individual VA medical facilities are based on the methodologies and data sources described in § 17.101. The nationwide charges will be posted on VA's OCC website at: *https://www.va.gov/communitycare/revenue_ops/payer_rates.asp* under the heading ''Reasonable Charges Data Tables and identified as v4.215 Data Tables (Outpatient and Professional)''.

The list of data sources used for calculating the actual charge amounts listed above also will be posted on VA's OCC website under the heading ''Reasonable Charges Data Sources and identified as Reasonable Charges v4.215 Data Sources (Outpatient and Professional) (PDF)''.

Acute inpatient facility charges and skilled nursing facility/sub-acute inpatient facility charges remain the same as set forth in the notice published in the **Federal Register** on September 22, 2020 (85 FR 59606).

We are also updating the list of VA medical facility locations. The list of VA medical facility locations, including the first three digits of their zip codes as well as their provider-based designation, will be posted on VA's OCC website under the heading ''VA Medical Facility Locations and identified as v4.215 (Jan21)''.

Consistent with § 17.101(a)(2), the updated data and supplementary tables containing the changes described in this notice will be posted on VA's OCC website at: *https://www.va.gov/communitycare/revenue_ops/payer_rates.asp* under the heading ''Reasonable Charges Rules, Notices, and **Federal Register** and identified as v4.215 **Federal Register** Notice 01/01/21 (Outpatient and Professional)''. The updated data and supplementary tables containing the changes described will be effective until changed by a subsequent **Federal Register** notice.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Brooks D. Tucker, Assistant Secretary for Congressional and Legislative Affairs, Performing the Delegable Duties of the Chief of Staff, Department of Veterans Affairs, approved this document on December 18, 2020, for publication.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2020–28441 Filed 12–22–20; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 83
Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 83

[EPA–HQ–OAR–2020–0044; FRL 10018–56–OAR]

RIN 2060–AU51

Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes processes that the Environmental Protection Agency (EPA) will be required to undertake in promulgating regulations under the Clean Air Act (CAA) to ensure that information regarding the benefits and costs of regulatory decisions is provided and considered in a consistent and transparent manner. The EPA is establishing procedural requirements governing the preparation, development, presentation, and consideration of benefit-cost analyses (BCA), including risk assessments used in the BCA, for significant rulemakings conducted under the CAA. Together, these requirements will help ensure that the EPA implements its statutory obligations under the CAA, and describes its work in implementing those obligations, in a way that is consistent and transparent.

DATES: This final rule is effective December 23, 2020, but does not apply to final rules for which a proposal was published prior to the effective date.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2020–0044. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Leif Hockstad, Office of Air Policy and Program Support, Office of Air and Radiation, Environmental Protection Agency, Mail Code 6103A,1200 Pennsylvania Avenue NW, Washington, DC 20460; (202) 343–9432; email address: *hockstad.leif@epa.gov.*

SUPPLEMENTARY INFORMATION: Preamble acronyms and abbreviations. The EPA uses multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms:

ANPRM Advanced Notice of Proposed Rulemaking
BCA Benefit-cost analysis
BenMAP Benefits Mapping and Analysis Program (BenMAP)
CAA Clean Air Act
CBI Confidential business information
CFR Code of Federal Regulation
CRA Congressional Review Act
EPA Environmental Protection Agency
IOM Institute of Medicine
NAAQS National Ambient Air Quality Standards
NHTSA National Highway Traffic Safety Administration
NPRM Notice of Proposed Rulemaking
IRIS Integrated Risk Information System
ISA Integrated Science Assessments
PII Personally identifiable information
SAB Science Advisory Board
WTA Willingness-to-accept
WTP Willingness to pay

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Executive Summary

A. Purpose of the Regulatory Action

Thorough and careful economic analysis is informative for developing sound environmental policies. High quality economic analyses enhance the effectiveness of environmental policy decisions by providing policy makers and the public with information needed to assess the likely consequences of various actions or options. Transparency about how these economic analyses are developed and how they are used in decision-making is essential to allowing interested parties to hold decision makers accountable for their decisions. BCA, a type of economic analysis, can serve an integral informative role in the regulatory development process. It provides detailed information about the value of benefits and costs of a policy to affected parties and whether a policy change has the potential to improve the aggregate well-being of society.

The purpose of this action is to codify procedural best practices for the preparation, development, presentation, and consideration of BCA in regulatory decision-making under the CAA. This codification will help ensure that the EPA implements its statutory obligations under the CAA, and describes its work in implementing those obligations, in a way that is consistent and transparent. This transparency is important to allow interested parties to understand and evaluate the adequacy and accuracy of the BCA and the role the analysis

played in significant regulatory decision-making.

The Agency is taking this action pursuant to CAA section 301(a). 42 U.S.C. 7601(a)(1). Section 301(a)(1) provides authority to the Administrator ''to prescribe such regulations as are necessary to carry out his functions'' under the CAA. Such authority extends to internal agency procedures that increase the Agency's ability to provide consistency and transparency to the public in regard to the rulemaking process under the CAA. *See NRDC* v. *EPA,* 22 F.3d 1125, 1148 (D.C. Cir. 1994) (''[Section 301] is sufficiently broad to allow the promulgation of rules that are necessary and reasonable to effect the purposes of the Act.'').

B. Summary of the Major Provisions of the Regulatory Action

This final rule consists of three elements. First, it requires the EPA to prepare a BCA for all future significant proposed and final regulations under the CAA. The rule also requires that the Agency consider the BCA in promulgating the regulation except where the statutory provision or provisions under which a significant regulation is promulgated prohibit it.

Second, the rule requires EPA to develop the BCA using the best available scientific information and in accordance with best practices from the economic, engineering, physical, and biological sciences. The final rule codifies best practices consistent with the EPA's *Guidelines* for Preparing Economic Analyses (hereafter ''*Guidelines*'') and the Office of Management and Budget's (OMB) Circular A–4, and also requires that risk assessments used to support BCAs should follow best methodological practices for risk characterization and risk assessment.

Third, the rule imposes additional procedural requirements to increase transparency in the presentation and consideration of the BCA results. Specifically, the rule provides that the preambles of significant proposed and final CAA regulations must include a section that contains:

a. A summary presentation of the overall BCA results for the rule, including total costs, benefits, and net benefits;

b. An additional reporting of the public health and welfare benefits that pertain to the specific objective(s) of the CAA provision(s) under which the rule is promulgated;

c. A transparent presentation of how specific costs contemplated in the CAA provision(s) under which the rule is promulgated (to the extent specified), relate to total costs, to the extent possible; and

d. When the CAA statutory provision or provisions under which the rule is promulgated permit consideration of the BCA, a description of how the Agency considered the BCA.

Together, these requirements will help ensure that the EPA implements its statutory obligations under the CAA in a way that is consistent and transparent. The provisions of the final rule codify best practices for the preparation, development, presentation, and consideration of BCA as articulated in the principles and requirements of Executive Order 12866. This final rule does not change any other requirements pertaining to CAA rules specified in executive orders and existing guidance documents. For example, this final rule does not change the requirements for what types of analysis should be included in regulatory impact analyses prepared under E.O. 12866.

II. General Information

A. Does this action apply to me?

This rule does not regulate the conduct or determine the rights of any entity or individual outside the Agency, as this action pertains only to internal EPA practices. However, the Agency recognizes that any entity or individual interested in EPA's regulations may be interested in this rule. For example, this rule may be of particular interest to entities and individuals concerned with how the EPA conducts BCA.

B. What is the Agency's authority for taking this action?

The Agency is taking this action pursuant to CAA section 301(a). 42 U.S.C. 7601(a)(1). Section 301(a)(1) provides authority to the Administrator ''to prescribe such regulations as are necessary to carry out his functions'' under the CAA. Such authority extends to internal agency procedures that increase the Agency's ability to provide consistency and transparency to the public in regard to the rulemaking process under the CAA. *See NRDC* v. *EPA,* 22 F.3d 1125, 1148 (D.C. Cir. 1994) (''[Section 301] is sufficiently broad to allow the promulgation of rules that are necessary and reasonable to effect the purposes of the Act.'').

This is a rulemaking of agency organization, procedure, or practice. This procedural rule would not regulate any person or entity outside the EPA and would not affect the rights or obligations of outside parties. As a rule of Agency procedure, this rule is exempt from the notice-and-comment and delayed effective-date requirements set forth in the Administrative Procedure Act. See 5 U.S.C. 553(a)(2),(b)(A),(d). Nonetheless, the Agency voluntarily sought public comment on the proposed rule because it believed that the information and opinions supplied by the public would inform the Agency's views. *Vt. Yankee Nuclear Power Corp.* v. *Nat. Res. Def. Council, Inc.,* 435 U.S. 519, 524 (1978) (''Agencies are free to grant additional procedural rights in the exercise of their discretion.'') In addition, even assuming arguendo that the notice-and-comment requirements of the Act applied to this action, EPA has determined that there would be good cause, consistent with 5 U.S.C. 553(d)(3), for making this final rule effective immediately because the goals of the rule, ensuring transparency and consistency in BCAs for significant CAA rulemakings, are crucial for ensuring confidence in EPA decision-making. Because this is a procedural rule that only applies internally to ensure that EPA follows existing best practices with respect to BCA and to ensure that EPA explains how EPA considered the results, the rationale for delayed effectiveness to allow time to adjust to the new requirements does not apply.

In addition, the EPA received comments and recommendations on the proposed rule from the EPA Science Advisory Board (SAB), pursuant to its statutory duties to offer advice and comments on the scientific and technical basis of certain planned EPA actions pursuant to the Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA).[1] Finally, the EPA also reviewed comments received from the SAB during the course of its review of the forthcoming update of the EPA's *Guidelines.*[2]

III. Background

A. Summary of Executive Orders, Guidances, and Court Rulings Related to Regulatory BCA

As the EPA works to advance its mission of protecting public health and

[1] The ERDDAA requires the EPA to make available to the SAB proposed criteria documents, standards, limitations, or regulations, together with relevant scientific and technical information on which the proposed action is based. On the basis of this information, the SAB may provide advice and comments. The SAB final report on the proposed rule is available at: *https://yosemite.epa.gov/sab/sabproduct.nsf/0/82e89c7a596e9efa852585a50064d32e!OpenDocument&TableRow=2.3#2.*

[2] Information about the SAB review of the forthcoming update of the EPA's *Guidelines* is available at: *https://yosemite.epa.gov/sab/sabproduct.nsf//LookupWebProjectsCurrentBOARD/30D5E59E8DC91C2285258403006EEE00?OpenDocument.*

the environment, it seeks to ensure that its analyses of regulatory decisions provided to the public continue to be rooted in sound, transparent, and consistent approaches to evaluating benefits and costs.

The Supreme Court noted in *Michigan* v. *EPA* that ''[c]onsideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages and the disadvantages of agency decisions.'' *Michigan* v. *EPA,* 135 U.S. 2699, 2707 (2015). Many environmental statutes, including the CAA, contemplate the consideration of costs as part of regulatory decision-making in many instances. Several of these statutes, including the CAA, contain provisions that explicitly require some form of cost consideration when establishing a standard. Additionally, several other statutory provisions use terminology that in context implicitly direct or allow the EPA to consider costs, alone or in conjunction with benefits and other factors. For example, section 112(n)(1)(A) of the CAA directs the Administrator to ''regulate electric utility steam generating units under [section 112], if the Administrator finds such regulation is appropriate and necessary.'' ''Read naturally in the present context, the phrase 'appropriate and necessary' requires at least some attention to cost.'' *Michigan,* 135 S. Ct. at 2707 (2015). Therefore, in light of the varying statutory provisions in the CAA that apply to or otherwise address cost consideration, the Agency is finalizing procedural requirements to provide analysis to the public that will present all of the benefits and costs in a consistent manner for all significant CAA rulemakings.

Thorough and careful economic analysis is informative for developing sound environmental policies. High quality economic analyses enhance the effectiveness of environmental policy decisions by providing policy makers and the public with information needed to systematically assess the likely consequences of various actions or options. BCA, a type of economic analysis, can serve an integral informative role in the regulatory development process. In general terms, a BCA is an evaluation of both the benefits and costs to society as a result of a policy and the difference between the two (*i.e.,* the calculation of net benefits (benefits minus costs)). It provides information about whether a policy change has the potential to improve the aggregate well-being of society.

The usefulness of BCA in informing the development of environmental regulations has been recognized both within and outside government for decades. As discussed below, Presidential Executive Orders and statutes have been in place for decades formally requiring the preparation of BCA in the development of major Federal regulations, and the courts have examined the use of BCA in several regulatory contexts. In addition, the usefulness of formal BCA in informing regulatory policy debates on protecting and improving public health, safety, and the natural environment has been emphasized in the academic literature. For example, as explained in seminal work by prominent economists Arrow et al. (1996a, 1996b), BCA ''can provide an exceptionally useful framework for consistently organizing disparate information, and in this way, it can greatly improve the process and, hence, the outcome of policy analysis. If properly done, BCA can be of great help to agencies participating in the development of environmental regulations . . .'' (1996b). Arrow et al. recommend that ''Benefit-cost analysis should be required for all major regulatory decisions,'' and that ''the precise definition of 'major' requires judgment.''

Benefit-cost analyses have been an integral part of executive branch rulemaking for decades. Presidents since the 1970s have issued executive orders requiring agencies to conduct analysis of the economic consequences of regulations as part of the rulemaking development process. President Ford's 1974 Executive Order (E.O.) 11821 required government agencies to prepare inflation impact statements before issuing major regulations.[3] These inflation impact statements essentially turned into benefit-cost analyses based on the understanding that a regulation would not be truly inflationary unless its costs to society exceeded the benefits it produced,[4] and the E.O. was renamed as *Economic Impact Statements* with E.O. 11949 in 1976.[5] President Carter's 1978 E.O. 12044, *Improving Government Regulations,* included formal requirements for conducting regulatory analysis at a minimum ''for all regulations which will result in (a) an annual effect on the economy of $100 million or more; or (b) a major increase in costs or prices for individual industries, levels of government or geographic regions.'' [6] Regulatory analyses under E.O. 12044 were required to contain ''a succinct statement of the problem; a description of the major alternative ways of dealing with the problem that were considered by the agency; an analysis of the economic consequences of each of these alternatives and a detailed explanation of the reasons for choosing one alternative over the others.''

In 1981, President Reagan issued E.O. 12291, *Federal Regulation,* which imposed the first requirements for conducting formal benefit-cost analysis in the development of new major Federal regulations. Among its provisions, E.O. 12291 explicitly required that: ''(a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action; (b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society; (c) Regulatory objectives shall be chosen to maximize the net benefits to society; (d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and (e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.'' [7] Under E.O. 12291, major regulations included ''any regulation that is likely to 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 or export markets.''

In 1993, E.O. 12291 was revoked and replaced by President Clinton's E.O. 12866, *Regulatory Planning and Review,* which is still in effect today. E.O. 12866

[3] Executive Order 11821—Inflation Impact Statements, **Federal Register**, VOL. 39, NO. 231—Friday, November 29, 1974 (pages 41501–41502) .

[4] *https://obamawhitehouse.archives.gov/omb/inforeg_chap1#tnfrp.*

[5] Executive Order 11949—Economic Impact Statements, **Federal Register**, VOL. 42, NO. 3—Wednesday, January 5, 1977 (page 1017). *https://www.govinfo.gov/content/pkg/FR-1977-01-05/pdf/FR-1977-01-05.pdf.*

[6] Executive Order 12044—Improving Government Regulations, **Federal Register**, VOL 43, NO. 58—Friday, March 24, 1978 (Pages 12659–12670).

[7] Executive Order 12291—Federal Regulation, **Federal Register**, Vol 46—February 19, 1981 (Page 13193).

requires that for all significant regulatory actions pursuant to Section 3(f), an agency provide ''an assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate . . .'' For regulatory actions meeting criteria listed under Section 3(f)(1)—that is, any regulatory action that is ''likely to result in a rule that may . . . have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities''—E.O. 12866 further requires that this assessment include a quantification of benefits and costs to the extent feasible. In addition, E.O. 12866 states that, to the extent permitted by law, agencies ''should assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs''; ''in choosing among alternative regulatory approaches . . . should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach''; and that ''[e]ach agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.''

In 1995, the Unfunded Mandates Reform Act of 1995 (UMRA) included analytical requirements for all regulatory actions that include federal mandates ''that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.'' An action contains a federal mandate if it imposes an enforceable duty on state, local or tribal governments, or the private sector. The analytical requirements under UMRA are similar to the analytical requirements under E.O. 12866, and thus the same analysis may permit compliance with both analytical requirements.[8]

More recent Executive Orders also reaffirm the requirements and principles in E.O. 12866. E.O. 13563, issued in 2011 and still in effect today, reaffirms the requirements and other principles and definitions in E.O. 12866 and embraces benefit-cost analysis: ''In applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' [9] More recently, E.O. 13777, issued in 2017, directs agencies to identify regulations that ''impose costs that exceed benefits.'' [10] E.O. 13783, also issued in 2017, similarly reaffirms the importance of benefit-cost analysis: ''In order to ensure sound regulatory decision-making, it is essential that agencies use estimates of costs and benefits in their regulatory analyses that are based on the best available science and economics.'' [11]

The Office of Management and Budget's (OMB's) *Circular A–4* (OMB 2003), which remains in effect today, provides guidance to Federal agencies on the development of regulatory analysis as required under E.O. 12866 and a variety of related authorities.[12] In developing Circular A–4, OMB first developed a draft that was subject to public comment, interagency review, and external peer review. As summarized in E.O. 13783, ''. . . OMB Circular A–4 . . . was issued after peer review and public comment and has been widely accepted for more than a decade as embodying the best practices for conducting regulatory cost-benefit analysis.'' [13] The document encourages transparency in practices, including the expression of costs and benefits in monetary units that allow for the evaluation of ''incremental benefits and costs of successively more stringent regulatory alternatives'' such that an agency can ''identify the alternative that maximizes net benefits.'' [14]

EPA's *Guidelines for Preparing Economic Analyses* (hereafter, the *Guidelines*) [15] complements Circular A–4 by providing the Agency with more detailed peer-reviewed guidance on how to conduct BCA and other types of economic analyses for both environmental regulatory actions and non-regulatory management strategies, with the intent of improving compliance with E.O. 12866 and other executive orders and statutory requirements (*e.g.,* Small Business Regulatory Enforcement Fairness Act of 1996 provisions). The *Guidelines* are updated periodically—building on work issued in 1983 (then titled *Guidelines for Performing Regulatory Impact Analysis*), 2000, and most recently in 2010—to account for growth and development of economic tools and practices. The *Guidelines* establish a scientific framework for analyzing the benefits, costs, and other economic impacts of regulations and policies, including assessing the distribution of costs and benefits among various segments of the population. In addition to presenting the well-established scientific foundations for economic analysis, the *Guidelines* incorporate recent advances in theoretical and applied work in the field of environmental economics. Updates of the *Guidelines* are led by the EPA's National Center for Environmental Economics in consultation with economists from across the Agency and OMB. All chapters undergo an external peer review, either through EPA's Science Advisory Board or through independent reviews by external experts, prior to be being finalized.[16]

Given the history described above pertaining to the use of BCA by executive agencies, and given that several statutes, including the CAA, include provisions that require some form of cost consideration, the federal courts have also developed significant case law regarding regulatory cost consideration and the usefulness of BCA. This case law addresses when, and if, such use is required or permissible and how it may be employed in reasoned decision-making.

[8] While the analytical requirements are the same, the dollar thresholds do not exactly coincide because the $100 million threshold is not adjusted for inflation under E.O. 12866.

[9] *https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review.*

[10] Enforcing the Regulatory Reform Agenda (82 FR 12285, March 1, 2017).

[11] *https://www.govinfo.gov/content/pkg/FR-2017-03-31/pdf/2017-06576.pdf.*

[12] *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/. Circular A–4 refines and replaces OMB's ''best practices'' document of 1996, which was issued as a guidance in 2000 and reaffirmed in 2001. All these versions of the 1996 document were superseded by Circular A–4.*

[13] *https://www.govinfo.gov/content/pkg/FR-2017-03-31/pdf/2017-06576.pdf.*

[14] *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/.*

[15] *https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses.*

[16] The EPA is in the process of a periodic update of the *Guidelines.* The EPA anticipates that among the changes within this update, the current Section 9.2.3.3, ''Impacts on employment'', will be replaced with a discussion based on more recent literature and feedback from the Economy Wide Modeling Science Advisory Board Panel. For more details regarding Chapter 9, see: *https://www.epa.gov/sites/production/files/2017-09/documents/ee-0568-09.pdf.* For more details regarding the update of the *Guidelines* in general, see: *https://yosemite.epa.gov/sab/sabproduct.nsf//LookupWebProjectsCurrentBOARD/30D5E59E8DC91C2285258403006EEE00?OpenDocument.*

As a general matter, while certain statutory provisions may prohibit reliance on BCA or other methods of cost consideration in decision-making,[17] such provisions do not preclude the Agency from providing additional information regarding the impacts of a proposed or final rule to the public. For example, while the CAA prohibits the EPA from considering cost when establishing or revising requisite National Ambient Air Quality Standards (NAAQS) for criteria pollutants,[18] the EPA nonetheless provides Regulatory Impact Analyses (RIAs) [19] to the public for these rulemakings.[20]

The Supreme Court has held that agencies may conduct and consider a BCA even when a statute does not explicitly require one. In *Entergy Corp.* v. *Riverkeeper, Inc.,* 556 U.S. 208, 222–224 (2009), the Supreme Court clarified that neither *American Textile Mfrs. Inst. V. Donovan,* 452 U.S. 490 (1981) (*American Textile Mfrs.*) nor *Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457 (2001) (*American Trucking*), stands for the broad proposition that statutory silence in regard to a potential factor always implies prohibition of consideration of that factor. Therefore, the Supreme Court concluded that the EPA was permitted to use BCA in determining the content of regulations promulgated under Clean Water Act section 1326(b). The Court reasoned ''that [CWA] § 1326(b)'s silence is meant to convey nothing more than a refusal to tie the agency's hands as to whether cost-benefit analysis should be used, and if so to what degree.'' *Id.* at 222; *see also id.* at 212, 219–20, 226.

The Supreme Court noted that its decisions in *American Trucking and American Textile Mfrs.* ''do not undermine this conclusion.'' 556 U.S. at 223. The Court highlighted that in *American Trucking,* it had held that the text of section 109 of the Clean Air Act, ''interpreted in its statutory and historical context . . . unambiguously bars cost considerations'' when air quality standards are set pursuant to that provision. *American Trucking,* 531 U.S. at 471, *quoted in Entergy Corp.,* 556 U.S. at 223. The *Entergy Corp.* Court further elaborated that ''[t]he relevant 'statutory context' [in *American Trucking*] included other provisions in the [CAA] that expressly authorized consideration of costs, whereas § 109 did not.'' 556 U.S. at 233. The Court concluded, not that *American Trucking* stands for the proposition that statutory silence always unambiguously bars cost consideration, but, rather that *American Trucking* ''stands for the rather unremarkable proposition that sometimes statutory silence, when viewed in context, is best interpreted as limiting agency discretion.'' 556 U.S. at 223. The Court further noted that in *American Textile,* the Court had relied, in part, on the absence of mention of BCA in the statute to hold that the agency was not required to conduct a BCA when setting certain health and safety standards. 556 U.S. at 223. ''[U]nder *Chevron,* that an agency is not required to [engage in cost-benefit analysis] does not mean that an agency is not *permitted* to do so.'' *Id.* Thus, the Supreme Court has confirmed that a statute need not have explicitly required that the agency conduct a BCA in its decision-making process for the agency to do so.

The Supreme Court additionally acknowledged in *Entergy Corp.* that ''whether it is 'reasonable' to bear a particular cost may well depend on the resulting benefits.'' 556 U.S. at 225–226. This concept was further elaborated upon by the Court in *Michigan* v. *EPA,* which held, in the context of the term ''appropriate and necessary'' contained in Section 112(n)(1)(A) of the CAA, that the term required consideration of cost. 135 S. Ct. 2699, 2706 (2015). In doing so, the Supreme Court stated that ''[o]ne would not say that it is even rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits'', concluding that ''[n]o regulation is 'appropriate' if it does significantly more harm than good.'' *Id.* at 2707. The D.C. Circuit recently echoed this concept in *Mingo Logan Coal Co.* v. *EPA.* While the D.C. Circuit panel ultimately concluded that the cost issue had been forfeited by petitioners, in response to then Judge Kavanaugh's dissent which argued that cost consideration should be required, the panel stated, ''[i]ndeed, we do not quibble with his general premise—and that of the many legal luminaries he cites—that an agency should generally weigh the costs of its action against its benefits.'' 829 F.3d 710, 723 (D.C. Cir. 2016). In general, when cost consideration is either required or permitted by the CAA, the courts have not mandated a specific approach for cost consideration but have granted the Agency broad discretion in determining its methodology. *See Michigan,* 135 S. Ct. at 2711 (''We need not and do not hold that the law unambiguously required the Agency, when making this preliminary estimate, to conduct a formal cost-benefit analysis in which each advantage and disadvantage is assigned a monetary value. It will be up to the Agency to decide (as always, within the limits of reasonable interpretation) how to account for cost.''); *see also Sierra Club* v. *Costle,* 657 F.2d 298, 345 (D.C. Cir. 1981) (''[S]ection 111(a) explicitly instructs the EPA to balance multiple concerns when promulgating a NSPS.''); *id.* at 321 (''The text gives the EPA broad discretion to weigh different factors in setting the standard.''); *Lignite Energy Council* v. *EPA,* 198 F.3d 930, 933 (D.C. Cir. 1999) (''Because section 111 [of the CAA] does not set forth the weight that [should be] assigned to each of these factors, we have granted the agency a great degree of discretion in balancing them''); *Husqvarna AB* v. *EPA,* 254 F.3d 195, 200 (D.C. Cir. 2001) (''Section 213 [of the CAA] . . . simply directs the EPA to consider cost. . . . Because section 213 does not mandate a specific method of cost analysis, we find reasonable the EPA's choice to consider costs on the per ton of emissions removed basis.'').

Additionally, courts have noted the usefulness of BCA and have utilized the information provided therein to inform their analysis when reviewing agency regulations. Several of these cases utilize information from agency-created BCAs and/or RIAs as evidence that an agency ignored alternatives or acted in an arbitrary and capricious manner when taking action.

For example, in *Advocates for Highway and Auto Safety* v. *FMCSA,* 429 F.3d. 1136 (D.C. Cir. 2005), the D.C. Circuit relied in part on a BCA in invalidating, as arbitrary and capricious, a final rule promulgated by Federal Motor Carrier Safety Administration (FMCSA) intended to ensure that drivers of commercial motor vehicles received adequate training. In its analysis, the D.C. Circuit highlighted an incongruity between methods of training shown to be effective and the final rule, noting that ''[f]rom a purely economic perspective, the agency's disregard of the Adequacy Report [containing a BCA] is baffling in light of the evidence in the record.'' *Id.* at 1146. The D.C. Circuit pointed to a training regimen that ''according to the agency's

[17] See, *e.g., Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457 (2001) (holding that Section 109(b) of the CAA unambiguously barred cost considerations when setting the National Ambient Air Quality Standards.

[18] Id.

[19] A regulatory impact analysis, or ''regulatory analysis'' for brevity, as prepared under E.O. 12866, consists of a benefit-cost analysis and any related cost-effectiveness analyses and assessments of economic and distributional impacts (OMB 2003).

[20] *See, e.g.,* U.S. EPA, Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone (2014), *https://www3.epa.gov/ttn/ecas/regdata/RIAs/20141125ria.pdf.*

own calculations, [would] produce benefits far in excess of costs.'' *Id.* Noting the agency's findings that ''the program's estimated 10–year cost of between $4.19 billion to $4.51 billion would yield a benefit ranging from $5.4 billion to $15.27 billion, depending on analytic assumptions,'' the court concluded that the BCA for the rule ''lends no support to FMCSA's position. In the final rule, FMCSA says practically nothing about the projected benefits.'' *Id.*

In *Public Citizen, Inc.* v. *Mineta,* 340 F.3d 39 (2nd Cir. 2003), the Second Circuit determined that a National Highway Traffic Safety Administration (NHTSA) rule regarding tire pressure monitoring system (TPMS) requirements was arbitrary and capricious, as the NHTSA BCA showed that alternatives would be safer and more cost-effective. The court stated that it may ''be difficult to weigh economic costs against safety benefits. But the difficulty of the task does not relieve the agency of its obligation to perform it under [certain vehicle safety laws] and *State Farm.*'' *Id.* at 58 (citing *Motor Vehicles Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983)). The Second Circuit observed that NHTSA ''instead, presents us with a rulemaking record that does not explain why the costs saved were worth the benefits sacrificed.'' *Id.* The court noted that the BCA ''discloses that the added cost for a system that worked all of the time, rather than half of the time, was less than $10 per car, and that the adoption of the four-tire, 25 percent standard alone was the most cost effective means of preventing crashes caused by significantly under-inflated tires.'' *Id.*

Finally, in *NRDC* v. *EPA,* 824 F.2d 1258 (1st Cir. 1987), the First Circuit vacated, in part, and remanded rules for long-term disposal of high-level radioactive waste under Nuclear Waste Policy Act of 1982 based in part on the Agency's selection of a 1,000-year design criterion rather than a longer-term one. The court determined that it was unreasonable agency action to not adopt cheap methods of increasing protections. In doing so, the court observed that ''[l]ikewise, EPA's Final [RIA] of 40 CFR part 191 demonstrates that more rigorous site selection could produce sites with such impermeable geologic media that compliance with the individual protections for a much longer duration would not even require the extra cost of 'very good' engineered canisters.'' *Id.* at 1289.

B. Summary of the Proposed Rule

With the history discussed above in mind as a backdrop and following E.O. 13777 noted above, the EPA opened a public docket [21] in April 2017 to solicit feedback and identify regulations that ''impose costs that exceed benefits.'' Among the public comments received, a large cross-section of industry stakeholders stated that the agency either underestimated costs, overestimated benefits, or evaluated benefits and costs inconsistently in its rulemakings. Per E.O. 13777 and based on these public comments, the EPA decided to take further action to evaluate opportunities for reform.

In June 2018, the EPA issued an Advance Notice of Proposed Rulemaking (ANPRM), ''Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process'' (83 FR 27524, June 13, 2018), to solicit public input on potential approaches for increasing consistency and transparency in how the EPA considers benefits and costs in the rulemaking process. Informed by the public comments received on that ANPRM, on May 13, 2019, the Administrator issued a memorandum [22] to EPA's Assistant Administrators announcing the intention to propose statute-specific rules that outline how consistency and transparency concepts will be implemented in future rulemakings. The memorandum outlined the following principles for developing these regulatory proposals, consistent with applicable laws and regulations: Ensuring that the Agency balances benefits and costs in regulatory decision-making; increasing consistency in the interpretation of statutory terminology; providing transparency in the weight assigned to various factors in regulatory decisions; and promoting adherence to best practices in conducting the technical analysis used to inform decisions.

In June 2020, the EPA issued a Notice of Proposed Rulemaking (NPRM), ''Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process'' (85 FR 35612, June 11, 2020). The proposed rule was the first statute-specific rulemaking in this effort. The EPA proposed to codify the procedural requirements governing the development of BCA, including risk assessments used as inputs to the BCA, for significant rulemakings conducted under the CAA, and proposed additional procedural requirements to increase transparency in the presentation of the benefits and costs resulting from significant CAA regulations. Together, these requirements were proposed to ensure a consistent approach to the EPA's BCAs under the CAA and to provide transparency by requiring the provision of relevant information in all significant rulemakings. In the proposed rule, the EPA also solicited comment on how the Agency should take into consideration the results of a BCA in future rulemakings under specific provisions of the CAA, among other topics. Discussion of topics where the EPA solicited comment, and comments and responses where EPA has made modifications in the final rule, is included in Section V of this preamble. Responses to the rest of the comments are provided in the Response to Comments Document.

IV. Description of the Final Rule

This final rule consists of three elements. In the first element, it requires the EPA to prepare a BCA for all future significant proposed and final regulations promulgated under the CAA and to consider the BCA in the decision-making process when permitted for consideration under the specific provision of the CAA under which the future regulation is promulgated. The EPA believes that in keeping with OMB's Circular A–4 and Executive Order 12866 that the requirement to prepare a BCA would create consistency with well-understood and established processes and determinations for what constitutes a ''significant'' rulemaking. Therefore, in this final rule, a significant regulation will include any proposed or final regulation that is determined to be a ''significant regulatory action'' pursuant to Section 3(f) E.O. 12866 or is otherwise designated as significant by the Administrator. Consideration of the results of BCA in regulatory decision-making is also consistent with the requirements of E.O. 12866. If the provision or provisions under which the rule is promulgated prohibit the consideration of the BCA, the final rule requires the Agency to identify the specific provision that bars such consideration.

The second element of the final rule requires EPA to develop the BCA using the best available scientific information and in accordance with best practices from the economic, engineering, physical, and biological sciences. The final rule codifies general best practices consistent with the existing guidances that EPA relies upon to develop high

[21] See EPA, Evaluation of Existing Regulations (82 FR 17793). All public comments are accessible online in our docket on the *Regulations.gov* website identified by Docket ID No. EPA–HQ–OA–2017–0190.

[22] Available at: *https://www.epa.gov/environmental-economics/administrator-wheeler-memorandum-increasing-consistency-and-transparency.*

quality regulations (*e.g.,* EPA's *Guidelines for Preparing Economic Analyses* (hereafter ''*Guidelines*'') and the Office of Management and Budget's (OMB) *Circular A–4*), and also requires that risk assessments used to support BCAs should follow best methodological practices for risk characterization/assessment. The final rule does not replace any detailed guidance for Agency analysis, including Executive Orders (*e.g.,* E.O. 12866), OMB Circulars (*e.g., Circular A–4*), and EPA documents (*e.g., Guidelines* for Preparing Economic Analyses).

The specific best practices that are required in this final rule are as follows. The BCA must include a statement of need, an examination of regulatory options which would contribute to the stated objectives of the CAA, and to the extent feasible, an assessment of all benefits and costs of these regulatory options relative to the baseline scenario. The baseline used in the BCA must appropriately consider relevant factors and rely on transparent and reasonable assumptions. In preparing the BCA, the Agency must rely on the use of a framework for estimating costs and benefits that is appropriate for the characteristics of the regulation being evaluated and must provide an explanation for the approach adopted. In estimating costs and benefits, the Agency must consider how costs and benefits may be affected by consumer and producer behavior both in the baseline and in the policy scenarios. The BCA must include, to the extent supported by scientific literature as well as practicable in a given rulemaking: A quantification of all benefits; a monetization of benefits that follows well-defined economic principles using well-established economic methods, appropriate data and/or studies; and a qualitative characterization of benefits that cannot be quantified or monetized.

Regarding the process of selecting health benefit endpoints for quantification, the final rule requires that this process will be based upon scientific evidence that indicates there is a clear causal or likely causal relationship between pollutant exposure and effect, and that sufficient data and understanding allows the agency to reasonably model the anticipated change in that effect in response to changes in environmental quality or exposures expected as a result of the regulation under analysis. The evaluation of the scientific evidence necessary to select and quantify health benefit endpoints should follow the systematic review process, must emphasize transparency and replicability, and give more weight to higher quality data, models, and/or analyses that have been peer reviewed. The models used to quantify the concentration-response relationships should take into account the breadth and quality of the available evidence regarding the nature and magnitude of the risk to the populations affected by the regulation. The presentation of results should characterize the sensitivity of the choice of the concentration-response function on the magnitude and the uncertainty associated with estimated benefits.

The BCA must include an identification of uncertainties underlying the estimation of both benefits and costs and, to the extent feasible and appropriate, quantitatively analyze those that are most influential; and must present benefits and cost estimates in ways that convey their uncertainty, including acknowledging unquantified benefits and costs, where appropriate. The BCA must include a reasoned explanation for the scope and specific quantitative or qualitative methods chosen to analyze uncertainties.

The final rule also requires that the overall results of the BCA (benefits, costs, and net benefits of each regulatory option evaluated in the BCA) be presented and described in a manner designed to be objective, comprehensive, reproducible to the extent reasonably possible, and easily understood by the public. To the extent permitted by law, the Agency must ensure that all information (including data and models) used in the development of the BCA is publicly available. If data and models are proprietary, the Agency must make available, to the extent practicable, the underlying inputs and assumptions used, equations, and methodologies used by EPA. The BCA shall provide a reasoned explanation for any departures from best practices in the BCA, including a discussion of the likely effect of the departures on the results of the BCA.

The third element of the final rule imposes additional procedural requirements to increase transparency in the presentation and consideration of the BCA results. Specifically, the rule requires the preamble of significant proposed and final CAA regulations to include a section that contains a summary presentation of the overall BCA results for the rule, including total benefits, costs, and net benefits. Within this summary presentation, if any benefits and costs accrue to non-U.S. populations they must be reported separately to the extent possible. This section of the preamble should also provide an additional reporting of the public health and welfare benefits that pertain to the specific objective(s) of the CAA provision(s) under which the rule is promulgated and a transparent presentation of how specific costs contemplated in the CAA provision(s) under which the rule is promulgated (to the extent specified), relate to total costs, to the extent possible. Finally, when the CAA statutory provision or provisions under which the rule is promulgated permit consideration of the BCA, this section of the preamble should contain a description of how the Agency considered the BCA.

Together, these requirements will help ensure that the EPA implements its statutory obligations under the CAA with high quality regulations in a way that is consistent and transparent and that these procedures are made enforceable upon the Agency. The provisions of the final rule codify into regulation best practices for the preparation, development, presentation, and consideration of BCA as articulated in the principles and requirements of Executive Order 12866.

V. Responses to Significant Comments

The EPA had a 45-day public comment period on the proposed rule, and also hosted a virtual public hearing on July 1, 2020, which included 50 speakers registered to provide testimony. In total, the EPA received 24,740 public comments, including several mass mail campaigns and 513 unique comment letters (including transcripts from the July 1 virtual public hearing). Of these, a total of 143 letters provided detailed, substantive comments. Commenters included environmental and health advocacy organizations, industry trade groups, academics, and State, Local, and Tribal governments.

A. Purpose of the Action

Commenters supporting the EPA's proposed rulemaking argued that the proposed requirements, if finalized, would provide more clarity and transparency, make common sense, enhance public accountability and understanding of the scientific inputs that drive the EPA's decisions, improve the integrity of the rulemaking process, and lead to better public policy. Commenters also stated that codification of best practices for conducting and presenting BCA would standardize procedures and would achieve consistency over time and provide for better transparency. Some commenters further argued the rule would deliver continued environmental improvement as well as a more

predictable and achievable set of outcomes for the regulated community. In addition, a commenter stated that EPA's proposed rule, if finalized, would supersede, rather than duplicate, existing non-justiciable, non-statutory sources of guidance for Agency analysis, including EOs (*e.g.,* E.O. 12866), OMB Circulars (*e.g., Circular A–4*), and EPA documents (*e.g.,* EPA's *Guidelines*).

Commenters opposed to the proposed rule argued that the EPA does not explain how any of the Agency's previous BCAs have fallen short of any applicable legal requirements or failed to deliver on their purported policy benefits. Commenters stated that EPA has also not specifically detailed how the Agency's use of its own economic guidance (*e.g.,* EPA's *Guidelines*) and OMB's Circular A–4 guidance has resulted in inadequate, inconsistent, or nontransparent practices or has compromised the Agency's abilities and disagreed with the need for a rulemaking. These commenters said that the EPA's proposal does not make the case that such shortcomings are so widespread among the EPA's existing BCA practices that the proposal was necessary. These commenters further stated the EPA does not identify any deficiencies in existing laws, orders, and guidelines, and, therefore, did not fully demonstrate how the proposed changes will address the alleged problem. Some commenters further stated that the EPA's proposed rule creates an excessively burdensome set of procedures for completing a BCA that would be difficult for the agency to satisfy and would be prohibitively costly to complete. One commenter stated that increasing transparency and consistency in the analysis upon which regulatory decisions are based should not come at the cost of undermining the flexibility and accuracy needed for regulatory decision-making on the wide variety of air pollutants and sources regulated under the CAA. The commenter added that many of the consistency and transparency goals in the proposal are already being met through existing EPA practices, particularly requirements in E.O. 12866, and contended that setting a prescriptive process for conducting BCAs will lead to inflexibility that could prove detrimental to public health and the environment. One commenter argued that, given the clear credibility and reliability of the peer-reviewed and longstanding methodologies for developing BCAs (as acknowledged by the EPA itself throughout the proposal), it was arbitrary and capricious for the EPA to constrain its methodologies. A few commenters objected to the proposal's approach, as they believed that a regulation establishes rigid practices that then make it difficult for the EPA to readily adopt future improvements to best practices. On this issue, a few commenters further suggested that because analytical requirements evolve, the EPA should create a requirement to periodically update the best practices through a public notice and comment rulemaking process.

The EPA disagrees with commenters that this rule is unnecessary. The EPA continues to believe that codifying best practices into regulation provides additional certainty and increases the consistency and transparency of its analysis of the benefits and costs of significant regulations under the CAA. The requirements promulgated in this action address the comments, by many, that the Agency has not consistently estimated, presented, and considered benefits and costs in line with best practices and principles set forth in longstanding executive orders governing regulatory analysis. Some commenters asserted that these inconsistencies were not identified by EPA and were not so widespread among the EPA's existing BCA practices that the proposal was necessary. However, EPA has not had procedural enforceable regulations in place to ensure consistency in its past BCA practices. To the extent that commenters assert that EPA's past practice has been consistent and transparent, it is not due to an enforceable standardized approach that would ensure such a result. Other commenters have noted the contrary belief, that EPA's practices in regard to BCA have indeed been inconsistent and have lacked transparency. Without enforceable procedural regulations for BCA, future regulations may be promulgated without consideration of, and public accountability concerning, their costs and benefits. Thus, the EPA has determined that the Final Rule is necessary to ensure that BCA practices are implemented in a consistent fashion prospectively. The requirements provide a practical framework to ensure that the BCA of significant CAA regulations follow best practices and complement more detailed existing guidances the EPA relies upon (*e.g.,* OMB's *Circular A–4* and EPA's *Guidelines*) to develop quality regulations consistent with the CAA, and that these procedures are made enforceable upon the Agency. The final rule does not replace detailed guidance for Agency analysis, including Executive Orders (*e.g.,* E.O. 12866), OMB Circulars (*e.g., Circular A–4*), and EPA documents (*e.g.,* EPA's *Guidelines*).

B. Authority To Promulgate a Procedural Rule

The EPA received comments on its legal authority to promulgate the proposed rule. We respond to some of the major comments below and to the rest in Chapter 4 of the Response to Comments Document. In particular, the EPA received comments that Section 301(a)(1) of the CAA both does and does not provide adequate authority to promulgate the proposed rule. Commenters asserted that Section 301(a)(1) explicitly authorizes the EPA Administrator ''to prescribe such regulations as are necessary to carry out his functions'' under the statute, noting the D.C. Circuit holding that Section 301(a)(1) ''is sufficiently broad to allow the promulgation of rules that are necessary and reasonable to effect the purposes of the Act.'' *NRDC* v. *EPA,* 22 F.3d 1125, 1148 (D.C. Cir. 1994). Commenters further noted how consistency and transparency advance the goals of the CAA. Other commenters argued that Section 301(a)(1) was not an adequate authority as the rule was not necessary, noting that Section 301(a)(1) does not provide the Administrator ''carte blanche authority to promulgate any rules, on any matters relating to the Clean Air Act, in any manner that the Administrator wishes,''' and only permits ''the promulgation of rules that are necessary and reasonable to effect the purposes of the Act.'' *Id.*

The EPA agrees with the commenters stating that Section 301(a)(1) of the CAA provides adequate authority for this final rulemaking. The EPA has determined that the authority in Section 301(a)(1) extends to internal agency procedures that increase the Agency's ability to provide consistency and transparency to the public in regard to the rulemaking process under the CAA. In *NRDC,* the court stated that ''[a]lthough section 301 does not provide the Administrator 'carte blanche authority to promulgate any rules, on any matter relating to the Clean Air Act, in any manner that the Administrator wishes,' *Spencer County,* 600 F.2d at 873, it is sufficiently broad to allow the promulgation of rules that are necessary and reasonable to effect the purposes of the Act.'' *Id.* Further finding that ''[w]here, as here, Congress has erected no clear impediment to the issuance of binding rules, section 301 takes the agency as far as the second step of *Chevron.* Once there, the EPA provided a reasoned explanation for resorting to rulemaking.'' *Id.* Likewise, the Agency is not aware of any clear

impediment to this rulemaking and this preamble provides a reasoned explanation of the purpose and need for this rulemaking.

The Agency believes that the information provided as a result of the procedural requirements of this rule will increase transparency and consistency across CAA rulemakings; provide the public with additional information in the CAA rulemaking process; and provide the Agency with supplemental information for use by the Agency when it is appropriate to be considered. These outcomes will better allow the Agency to fulfill the purpose described in Section 101(b)(1) of the CAA ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population''. Further, Section 101(c) of the CAA states that ''a primary goal of [the Act] is to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of [the] Act, for pollution prevention.'' As noted above, the Supreme Court has stated that ''reasonable regulation ordinarily requires paying attention to the advantages and the disadvantages of agency decisions.'' *Michigan* v. *EPA,* 135 U.S. 2699, 2707 (2015). The information provided as a result of the procedural requirements of this rule will be in addition to the information provided by other methodologies and analyses as directed by specific CAA statutes and regulations. Such an approach is consistent with reasonable rulemaking standards.

The EPA also received public comments asking for clarification as to whether the procedures in this final rule are enforceable against the Agency. The EPA received comments arguing that the procedures in this final rule are enforceable against the agency and comments that such procedures would not be and asking for clarification. The EPA agrees with commenters asserting that the procedures in this final rule are enforceable against the Agency. Generally, a court reviews an agency's compliance with its regulations, even where the regulatory requirements go beyond what is required by statute. See, *e.g., Service* v. *Dulles,* 354 U.S. 363, 388 (1957) (''While . . . the Secretary was not obligated to impose upon himself these more rigorous substantive and procedural standards, neither was he prohibited from doing so, as we have already held, and having done so he could not, so long as the Regulations remained unchanged, proceed without regard to them.''). See generally Wright & Miller, 32 FED. PRAC. & PROC. JUDICIAL REVIEW § 8165 (1st ed. Oct. 2020 Update) (''One of the most firmly established principles in administrative law is that an agency must obey its own rules.''). See also, *e.g., United States* v. *Nixon,* 418 U.S. 683, 696 (1974) (''So long as this regulation remains in force the Executive Branch is bound by it, and indeed the United States as sovereign composed of the three branches is bound to respect and to enforce it.''); *Vitarelli* v. *Seaton,* 359 U.S. 535, 540 (1959); *United States ex rel. Accardi* v. *Shaughnessy,* 347 U.S. 260, 266–67 (1954). Indeed, many courts have enforced non-legislative procedural rules against the agency. See, *e.g., Morton* v. *Ruiz,* 415 U.S. 199, 235 (1974) (enforcing an agency manual even though the manual was not a ''legislative rule'' but ''solely an internal-operations brochure intended to cover policies that do not relate to the public,'' because ''[b]efore the BIA may extinguish the entitlement of these otherwise eligible beneficiaries, it must comply, at a minimum, with its own internal procedures.''); *NRDC* v. *Perry,* 940 F.3d 1072, 1077 (9th Cir. 2019). Thus, the Agency believes that this Final Rule is binding upon the Agency for significant CAA regulations, and that EPA's compliance with these procedural requirements is subject to judicial review in challenges to such rulemakings.

Finally, the EPA received comments that the proposed rule was a procedural rule and comments, to the contrary, that the proposed rule was non-procedural because it altered the rights and interests of parties beyond EPA. The EPA disagrees with commenters asserting that the proposed rule was non-procedural because it altered the rights and interests of parties beyond EPA. The D.C. Circuit has explained that ''the critical feature of a rule that satisfies the so-called procedural exception [to the APA's notice and comment requirements] is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.'' *James A. Hurson Assocs.* v. *Glickman,* 229 F.3d 277, 280 (D.C. Cir. 2000); *National Mining Association* v. *McCarthy,* 758 F.3d 243 (D.C. Cir. 2014) (holding that EPA's interagency plan for enhanced consultation and coordination is a procedural rule because it does not alter the rights or interests of parties); *Batterton* v. *Marshall,* 648 F.2d 708 (D.C. Cir. 1980) (''The critical question is whether the agency action jeopardizes the rights and interests of parties.''). In addition, the Supreme Court explained in *Chrysler Corp.* v. *Brown,* that rules of internal agency management are considered procedural rules as opposed to substantive rules under the APA. 441 U.S. 281, 301–02 (1979). As the Supreme Court explained in *Chrysler Corp.,* ''the central distinction among agency regulations found in the APA is that between 'substantive rules' on the one hand and 'interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice on the other.' '' 441 U.S. at 301. The Supreme Court further clarified that unlike procedural rules, substantive rules have legal force and effect on individual rights and obligations, and noted that whether a rule affects individual rights and obligations is an ''important touchstone'' for distinguishing substantive rules from other types of rules. *Chrysler Corp.,* 441 U.S. 281 at 302.

Because this rule covers requirements that apply to the agency's rulemaking procedure and does not impose any obligations or grant any rights to third parties, it is procedural.

In this Final Rule, the EPA does not interpret or apply other provisions of the CAA. Subsequent substantive CAA rulemakings applying this rule will be subject to judicial review. By contrast, in this action, the EPA finalizes a rule governing internal agency procedures. This rule does not require any outside entity to take any action. Further, this rule would not regulate the conduct or determine the rights of any entity outside the federal government in the manner described above. Several comments noted that the rule would potentially create an enforcement mechanism were the Agency to fail to follow its own internal procedures. The Agency, as discussed above, believes that this Final Rule is binding upon the Agency for significant CAA regulations, and EPA's compliance with these procedural requirements is subject to judicial review in challenges to such rulemakings. However, this does not render a rule non-procedural. As discussed above, courts have generally enforced non-legislative procedural rules against agencies. Commenters assert that such enforcement in turn renders the rule non-procedural. If enforcement of a procedural rule rendered the rule substantive, there could be no history of enforcement of procedural rules; all such rules would simply be substantive. Clearly this cannot be the standard. The rule itself must alter the rights and interests of parties beyond EPA, rather than simply be binding upon the Agency, and this final rule does not regulate any party

outside of the EPA, but, rather, exclusively governs the EPA's internal procedure.

C. Definitions

Several commenters and the SAB provided specific recommendations for changes to some of the definitions in the proposed rule. Examples of terms that commenters or the SAB provided specific definitions for include, but are not limited to, ''Benefit-cost analysis (BCA)'', ''Opportunity cost,'' ''Social benefits,'' ''Compliance cost,'' ''Regulatory Options'', and ''Significant'' regulation. These commenters provided references for their suggested definitions, which included guidance published by OMB, the EPA's *Guidelines,* and published economic journal articles, and they recommended that the EPA finalize the rule with these definitions. Discussed below are the definitions that we are revising or finalizing as proposed based on the comments received. Complete responses to other specific suggestions for additional terms to be defined are provided in Chapter 10 of the Response to Comments document, and in some of the remaining sections in this preamble where relevant.

Baseline. The EPA did not receive specific suggestions in the public comments on the definition of baseline. However, based on feedback from the EPA SAB on the EPA *Guidelines* update, the EPA has decided to adopt a minor revision to the definition to clarify that it provides the counterfactual situation against which a policy should be assessed. The revision does not change the substantive meaning of the term. In the final rule, the definition of baseline is as follows: ''Baseline means the best assessment of the way the world would evolve absent the regulation. It is the primary point of comparison for assessing the effects of the regulatory options under consideration.''

Benefit-cost analysis (BCA). Some commenters recommended that EPA provide a more detailed definition of benefit-cost analysis. For example, one commenter claimed that as written, ''benefit-cost analysis'' lacks clarity, because a key term ''favorable effects of a policy action'' is undefined. The commenter further argued that evaluation of a benefits-cost analysis is incomplete without concise, clear directive to the EPA on what favorable effects may balance opportunity costs.

In their review of the proposed rule, the SAB recommended that the definition for BCA be revised to more closely align with the definition provided in OMB's *Circular A–4.* Specifically, the SAB recommended revising the definition to clearly state that BCA provides decision makers with a clear indication of the most efficient alternative, that is, the alternative that generates the largest net benefits (benefits minus costs) to society (ignoring distributional effects) (OMB, 2003). The SAB also recommended that the definition should indicate that costs should be opportunity costs and benefits represent the willingness-to-pay for a policy outcome valued by United States individuals.

The EPA agrees with the SAB and public comments that it would be helpful to provide a more comprehensive definition of BCA, drawing language more explicitly from OMB's *Circular A–4* and avoiding undefined phrases such as ''favorable effects''. Thus, in this final rule the definition of BCA is revised to eliminate the phrase ''favorable effects.'' The definition is also expanded to clarify that the social benefits of a policy are measured by society's willingness-to-pay for the policy outcome, and the social costs are measured by the opportunity costs of adopting the policy. Finally, the definition explains that where all benefits and costs can be quantified and expressed in monetary units, BCA provides decision makers with a clear indication of the most economically efficient alternative, that is, the alternative that generates the largest net benefits to society (ignoring distributional effects).

The EPA does not agree with the SAB's recommendation to add ''valued by United States individuals'' because limiting the geographic scope of a BCA does not belong in a general definition of BCA. OMB *Circular A–4* allows impacts accruing to non-U.S. populations to be estimated and reported separately: ''Where you choose to evaluate a regulation that is likely to have effects beyond the borders of the United States, these effects should be reported separately'' (OMB 2003). The EPA is including in this final rule a presentational requirement consistent with this guidance. See Section V.F of this Preamble.

Compliance cost. One commenter stated that the definition provided in the proposed rule fails to include all necessary costs of compliance, because costs of professional service and interrelated effects appear to be excluded. While the EPA believes that the definition provided in the proposed rule was broad enough to cover all private costs associated with compliance, the final rule revises the definition to explain that this could include, for instance, costs incurred through planning, design, installation and operation of pollution abatement equipment.

Data. The EPA received limited specific suggestions in the public comments on the definition of data. Some commenters expressed concern that this language could be interpreted to exclude anonymized medical data from the definition of ''data'' and therefore preclude use of studies relying on such medical data in the EPA's BCAs. The EPA notes that the proposed definition for ''data'' is consistent with the EPA's ''Strengthening Transparency in Pivotal Science Underlying Final Significant Regulatory Actions and Influential Scientific Information'' rulemaking.[23] Therefore, the EPA is finalizing this definition as proposed to maintain consistency with related EPA actions.

Expected value. The EPA did not receive specific suggestions in the public comments on the definition of expected value. However, based on feedback from the EPA SAB on the EPA *Guidelines* update, the EPA has decided to expand the definition for clarity. The revision does not change the substantive meaning of the term. In the final rule, the definition of expected value is as follows: ''Expected value means the probabilistically weighted outcome that defines a statistical mean and a measure of the central tendency of a set of data. For a variable with a discrete number of outcomes, the expected value is calculated by multiplying each of the possible outcomes by the likelihood that each outcome will occur and then summing all of those values.''

Model. The EPA did not receive specific suggestions in the public comments on the definition of model. Therefore, the EPA is finalizing the definition as proposed.

Opportunity cost. One commenter recommended that the EPA expand the definition of opportunity cost to explain how other concepts like willingness to pay capture the notion of opportunity cost. Further discussion of opportunity cost and how to measure it is provided in section V.E.5 of this Preamble. The EPA disagrees that an expanded definition of this term is needed in the regulatory text. Therefore, the EPA is finalizing this definition as proposed.

Publicly available. The EPA did not receive specific suggestions in the public comments on the definition of publicly available. Therefore, the EPA is finalizing this definition as proposed.

Regulatory options. One commenter criticized the proposed definition of

[23] *https://www.epa.gov/osa/strengthening-transparency-regulatory-science.*

''regulatory options'' for bracketing the selected proposed or final option with one more stringent alternative and one less stringent alternative. In the commenter's view, this bracketing results in biasing the EPA in favor of ultimately choosing central options rather than a more environmentally protective one that is more consistent with statutory guidance or requirements. In their review of the proposed rule, the SAB recommended that the definitions for regulatory options be revised to make clearer that for BCA, as opposed to cost-effectiveness analysis, the regulatory options should only help to solve a problem, not accomplish a goal or objective. For example, a less stringent option might accomplish less, but at lower cost.

The EPA disagrees with the comment that analyzing one more stringent and one less stringent alternative than the selected option biases the Agency's decision. The analysis of these alternative options provides the public and decision makers information about the consequences of options that are more or less stringent than the selected option. The EPA agrees with the SAB's comment and is adopting the SAB recommended revisions to the definition to improve clarity. Specifically, the EPA is revising parts of the definition of regulatory options to clarify that the options should only help to solve a problem, not accomplish a goal or objective. For example, the definition describes a more stringent option as one that ''contributes to'' the stated objectives of the Clean Art Act and achieves additional benefits (and presumably costs more) beyond those realized by the proposed or finalized option.

Sensitivity Analysis. The EPA did not receive specific suggestions in the public comments on the definition of sensitivity analysis. Therefore, the EPA is finalizing this definition as proposed.

Significant regulation. Several commenters were broadly supportive of the proposed definition of ''significant regulation''. Additionally, several commenters supported the concept that the definition of a ''significant regulation'' should include ''those that would disproportionately affect an industry, group or area'' or ''those that are novel or relevant for other policy reasons,'' with one commenter arguing that such inclusion is important to avoid adverse impacts on small businesses. One commenter stated that the E.O. 12866 language should be inserted into the BCA rather than referencing E.O. 12866, because executive orders can be changed or withdrawn in the future.

Some commenters advocated using the definition of ''significant'' from the Congressional Review Act (CRA). The commenters argued that adopting a definition from U.S. law is preferable to one from an executive order. Furthermore, the commenters also argued that the CRA is not limited to a narrow economic impact analysis that ignores the indirect impacts of a regulation on the broader economy. The commenters further stated that the EPA's economic impact statements for any significant proposal should be consistent with the CRA and give approximate quantitative estimates of the potential economic impacts, the expected timing of these impacts, and the sectors of the economy that will experience the impact.

Several commenters objected to giving the Administrator the discretion to decide what constitutes a significant regulation, because with no specific decision criteria specified in the rule, the decisions would be arbitrary and contrary to the stated goals of the BCA rule for consistency and transparency. And some commenters expressed opposition to expanding rules requiring a BCA because it would deplete the EPA's analytic, financial, and expertise resources without providing any benefit to public health or the environment.

As discussed in more detail below, after reviewing the comments on applicability, in this final rule, EPA maintains the same definition of significant regulation as in the proposal and concludes it represents an appropriate scope for the rule. Specifically, EPA requires that all future significant proposed and final regulations promulgated under the CAA be accompanied by a BCA using the definition that a significant regulation is a proposed or final regulation that is determined to be a ''significant regulatory action'' pursuant to E.O. 12866 Section 3(f)[24] or is otherwise designated as significant by the Administrator. Regulations meeting either of these factors are generally those that the EPA anticipates would have the largest annual impact on the economy (*i.e.,* greater than $100 million) or are important to analyze for other policy reasons. For example, a rule projected to have less than a $100 million annual effect on the economy could disproportionately affect a single industry, population subgroup, or geographic area. Such rules, or ones that are notably novel or significant for other policy reasons, will benefit from rigorous analysis to inform the public and decision makers about the magnitude and disposition of both their benefits and costs on affected entities.

Social benefits, or benefits. One commenter argued that the definition of ''social benefit or benefits'' is overly broad and vague. Another recommended an expanded definition that included discussion of how to measure benefits. Another said the EPA's definition is arbitrary and capricious and potentially unlawful because the proposed definition of ''social costs'' included the ''sum'' of all costs, but the proposed definition of social benefits, did not. The commenter contended that this apparent direction to include all costs but not necessarily all benefits would be inconsistent with the general principles of BCA and would bias any such analyses. The EPA did not intend to create a disparity between the calculations of costs and benefits, so the Agency is adjusting the definition of social benefits to be consistent with the phrasing of the definition of social costs to avoid any confusion. In this final rule, social benefits, or benefits, means ''the sum of all positive changes in societal well-being experienced as a result of the regulation or policy action.'' Additional discussion of how benefits can be measured is provided in section V.E.5 of this Preamble.

Social costs, or costs. One commenter recommended an expanded definition of social cost to elaborate on how costs are measured. In this final rule, the EPA is adding a second sentence to the definition of social costs to further clarify what is included in opportunity costs. Additional discussion of how these costs can be measured is provided in section V.E.5 of this Preamble.

D. Preparation and Consideration of BCA in Rulemaking

In the proposed rule, the EPA proposed to require that all future significant proposed and final regulations promulgated under the CAA be accompanied by a BCA. Commenters supportive of the proposal were generally supportive of conducting BCA for all significant regulatory actions, though some commenters argued for a less expansive approach and others argued for broader application than the proposal. For example, as discussed above, some commenters argued that the

[24] Separate from and independent of the requirements in this rulemaking, E.O. 12866 establishes broadly applicable conditions for regulatory analysis. More specifically, section 6 of E.O. 12866 establishes the analytic requirements for those actions OIRA determines to be a ''significant regulatory action'' and ''significant regulatory actions within the scope of section 3(f)(1).'' Sec. 6(a)(3)(B)–(C).

EPA should use the definition of significant from the CRA. Other commenters recommended expanding the scope, for example, to (1) apply not only to BCA, but also to any related risk assessment to estimate both baseline risk and the risk-reduction benefits estimated in the BCA, and (2) clarify that its information quality standards apply to BCA, risk assessments, and related risk analyses (*e.g.,* IRIS assessments). Commenters opposed to the proposal found the scope too expansive and questioned the resource burden of the requirements.

After considering these comments, the EPA is finalizing the requirement that all future significant proposed and final regulations promulgated under the CAA be accompanied by a BCA. The EPA believes that in keeping with OMB's Circular A–4 and Executive Order 12866 that this requirement would create consistency with well-understood and established processes and determinations for what constitutes a ''significant'' rulemaking. Therefore, in this final rule, a significant regulation will include any proposed or final regulation that is determined to be a ''significant regulatory action'' pursuant to Section 3(f) E.O. 12866 or is otherwise designated as significant by the Administrator.

At proposal, in addition to proposing the preparation of a BCA for all significant regulation, the EPA also solicited comment on how or whether the results of the BCA should inform significant CAA regulatory decisions. The EPA requested comment on how the Agency ''could take into consideration the results of a BCA in future rulemakings under specific provisions of the CAA.'' 85 FR 35624. The EPA received numerous comments including recommendations that the Agency formulate a mandatory test that the benefits justify the costs of future significant rulemakings subject to this final rule, recommendations that the Agency not address how BCAs would be taken into consideration in future rules, and recommendations that no final rule be promulgated. Several commenters noted the importance of BCA and how it can inform decision makers. Commenters emphasized that consideration of benefits and costs is part of long held requirements imposed by executive order. As one commenter summarized, ''the clear direction of every president over the last four decades [is] that, to the extent permitted by law, executive agencies 'shall . . . propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.' '' In addition, the proposal highlighted the historical use of BCA by courts to inform their view of the appropriateness of agency actions and that ''[c]onsideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages and the disadvantages of agency decisions.'' *Michigan* v. *EPA,* 135 U.S. 2699, 2707 (2015), *see* 85 FR 35615–617.

Based on the comments received, executive orders, and judicial decisions, the EPA has determined that, when permitted for consideration under the specific provision of the CAA under which a future regulation is promulgated, the Agency should consider in the decision-making process the BCA developed pursuant to this Final Rule, which would be part of the record of such a future rulemaking. *See* 42 U.S.C. 7607(d)(9); 5 U.S.C. 706(2); *see also Motor Vehicles Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983) (''Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.''). The benefits and costs of a potential regulation, when permitted to be considered under the specific provision of the CAA under which a future regulation is promulgated, are of clear importance to decision-making and can provide justification for whether and how the Agency decides to regulate. Consideration of the results of BCA in regulatory decision-making is also consistent with the requirements of E.O. 12866. However, the EPA declines to formulate a specific test or mandate of how to consider the BCA or what weight it should be given in such a future rulemaking. The precise details of what test would be appropriate could differ from one CAA provision to another, and the EPA has not proposed or requested comment on how such tests would be formulated under those specific provisions. Some commenters also expressed concern that the rule as proposed would limit or prohibit the Agency from considering other metrics or analyses, either generated by the Agency or submitted by commenters into the record of a future rulemaking proceeding. There is nothing in this final rule that would create such an outcome, as consideration of one metric does not bar consideration of another; commenters will retain the ability to provide the Agency with information, and the Agency will be required to consider such information and respond to comment as is dictated by the process governing the future CAA rulemaking. To provide the public with as much information and transparency as possible, the EPA is finalizing a requirement to identify when the CAA provision or provisions under which the future rule is promulgated permit consideration of the BCA, and if so, the Agency is required to provide a description in the preamble of how the Agency considered the results of the BCA. If the provision or provisions under which the rule is promulgated prohibit the consideration of the BCA, the final rule requires the Agency to identify the specific provision that bars such consideration.

E. Best Practices for the Development of BCA

The EPA received a wide range of comments on the proposed requirements to codify best practices for the development of the BCA into a procedural regulation. In its review of the proposed rule, the SAB sought to limit its review to requirements in the proposed rule that would not be addressed by the SAB's review of the forthcoming update to the EPA's *Guidelines.* Therefore, the SAB did not advise on the details of each BCA best practice that the EPA proposed to codify. However, the SAB did emphasize that the EPA should consider carefully which aspects of BCA should be included in the final rule versus which aspects should be addressed in guidance, given the case-by-case nature of BCA. The EPA appreciates all the comments received and agrees with the SAB that it is important to think carefully about which best practices should be made enforceable and which best practices (or details thereof) should be addressed in guidance. The best practices codified in this final rule include the high-level best practices in conducting regulatory BCA. The EPA's *Guidelines* will continue to provide detailed guidance on how to implement these best practices. The EPA does not expect the forthcoming update of the EPA's *Guidelines* to include any changes to these high-level elements. We respond to some of the major comments in the discussions in the subsections below and to the rest in Chapter 7 of the Response to Comments Document.

After reviewing the comments, the EPA has included in this final rule the requirements outlined in the following subsections, which are the high-level best practices outlined in existing peer-

reviewed OMB and EPA guidance documents developed in response to longstanding presidential orders discussed above, OMB's *Circular A–4* (2003) and its associated guidance (2010, 2011a, 2011b),[25] EPA's *Guidelines* (2010). These guidance documents are grounded in the economics literature pertaining to the conduct of BCA. Benefit-cost analysis as a discipline is a branch of applied microeconomic welfare economics and is summarized in numerous textbooks such as Boardman et al. (2018), Farrow (2018), Brent (2006), Mishan and Quah (2007), and Hanley and Spash (1996).[26] This discipline is applied routinely to environmental economics issues and the theory of BCA and its application can be found in standard environmental economic textbooks such as Phaneuf and Requate (2016) and Perman et al. (2012).[27] Specific lists of best practices and guidance for practitioners can also be found in articles by Robinson and Hammit (2016), Sunstein (2014), Farrow (2013), Farrow and Viscusi (2011), Krutilla (2005), and notably in an article on the principles and standards by Nobel laureate Kenneth Arrow and a number of prominent economists (Arrow et al., 1996).[28]

Since best practices for the conduct of BCA inherently require that the inputs to the analysis reflect the best available information,[29] the EPA is also finalizing the requirement that the EPA follow certain best practices regarding the incorporation of information as an input to BCA for significant CAA regulations. In particular, risk assessments often provide key inputs to the development of the EPA's health benefit estimates in a BCA, and several commenters recommended that additional consistency and transparency be applied in the assessment of risks leading to the estimation of benefits. Through this rulemaking, the EPA requires a consistent and transparent use of risk assessments in BCA of CAA regulations. These requirements include elements that are responsive to recommendations from the National Academies of Science, Engineering and Medicine (hereafter, ''National Academies'') and the EPA's SAB to improve the utility of risk assessment for use in BCAs for CAA regulations, as well as recommendations offered by the SAB in their review of the proposed rule. As an example, the National Academies has previously provided advice to the Agency regarding best practices for selecting concentration-response parameters, when it is appropriate to pool (or, combine) risk estimates and how to characterize uncertainty in those estimates. This rule is also consistent with the 2007 OMB and Office of Science and Technology Policy's Updated Principles for Risk Analysis,[30] which also builds off the National Academies and SAB recommendations as well as the EPA's Risk Characterization Handbook.[31]

1. Key elements of a BCA. The EPA did not receive comments on the proposed requirement that a BCA should include three key elements. The specific comments received on each element are provided in the corresponding subsections below. Therefore, EPA is finalizing the key elements of a BCA as proposed. The key elements of a rigorous regulatory BCA include: (1) A statement of need; (2) an examination of regulatory options; and (3) to the extent feasible, an assessment of all benefits and costs of these regulatory options relative to the baseline (no action) scenario.

2. Statement of Need. Some commenters supported the EPA requiring a statement of need in the BCA stating that the requirement is consistent with agency guidance detailed in OMB's Circular A–4 and Executive Order 12866. These commenters argued that a concise and coherent statement of need helps to set the foundation for developing the subsequent analysis of benefits and costs, particularly as it relates to assessing environmental or public health improvements targeted by the relevant statutory provision from which the rule derives its authority.

Some commenters opposed the EPA requiring a statement of need in the BCA. These commenters argued a statement of need would be in conflict with many, if not most, of the EPA's rulemaking responsibilities under the CAA. Commenters further asserted that a citation to the provision of the CAA that requires the rulemaking should be sufficient for any statement of need. Furthermore, one commenter also argued that the EPA cannot apply the ''statement of need'' requirement to rulemakings subject to CAA section 307(d) requirements, because CAA section 307(d)(2) already includes a requirement that the notice of rulemaking shall be accompanied by ''a statement of its basis and purpose.''

None of the comments received have led the EPA to materially change its views from the proposal regarding the requirement for a statement of need. The EPA disagrees with the comment that a statement of need would conflict with the EPA's rulemaking responsibilities under the CAA. There is nothing in this final rule that would create such an outcome, since an articulation of the statement of need does not bar the Agency from complying with any requirements of the CAA, including those of CAA section 307(d)(2). The EPA is codifying into regulation a procedure that is already prescribed as a best practice in OMB's *Circular A–4* (OMB, 1993) and EPA's *Guidelines* (EPA, 2010), which are the existing peer reviewed guidance documents implementing E.O. 12866. Therefore, the EPA is finalizing the requirement that each regulatory BCA should include a statement of need that provides (1) a clear description of the problem being addressed, (2) the reasons for and significance of any failure of private markets or public institutions causing this problem, and (3) the compelling need for federal government intervention in the market to correct the problem. This statement sets the stage for the subsequent analysis of benefits and costs and allows one to judge whether the problem is being adequately addressed by the

[25] Office of Management and Budget, U.S., 2003. Circular A-4: Regulatory Analysis. Office of Management and Budget, U.S., 2010. Agency Checklist: Regulatory Impact Analysis. Office of Management and Budget, U.S., 2011a. Circular A–4, ''Regulatory Analysis'' Frequently Asked Questions (FAQs). Office of Management and Budget, U.S., 2011b. Circular A–4, ''Regulatory Impact Analysis: A Primer''.

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[30] *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2007/m07-24.pdf.*

[31] *https://www.epa.gov/risk/risk-characterization-handbook* (EPA 100–B–00–002, December 2000).

policy. Additional discussion of the regulatory statement of need can be found in OMB's Circular A–4 (1993, B. Introduction, The Need for Federal Regulatory Action) and the EPA's *Guidelines* (2010, Chapter 3).

3. Regulatory Options. Commenters supporting the requirement to analyze the benefits and costs of at least three regulatory options argued that the proposed requirement provides decision makers and the public with important perspective on not only the various options' relative impact on net social benefits, but also the sensitivity of stringency options on other individual factors that comprise the overall forecasts. One commenter further suggested that the Agency also consider including a fourth option, the implementation of voluntary programs if appropriate to the circumstances.

Some commenters opposed the requirement to analyze the benefits and costs of at least three regulatory options. These comments provided various reasons including, but not limited to: The EPA incorrectly assumes that a continuum of options is possible; requiring three regulatory options may lead to patently inappropriate or otherwise unacceptable options; requiring three regulatory options may lead the agency to put forward intentionally poor choices; and requiring three regulatory options may lead to unintended consequences such as leading the agency to evaluate options that are infeasible and impractical.

None of the comments received have led the EPA to materially change its views from the proposal. The EPA is codifying into regulation a procedure that is already prescribed as a best practice in OMB's *Circular A–4* (OMB, 1993) and EPA's *Guidelines* (EPA, 2010), which are the existing peer reviewed guidance documents implementing E.O. 12866. These guidance documents provide additional details for how to select appropriate regulatory options for evaluation. OMB's Circular A–4 also allows for the possibility of evaluating an option whose selection would be prohibited under the specific statutory provision under which the rule is being promulgated because the identification of these statutory constraints and an estimate of their opportunity costs may provide useful information to Congress under the Regulatory Right-to-Know Act. The requirement to analyze at least three regulatory options also provides for cases where a continuum of options is not possible, which is further clarified below. Finally, there is nothing in this final rule that would prevent an additional evaluation of a voluntary program to address the problem articulated in the statement of need if appropriate to the circumstances. Therefore, the EPA is finalizing the requirement that the BCA analyze the benefits and costs of regulatory options. The final rule requires the BCA to analyze at least three options that contribute to the stated objectives of the CAA (unless the BCA explains the rationale for analyzing fewer than three options, as further described below) and to explain why they were selected. Where there is a continuum of options (such as options that vary in stringency), the three options are required to include at a minimum: The proposed or finalized option; a more stringent option that achieves additional benefits (and presumably costs more) beyond those realized by the proposed or finalized option; and a less stringent option that costs less (and presumably generates fewer benefits) than the proposed or finalized option. When a continuum of options is not applicable, an analysis of three regulatory options provides an opportunity to analyze a variety of parameters including different compliance dates, enforcement methods, standards by size or location of facilities, and regulatory designs (*e.g.,* performance vs. technology standards). If fewer than three options are analyzed relative to the baseline, or if there is a continuum of options and the options analyzed do not include at least one more stringent (or otherwise more costly) and one less stringent (or otherwise less costly) option than the proposed or finalized option, then the final rule requires the BCA to explain why it is not appropriate to consider more alternatives. For further discussion, see OMB's Circular A–4 (specifically, see section E. Identifying and Measuring Benefits and Costs, General Issues, 3. Evaluation of Alternatives).

4. Baseline. Many commenters supported the proposed requirement regarding the development of a baseline as consistent with best practices for BCA. Several commenters noted that defining the baseline scenario is one of the most important elements of a regulatory impact analysis, and multiple commenters supported the proposed requirements to develop a baseline that appropriately considers relevant factors based on transparent and reasonable assumptions. Additionally, some commenters supported the explicit use of more than one baseline: ''one baseline based solely on current standards and another based on the agency's reasoned assumptions regarding the effect of all related pending regulations''; and stated that this is consistent with OMB's Circular A–4.

Several commenters stated that the proposed requirements for developing a baseline will prevent ''double-counting.'' The commenters added that the issue of double counting of benefits has been a particular concern with past EPA BCAs under the CAA. Commenters referenced a report that found that the simultaneous advancement of multiple CAA-related rulemakings resulted in changes between proposed and final BCAs' baseline assumptions about implementation of other regulations that created inconsistencies in BCA estimates between the proposed and final stages and revealed examples of double-counting. One commenter suggested that where ancillary benefits exist and have not been counted before by the EPA, the EPA must determine the most cost-effective regulatory means of achieving them. The commenter argued that this should ensure that the EPA properly and efficiently utilizes its regulatory authorities to achieve optimal results to enhance societal well-being.

Some commenters opposed the requirements for developing a baseline in a BCA in the proposed rule as they argued OMB and EPA policies already establish the process for establishing a baseline, for assuring that benefits will not be double-counted, and for being transparent in those explanations. Creating a new rule for the purpose of preventing an oversight in a pre-existing mechanism for assessing BCA is unnecessarily ''reinventing the wheel.'' The commenters further argued the proposed requirements for developing a baseline bias the analyses against regulations that otherwise meet statutory requirements and provide important environmental benefits, in contravention of the CAA's public-health protective mandate.

Other commenters opposing the proposed requirements contended that the EPA provides no specific cases to support its assertion that there is a risk of ''double-counting.'' Some of the commenters contended that recent research indicates some claimed mechanisms of ''double-counting'' are either inaccurate or can be addressed by the EPA following its own guidelines on BCA baselines assuming full compliance with existing rules. The commenters added that the proposed rule provides no evidence that there is a gap that needs to be filled in this regard beyond its existing guidance, and, in fact, adds no additional insight into these issues.

None of the comments received have led the EPA to materially change its

views from the proposal. The EPA is codifying into regulation a procedure that is already prescribed as a best practice in OMB's *Circular A–4* (OMB 1993) and EPA's *Guidelines* (EPA 2010), which are the existing peer reviewed guidance documents implementing E.O. 12866. Nothing in the public comments have suggested specific additional factors that should be codified into the final rule as factors to be considered when developing the baseline in a BCA. Therefore, the EPA is finalizing the requirement to develop a suitable baseline as proposed, as described below.

The baseline in a BCA serves as a basis of comparison with the regulatory options considered. It is the best assessment of the way the world would look absent the regulatory action. The choice of a baseline requires consideration of a wide range of potential factors, including exogenous changes in the economy that may affect relevant benefits and costs (*e.g.,* changes over time in demographics, economic activity, consumer preferences, and technology); impacts of regulations that have been promulgated by the agency or other government entities; and the degree of compliance by regulated entities with other regulations. Accounting for other existing regulations in the baseline is especially important in order to avoid double counting of the incremental benefits and costs from other existing regulatory actions affecting the same environmental condition (*e.g.,* ambient air quality). When the EPA determines that it is appropriate to consider more than one baseline (*e.g.,* one that accounts for another EPA regulation being developed at the same time that would affect the same environmental condition), the final rule requires the BCA to provide a reasoned explanation for the baselines used and to identify the key uncertainties in the forecast(s). These requirements for developing a baseline are consistent with best practices as outlined in OMB's *Circular A–4* (1993) and EPA's *Guidelines* (2010).

5. Measuring Benefits and Costs. Some commenters contended that the proposal identifies the willingness to pay (WTP) metric as the ''correct measure'' of changes from the baseline, but the proposal fails to acknowledge the existence of other metrics and does not justify their exclusion in favor of WTP. One commenter further argued the proposal also fails to acknowledge or consider the greater difficulty in estimating willingness-to-pay for non-market goods, such as air quality and associated health risk. Another commenter further added that WTP studies are helpful, but not the only source of information for monetizing benefit and WTP studies are particularly helpful in estimating the value of mortality risk reduction, which typically comprise the bulk of monetized benefits in CAA rules.

Several commenters opposed including the WTP concept in the proposed rule. The commenters expressed concern that the proposed rule will continue practices to propagate the understatement of CAA benefits, to the detriment of all, but particularly to low-income and minority communities. Several commenters stated that WTP is strongly affected by factors such as ability to pay and by the awareness of the respondent of the harms being inflicted or avoided. A commenter then asserted that a WTP analysis will lead to higher measured monetary benefits for wealthier communities than for poorer communities for the same level of health and wellbeing benefit. At least two commenters focused on particular methods used for estimating WTP. These commenters advised EPA against using survey approaches to estimate WTP because they contend that such studies often overstate WTP that does not align with reality.

None of the comments received have led the EPA to materially change its views from the proposal on the appropriate measure of benefits and costs in a BCA. The EPA is codifying into regulation a procedure that is already prescribed as a best practice in OMB's *Circular A–4* (OMB, 1993) and EPA's *Guidelines* (EPA, 2010), which are the existing peer reviewed guidance documents implementing E.O. 12866. As discussed in Section V.B of this Preamble, the EPA agrees with the SAB's recommendation, per their review of the proposed rule, to provide more clarity in the definition of Benefit-Cost analysis and the measurement of benefits and costs. Therefore, in this final rule EPA has provided a more fulsome definition of BCA to clarify that it is consistent with OMB Circular A–4. The EPA disagrees with commenters who stated that the proposed rule did not acknowledge the existence of metrics other than willingness-to-pay, as discussed below. In addition, the EPA disagrees with commenters who advised to include more discussion in the rule about particular methods for estimating WTP. The EPA's *Guidelines* and OMB's *Circular A–4* include discussion of particular methods for estimating WTP, which can generally be broadly categorized as either revealed preference or stated preference methods. As described in these guidance documents and standard textbooks on BCA, some methods will be more suitable than others in a given scenario for a variety of reasons, and some will be better able to capture certain types of benefits than others. Since research on all of these methods is ongoing, the limitations and qualifications of each method is best described in guidance and the EPA has decided not to include any requirements related to particular valuation methods in this final rule.

A BCA evaluates the social benefits and social costs of a policy action. The social benefits of a policy are measured by society's willingness-to-pay for the policy outcome. The social costs are measured by the opportunity costs of adopting the policy. Opportunity cost is the value of the next best alternative to a particular activity or resource.[32] A BCA addresses the question of whether the benefits from the policy action are sufficient for those who gain to theoretically compensate those burdened such that everyone would be at least as well off as before the policy. In other words, many regulations can be thought of as a requirement to divert resources from activities with a higher net return in private markets alone to those with a higher net return when all impacts are counted, thus the calculation of net benefits (benefits minus costs) helps ascertain the economic efficiency of a regulation. Where all benefits and costs can be quantified and expressed in monetary units, BCA provides decision makers with a clear indication of the most economically efficient alternative, that is, the alternative that generates the largest net benefits to society (ignoring distributional effects).

In keeping with best practices, the appropriate measures of benefits and costs to use in a regulatory BCA are social benefits and social costs. When assessing a regulation, the social benefits are the society-wide positive changes in well-being, and social costs are the society-wide opportunity costs, or reductions in well-being. WTP is the correct measure of these changes in BCA.

Willingness to pay means the largest amount of money that an individual or

[32] Opportunity cost need not be assessed in monetary terms. It can be assessed in terms of anything that is of value to the person or persons doing the assessing. For example, a grove of trees used to produce paper may have a next-best-alternative use as habitat for spotted owls. Assessing opportunity costs is fundamental to assessing the true cost of any course of action. In the case where there is no explicit accounting or monetary cost (price) attached to a course of action, ignoring opportunity costs could produce the illusion that the action's benefits cost nothing at all. The unseen opportunity costs then become the implicit hidden costs of that course of action.

group would pay to receive the benefits (or avoid the damages) resulting from a policy change, without being made worse off. The principle of WTP captures the notion of opportunity cost by measuring what individuals are willing to forgo to enjoy a particular benefit. In general, economists tend to view WTP as the most appropriate measure of opportunity cost, but an individual's ''willingness-to-accept'' (WTA) compensation for not receiving the improvement can also provide a valid measure of opportunity cost. WTP is generally considered to be more readily measurable. Market prices provide rich data for estimating benefits and costs based on WTP if the goods and services affected by the regulation are traded in well-functioning competitive markets. See Hanley and Spash (1993), Freeman (2003), Just et al. (2005), and Appendix A of the EPA's *Guidelines* (2010).

WTP provides a full accounting of an individual's preference for an outcome by identifying what the individual would give up to attain that outcome. WTP is measured in monetary terms to allow a comparison of benefits to costs in the net benefit calculation. If the BCA departs from these best practices (*e.g.,* where WTP is hard to measure), this final rule requires a robust explanation for doing so. For further discussion, see OMB's *Circular A–4* (specifically, see section E. Identifying and Measuring Benefits and Costs, General Issues, 2. Developing a Baseline and *Guidelines* (2010), Chapter 5. Baseline).

While based on the same underlying conceptual framework, social benefits and social costs are often evaluated separately due to practical considerations. The social benefits of reduced pollution are often attributable to changes in outcomes not exchanged in markets, such as improvements in public health or ecosystems. In contrast, the social costs generally are measured through changes in outcomes that are exchanged in markets. As a result, different techniques are used to estimate social benefits and social costs however, in both cases the goal is to estimate measures of WTP to provide consistency.

6. Methods for Estimating Benefits and Costs. The EPA received a range of comments on the proposed requirements regarding the methods for estimating benefits and costs. Comments were divided on the idea of codifying best practices, with many commenters supporting codification in a procedural regulation, but others noting possible inconsistency when practices are updated in the future.

Many comments pertained to whether more specific or additional best practices should be codified as requirements in the final rule. For example, when estimating costs, some recommended that the final rule be expanded to include procedural requirements for determining whether an engineering base cost estimation, partial-equilibrium model, general equilibrium model, or a combination of these models should be used. One commenter argued that when a regulation will affect a sector that supplies a wide swath of the economy, then the final rule should specify that the presumptive cost evaluation method be a general equilibrium model, and if a general equilibrium model is not used, then the BCA should be accompanied by a detailed explanation of why small price effects in the affected sector's outputs would not be expected to have economy-wide effects. Others pointed out that systems are so large and complex that evaluative tools are not adequate for these types of analyses to be accurate and useful for decision-making. Another of these commenters said that although the EPA is correct to highlight the potential value added to be gained by using general equilibrium models, there still are a number of reasons why general equilibrium models may not yet be ready to be used as a principal analytic framework for undertaking cost-benefit analysis of environmental regulations. The commenter argued that general equilibrium models provide insights rather than answers about the economic effects of policies; for example, general equilibrium models are calibrated using parameter estimates to ''fit'' predetermined values providing a certain degree of ''realism'' but only up to a point.

Finally, some commenters argued that the proposed rule provided an unbalanced treatment of benefits and costs by setting more stringent standards for benefit estimation than cost estimation, and therefore, aside from being unnecessary and unjustified, they stated the proposed requirements were also biased and arbitrary. These commenters' recommended solution to the proposed rule's problem of treating costs and benefits differently is simply to withdraw the proposed rule and revert to relying on existing guidance, like OMB's Circular A–4 and the EPA's *Guidelines,* which already offer a more balanced treatment to both costs and benefits. Other commenters stated the proposed rule arbitrarily fails to address the likelihood that compliance costs will be overestimated and benefits will be underestimated.

None of the public comments received have led the EPA to materially change its views from the proposal. The EPA disagrees with the comments that more specific procedures should be codified into regulation pertaining to the use of particular estimation methods or models. The EPA also disagrees with commenters stating that the rule imposes uneven requirements. The EPA is codifying into regulation procedures that are consistent with best practices for estimating both benefits and costs as discussed at length in OMB's *Circular A–4* (OMB 1993) and the EPA's *Guidelines* (EPA 2010), which are the existing peer reviewed guidance documents implementing E.O. 12866. In this final rule, the EPA is codifying these best practices as proposed, as described below.

Although the most appropriate methods for estimating social costs and social benefits can often be regulation-specific, there are best practices for selecting these methods. With this final rule, the EPA requires that all BCAs will rely on such best practices and will provide reasoned explanations for methods selected. These best practices include the use of a framework that is appropriate for the characteristics of the regulation being evaluated. As discussed in OMB Circular A–4, a good regulatory analysis cannot be developed according to a formula. Conducting high-quality analysis requires competent professional judgment. Different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions. For example, the extent to which compliance cost is a sufficient measure of social costs will depend on whether a regulation is expected to result in changes in prices and quantities within and across markets. Other considerations when selecting an estimation method include the ability of an estimation approach to capture certain types of costs, to adequately reflect the geographic and sectoral detail and scope of the rule, and to reflect how costs may change over time, among other considerations.

During the estimation process, the final rule requires analysts to consider how social cost and benefit endpoints may be affected by behaviors in the baseline and potential behavioral changes from the policy. For example, three broad frameworks for estimating social cost—compliance cost, partial equilibrium, and general equilibrium—

offer different scopes in terms of the degree to which behavioral response and other market imperfections are included. In general, analysts can improve the accuracy of cost estimates by reducing known biases due to the omission of potentially important behavioral responses or missing opportunity costs. However, adopting more complex approaches can reduce the precision of estimates due to data and modeling limitations. A compliance cost approach typically identifies the private expenditures associated with compliance in the regulated sector(s). Compliance cost estimates typically exclude behavioral responses outside of the choice of compliance activity and may, therefore, not capture some opportunity costs associated with regulations. However, with adequate data, this approach can generate highly detailed and relatively precise information on compliance options and costs, reflecting the heterogeneity of regulated entities. This can provide a reasonable estimate of the social cost of a regulation when changes in the regulated sector's outputs and input mix are expected to be minimal and no large market effects are anticipated. A partial equilibrium analysis captures supply and demand responses in the regulated sector due to compliance activities and may, therefore, provide a more complete estimate of compliance costs in addition to any lost profits and consumer welfare due to reductions in output. In other words, behavioral responses can have important impacts on both the size and distribution of benefits and costs, and therefore can provide a fuller picture of the social impact of a particular regulation. Partial equilibrium analyses may be extended to consider a small number of related sectors in addition to those directly regulated (*e.g.,* upstream markets that supply intermediate goods to the regulated sector, or markets for substitute or complementary products). A partial equilibrium approach is preferred for estimating social cost when the regulation will result in appreciable behavioral change, but the effects will be confined primarily to a single market or a small number of markets. When broader economy-wide impacts are expected as a result of the regulation, a partial equilibrium approach will miss these effects. In this case, a general equilibrium approach may be more appropriate to more adequately estimate social cost.

A general equilibrium approach, which captures linkages between markets across the entire economy, is most likely to add value when both relevant relationships among sectors and pre-existing market distortions are expected to be significant. Market distortions are factors such as pre-existing taxes, externalities, regulations, or imperfectly competitive markets that move consumers or firms away from what would occur in the absence of such distortions. For example, when an environmental regulation affects the real wage such that individuals opt to work fewer hours, it can exacerbate pre-existing inefficiencies in the labor market due to taxes, regulatory barriers, or other market imperfections. This represents a welfare cost not captured by compliance cost estimates. The impacts of a regulation also may interact with pre-existing distortions in other markets, which may cause additional impacts on welfare either positively or negatively. In cases such as these, a general equilibrium approach may be capable of identifying how the costs of complying with a regulation flow through the economy, such as through changes in substitution among factors of production, trade patterns, and demand for goods and services. These effects are partially or wholly missed by compliance cost and partial equilibrium approaches. For further discussion, see EPA's *Guidelines* (2010), Chapter 8, Analyzing Costs, 8.1. The Economics of Social Cost.

The estimated social benefits reported in a BCA should link regulatory requirements to the value that individuals place on the beneficial outcomes,[33] or benefit endpoints, that can be meaningfully expected as a result of those requirements. Benefits assessment is, therefore, typically a multi-step process. The starting point is identifying the changes in environmental contaminants or stressors that are likely to result from policy options relative to the baseline. These changes are often characterized through air quality modeling. The next step is to identify the benefit endpoints that may be affected by changes in environmental quality, such as human health improvements, ecological improvements, aesthetic improvements, and reduced materials damages. The EPA recognizes that the strength of scientific evidence for different health or environmental endpoints varies, and that strength of scientific evidence should be strongest when the benefits are estimated. As further discussed in OMB's M 19–15, this concept is referred to as ''fitness for purpose,'' whereby information anticipated to have a higher impact must be held to higher standards of quality.[34]

Once benefit endpoints are identified, analysts need to decide whether and how to quantify changes in each endpoint. From among the endpoints identified above, the EPA will quantify effects for endpoints which scientific evidence is robust enough to support such quantification. If the Agency determines that some benefits should be discussed only qualitatively, for example, due to limited scientific evidence or limited resources for developing concentration response functions, the final rule requires the Agency to provide a reasoned explanation for that decision. Additional requirements for choosing and quantifying health endpoints are described further below.

Quantification is then followed by valuation of these endpoints when data and methods allow. There are well-defined economic principles and well-established economic methods for valuation as detailed in OMB and Agency guidance, including OMB's *Circular A–4* and the EPA's *Guidelines.* It will not always be possible to express in monetary units all of the important benefits and costs. When it is not, the most efficient alternative will not necessarily be the one with the largest quantified and monetized net-benefit estimate. In such cases, the EPA will exercise its subject matter expertise in determining how important the non-quantified benefits or costs may be in the context of the overall analysis. Even when a benefit or cost cannot be expressed in monetary units, the EPA will try to measure it in terms of its physical units. If it is not possible to measure the physical units, the EPA will describe material benefits or costs qualitatively.

Finally, the valued endpoints should be aggregated to the extent possible and supported by scientific and economic practice to provide the basis for characterizing the benefits of each policy option.

[33] As a practical matter, the value of any adverse public health or welfare outcomes (sometimes referred to as ''disbenefits'') resulting from the regulatory requirements are usually also included on the benefits side of the ledger in regulatory BCAs, although it is theoretically appropriate to include them on the cost side. Such adverse outcomes could include adverse economic, health, safety, or environmental consequences that occur due to a rule (*e.g.,* adverse safety impacts from vehicle emission standards) and are not already accounted for in the direct cost of the rule.

[34] OMB's M–19–15 refers back to OMB's 2002 *Guidelines,* which characterize a subset of agency information as ''*influential scientific, financial, or statistical information*'' *that is held to higher quality standards.* This is scientific, financial, or statistical information that ''the agency can reasonably determine . . . will have or does have a clear and substantial impact on important public policies or important private sector decisions.''

In some instances, it may be possible to value bundles of attributes or endpoints using reduced-form techniques, such as the hedonic property method. Care and professional judgment are necessary in determining the appropriateness of bundling of several endpoints versus modeling separate endpoints. Even if bundling is thought to be appropriate, it can be useful to think through the multi-step process above conceptually to: (a) Assess whether there are benefit endpoints not reflected in the reduced form valuation estimate that should be included through additional analysis, or (b) compare the magnitudes of multi-step and reduced-form, revealed-preference benefits estimates so that each can provide a check on the reliability of the other.

In summary, this final rule requires that, to the extent supported by the scientific criteria, as discussed above, as well as practicable in a given rulemaking, (1) BCAs will quantify all benefits; (2) BCAs will monetize all the benefits by following well-defined economic principles using well-established economic methods, appropriate data and/or studies; and (3) BCAs will qualitatively characterize benefits that cannot be quantified or monetized. In addition, the final rule requires the Agency to explain any departure from the best practices for the BCA described in Circular A–4; this includes discussing the likely effect of the departures on the size of the benefits estimate. More discussion of these best practices and estimation methods is provided in OMB's *Circular A–4* and the EPA's *Guidelines,* and the literature cited therein.

7. Selecting and Quantifying Health Endpoints in a BCA. The EPA received numerous comments on the proposed requirements for selecting and quantifying health endpoints in a BCA. Many public commenters were critical of the lack of definitions for key terms in this section, especially ''causal'' and ''likely causal'' though some of these commenters supported the proposed requirements while providing more specific definitions that could improve the terms. Other commenters were generally critical of the proposed requirements that any linkage between regulatory requirements and benefits be based on ''a clear causal or likely causal relationship'' and argued such requirements will restrict the assessment of the health benefits of proposed CAA regulations. With respect to determining what concentration-response functions to use to quantify changes in the selected endpoints, some commenters argued that the proposed criteria for selecting studies from the literature are too restrictive. Others recommended that the EPA consider different criteria entirely or require a more systematic review approach for evaluating the scientific literature to quantify health impacts. For example, one commenter noted that while the list of proposed criteria referred to study features that should be evaluated under a systematic review framework, it was not exhaustive or complete and does not provide a systematic approach for the integration of this evidence to prioritize studies that provide the accurate characterization of health impacts. Some commenters stated that the rule would contradict advice the EPA has received from the National Academies and SAB and/or questioned why, in their view, the EPA is re-inventing the wheel. Some commenters emphasized that best practices for characterizing uncertainty should reflect more probabilistic techniques and that EPA should also use a risk of bias approach when selecting among studies.

In their review of the proposed rule, the SAB also provided recommendations related to the selection and quantification of health endpoints. First, the SAB recommended that the EPA clarify the requirements for estimation of benefits to incorporate systematic review approaches, better define causality, and include effects for which causal or likely causal relationships may be less certain. In particular, the SAB advised that no ''one size fits all'' approach to causality should be mandated because a variety of approaches may need to be taken (some data driven, some based on systematic review of the biology, toxicology and epidemiology). Instead, the SAB recommended that the EPA should include reference to and support for relevant guidance from current best Agency practices for evaluating causality. The SAB also advised that the EPA modify the proposed requirement to include in the benefits analyses the effects for which causal or likely causal relationships may be less certain, but the impact would be substantial.

Second, the SAB provided recommendations for how the EPA could adjust the proposed requirements for selection of health endpoints to provide greater clarity and transparency, especially with regard to the selection of concentration response functions. The SAB recommended that the final rule should clarify the specific scientific rationale for endpoint selection and promote transparency by defining specific terms used in the requirements, or the Agency should replace all of the specific criteria on the selection of health endpoints with ''an overall framework outline of the systematic review principles it would follow for the evaluation of human health hazard data for the purposes of concentration-response selection and quantification of benefits.'' The SAB also advised the Agency to discuss how relevant advice from the National Academies and the SAB on systematic review as well as the approaches under development by the EPA in the Consolidated Human Toxicity Assessment Guidelines [35] will be evaluated and incorporated. The EPA agrees with the recommendations from the SAB and commenters on the importance of using a systematic review process to evaluate the scientific literature for the purposes of determining which health endpoints to include in a BCA and what concentration-response functions to use to quantify changes in these endpoints. Therefore, the EPA is revising the requirements in this section of the rule as described below.

It is essential for analyses to characterize health effects for which the science indicates the likelihood that changes in exposure would provide positive benefits. The EPA requires that BCAs performed under this final rule will include benefit endpoints for which the scientific evidence indicates there is (a) a causal or likely causal relationship between pollutant exposure and effect, and subsequently, (b) sufficient data and understanding to allow the agency to reasonably model the anticipated change in that effect in response to changes in environmental quality or exposures expected as a result of the regulation under analysis.

As stated in the proposal, decisions about whether and which changes in the health endpoints should be quantified should be informed by an evaluation of the relevant scientific literature studying the strength of the association between exposure to a pollutant and the health endpoint and the nature of the concentration-response function (*i.e.,* the amount of change in the frequency or severity of the health endpoint expected as the distribution of air quality changes). Benefits may be quantified for associations that meet the criteria for causality, considering, for example, the biologic plausibility, consistency, temporality, strength, and specificity of the effect.

[35] For more information about the development of the Consolidated Human Toxicity Assessment Guidelines, see: *https://yosemite.epa.gov/sab/sabproduct.nsf//LookupWebProjects CurrentBOARD/DF0F42C3464544868525857000 5ADFFF?OpenDocument.*

In this final rule, the EPA is clarifying that for human health endpoints, a systematic review process must be used to evaluate the hazard data for the purposes of determining which endpoints to include in a BCA and what concentration-response functions to use to quantify changes in these endpoints. As described by Institute of Medicine (IOM), ''systematic review is a scientific investigation that focuses on a specific question and uses explicit, pre-specified scientific methods to identify, select, assess, and summarize the findings of similar but separate studies. The goal of systematic review methods is to ensure that the review is complete, unbiased, reproducible, and transparent'' (IOM, 2011).

The systematic review process, at a minimum, consists of: Problem formulation and protocol development, evidence identification, evidence evaluation, and evidence integration (National Research Council, 2014). Problem formulation should identify the specific question to be addressed in the review and the protocol should specify the methods used to address the question, making these methods and the review process transparent. Evidence identification should follow a search strategy written into the protocol that explicitly states the inclusion and exclusion criteria for studies. Importantly, a study's inclusion in the review should not depend upon that study's findings. When feasible, the evidence evaluation should include a risk of bias assessment to determine how confidently conclusions can be drawn from the data. For example, the EPA began incorporating a risk of bias assessment into its Integrated Science Assessments (ISAs), starting with the recently published ozone ISA (EPA, 2020).[36] Finally, evidence integration should provide a structured approach to drawing conclusions considering all appropriate and available lines of scientific evidence, including epidemiologic, toxicologic, and mechanistic lines of evidence.

Applying the systematic review process described above, the final rule requires the EPA to identify concentration-response relationships from the scientific literature that take into account the breadth and quality of the available evidence regarding the nature and magnitude of the risk to the populations affected by the regulation. More weight should be given to higher quality studies or analyses that have been peer reviewed. To the extent possible, the studies or analyses should: (1) Be based upon human data when available; (2) specify the exposure route, duration, and levels, with preference given to those studies assessing exposure similar to those experienced by the general population; (3) employ a design or analysis that adequately addresses relevant sources of potential critical confounding; (4) consider how exposure is measured, particularly those that provide measurements at the level of the individual and that provide actual measurements of exposure; and (5) be able to reliably distinguish the presence or absence (or degree of severity) of health outcomes. Studies demonstrating more of the attributes listed above, and those which demonstrate the considerations to a greater extent, are expected to provide more accurate concentration-response relationships and associated risk estimates. Consistent with the general process of systematic review, the evaluation should emphasize transparency and replicability in the evaluation process.

When utilizing multiple concentration-response functions to estimate impacts on a single health outcome, the BCA must quantify risks in such a way that the heterogeneity in the estimated health impacts is clearly characterized. The EPA will present results in a manner that promotes transparency in the assessment process by selecting and clearly identifying concentration-response functions best characterizing risk for affected populations, as well as evidence necessary to demonstrate the sensitivity of the choice of the concentration-response function on the magnitude and the uncertainty associated with air pollution-attributable effects. Evidence from epidemiologic, experimental, and controlled human exposure studies may suggest that certain demographic subgroups are subject to risks that differ from the general population; in these instances, it may be appropriate to select concentration-response relationships that quantify risks among these specific subgroups, abiding by the overall framework of the systematic review process.

In cases where existing Agency documents (*e.g.,* ISA for criteria pollutants) provide the review and synthesis consistent with the process described above, the final rule allows a BCA to reference this synthesis.

Conceptually, BCA requires a comparison of expected costs and expected benefits, so BCA for CAA regulations should include the determination of expected benefits. When sufficient data exist, a probability distribution of risk is appropriate to use when determining the expected benefits for CAA regulations. When it is infeasible to estimate a probability distribution, measures of the central tendency of risk may be used. Upper-bound risk estimates must not be used without also presenting lower bound and central tendency estimates.

8. Uncertainty Analysis. Many public commenters supported the proposed rule's codification of best practices for uncertainty analysis and further contended that the EPA's past uncertainty analyses in CAA BCA vary in their quality, scope, and rigor. Some of these commenters provided additional recommendations for uncertainty analyses in the BCA including using probability distributions of risk when calculating benefits. For example, one commenter recommended that the EPA analyze assumptions embedded in the EPA's environmental Benefits Mapping and Analysis Program (BenMAP) tool[37] in its uncertainty assessment as well as further aligning with numerous EPA recommendations from the SAB and the National Academies. Some commenters recommended that the EPA should also quantify the effect of the major sources of uncertainty and variability on the risk estimates, benefit estimates, and cost estimates as well as transparently documenting key assumptions that drive uncertainty analyses.

Some commenters opposed the EPA's proposed requirements for an uncertainty analysis in the BCA, stating that these proposed provisions are arbitrary, capricious and not appropriate. One of these commenters said that the EPA unjustifiably weights the burden of uncertainty assessment on benefits rather than costs by placing more prescriptive requirements on the analysis of the uncertainty of benefits, thus skewing the assessment of uncertainty towards benefits more than costs, and by depicting benefits as more uncertain than costs. Additional commenters opposed to the EPA's proposal argued that the proposed requirements add seemingly endless layers of analyses and potentially import substantive constraints and judgments under the guise of characterizing uncertainty.

[36] The EPA prepares ISAs to provide the scientific foundation for setting standards for the 6 criteria air pollutants under the National Ambient Air Quality Standards program. This assessment is a comprehensive review, synthesis, and evaluation of the most policy-relevant science, including key science judgments that are important to inform the development of the risk and exposure assessments, as well as other aspects of the NAAQS review. The preamble to the ISAs describes the five-level causal framework for evaluating weight of evidence and drawing scientific conclusions and causal judgments. See *https://www.epa.gov/isa.*

[37] *https://www.epa.gov/benmap.*

The SAB also made several recommendations related to the proposed requirements for uncertainty analysis. First, the SAB recommended that the preamble of the final rule discuss the broader purposes of uncertainty analysis beyond simple transparency. Second, the SAB explained that because best practices require that the analysis be appropriate for the policy context, uncertainty analysis should only be required to the extent feasible ''and appropriate.'' Third, the SAB advised that the discussion in the final rule be broadened to reflect the fact that outcomes other than the expected value may be very important for policies involving low-probability, high consequence hazards. Also, when presenting quantitative results, the SAB recommended that the final rule require the EPA to clearly note when there are unquantified benefits or costs that could be significant. Finally, the SAB recommended that the EPA acknowledge in the final rule that uncertainty analysis will not correct errors resulting from the inclusion of ''poor science'', which arguably has a greater impact on policy choices than the lack of uncertainty analysis.

None of the public comments received have led the EPA to materially change its views from the proposal. The EPA disagrees with the comment that the requirement to conduct uncertainty analysis is arbitrary, capricious and not appropriate. The EPA is codifying into regulation procedures that are consistent with the principle of transparency discussed at length in OMB's *Circular A–4* (OMB, 1993) and the EPA's *Guidelines* (EPA, 2010), which are the existing peer reviewed guidance documents implementing E.O. 12866. The EPA agrees with the principles emphasized in the SAB's comments on the proposed rule. The Agency has reviewed the discussion of uncertainty analysis below to ensure it is consistent with these principles and has made clarifying revisions in this preamble and final regulatory text where helpful. The final rule includes requirements pertaining to uncertainty analysis as provided below.

For various reasons, including the reason that the future is unpredictable, the benefits and costs of future regulatory options are not known with certainty. The EPA is finalizing requirements for BCAs to identify uncertainties underlying the estimation of both benefits and costs and, to the extent feasible and appropriate, quantitatively analyze those that are most influential. Specifically, the final rule requires the EPA to characterize, preferably quantitatively, sources of uncertainty in the assessment of costs, changes in air quality, assessment of likely changes in health and welfare endpoints, and the valuation of those changes. The EPA will be required to also present benefit and cost estimates in ways that convey their uncertainty, including acknowledging unquantified benefits and costs, where appropriate. Because information on the range of outcomes from policy may be an important consideration in decision-making, the final rule requires EPA to also characterize the range of likely outcomes. BCAs will be required to include a reasoned explanation for the scope of the uncertainty analysis and to specify specific quantitative or qualitative methods chosen to analyze uncertainties. Quantitative uncertainty analyses may consider both statistical and model uncertainty where the data are sufficient to do so. Furthermore, where data are sufficient to do so, the rule requires BCAs to consider sources of uncertainty both independently and jointly. The BCA should also discuss the extent to which qualitatively assessed costs or benefits are characterized by uncertainty.

Probabilistic uncertainty analysis involves greater effort than other quantitative characterizations of uncertainty but can add insights into the role of uncertainty in a BCA. When simpler quantitative analysis may not sufficiently describe uncertainty, and where probability distributions for relevant input assumptions are available and can be feasibly and credibly combined, BCAs should characterize how the probability distributions of the relevant input assumption uncertainty would impact the resulting distribution of benefit and cost estimates. The EPA should report probability distributions for each health benefit whenever feasible. In addition to characterizing these distributions of outcomes, it is useful to emphasize summary statistics or figures that can be readily understood and compared to achieve the broadest public understanding of the findings. In instances when calculating expected values is not feasible or appropriate due to data or other limitations, the EPA should strive to present a range of benefits and costs. Additional discussion of these best practices related to uncertainty analysis is provided in OMB's *Circular A–4,* Treatment of Uncertainty, and throughout the EPA's *Guidelines.*

9. Principle of Transparency. Several commenters supported the general concept of transparency in conducting BCA, because transparency improves the quality of regulatory decision-making. Some commenters further stated that providing information on the data, models, assumptions, and uncertainties will increase public participation by improving the dialog between the EPA and stakeholders and creating a better-informed public.

Several commenters objected to the transparency provisions of the rule with one commenter stating that it is unclear what is meant by the statement that the EPA's presentation of BCA results should be ''reproducible to the extent reasonably possible.'' Commenters argued that the preamble offers no basis for concluding that the EPA in the past has not been transparent in presenting the results of their analysis of regulatory options. Other commenters further contended that the proposed requirements would obscure the basis for the EPA's decisions and the proposal is inappropriate to require ''consistency across the Clean Air Act'' given the differences in statutory obligations for different pollutants. Several of these commenters claimed that the EPA's regulatory assessments already are transparent, and the proposed rule would lead to confusion on the regulatory analysis and not increase transparency. One of these commenters further claimed that BCA does not increase transparency because it can distract from the statutory basis of regulations, since most CAA standards are health-based or technology-based standards, which involve a unique set of factors to consider.

None of the comments received have led the EPA to materially change its views from the proposal. The EPA disagrees with the comment that it is inappropriate to impose consistent requirements related to transparency across the CAA given the differences in statutory obligation for different pollutants in various provisions of the Act. The requirements in this final rule aimed at providing transparency do not bar the Agency from complying with any requirements of the Act. The EPA is codifying into regulation procedures that are consistent with the principle of transparency discussed at length in OMB's *Circular A–4* (OMB, 1993) and the EPA's *Guidelines* (EPA, 2010), which are the existing peer reviewed guidance documents implementing E.O. 12866. For example, the practice of ensuring that results are reproducible is taken directly from OMB's *Circular A–4.* Therefore, after reviewing public comments, the EPA is finalizing the transparency requirements as proposed.

This final rule provides that BCA of significant CAA regulations will include, at a minimum, a detailed and clear explanation of:

• The overall results of the BCA. The benefits, costs, and net benefits of each regulatory option evaluated in the BCA will be presented in a manner designed to be objective, comprehensive, and easily understood by the public.

• How the benefits and costs were estimated, including the assumptions made for the analysis. BCAs must include a clear explanation of the models, data, and assumptions used to estimate benefits and costs, and the evaluation and selection process for these analytical decisions. This explanation must also include an explanation of procedures used to select among input parameters for the benefit and cost models. Such an explanation could include methods used to quantify risk and to model the fate and transport of pollutants.

• A description, consistent with the best available scientific information, of the non-monetized and non-quantified benefits and costs of the action. The description must include available evidence on all non-monetized and non-quantified benefits and costs, including explanations as to why they are not being monetized or quantified and what the potential impact of those benefits and costs might be on the overall results of the BCA.

• The primary sources and potential effects of uncertainty. The BCA must present the results of the assessment of the sources of uncertainty that are likely to have a substantial effect on the results. Any data and models used to analyze uncertainty must be fully identified, and the quality of the available data must be discussed.

Finally, to the extent permitted by law, the Agency must ensure that all information (including data and models) used in the development of the BCA is publicly available while consistent with protections for privacy, confidentiality, confidential business information (CBI), and national and homeland security. If data and models are proprietary, the Agency must make available, to the extent practicable, the underlying inputs and assumptions, equations, and methodologies used by EPA.

Additional discussion of these best practices related to transparency is provided in OMB's *Circular A–4,* Transparency and Reproducibility of Results, and throughout the EPA's *Guidelines* (2010).

F. Requirements for the Presentation of BCA Results

In the proposed rule, the EPA proposed to codify a standardized presentation of the results of the BCA in the preamble of significant regulations. Regarding these presentational requirements, many commenters supported providing additional details and disaggregated data with a focus on the specific objective of the CAA provision or provisions under which the rule is promulgated. These commenters supported the increased transparency that this presentation of BCA results in the preamble will provide to the public on an EPA rulemaking action. Some commenters were supportive of adding even more requirements to enhance transparency (*e.g.,* to include a disaggregation of impacts on small entities).

Other commenters opposed the proposal's presentational requirements, especially the requirement to provide an additional reporting in the preamble of the public health and welfare benefits that pertain to the specific objective of the CAA provision under which the rule is promulgated. Commenters interpreted this proposed requirement as barring consideration of all benefits that do not stem directly from the statutory objective and they argued that such ancillary benefits developed for a BCA are important for the EPA to take into consideration. Some commenters stated that distinguishing between benefits ''targeted by the statutory provision'' versus ''other welfare effects'' can be a complex, controversial, and ultimately fruitless endeavor, and that analysts should not assume, absent explicit statutory language, that any statute has the objective of barring consideration of important indirect effects. For example, any broad statutory language, like ''reasonable'' or ''appropriate,'' should be read broadly to authorize consideration of all important effects, whether direct or indirect. The SAB did not comment on this element of the proposed rule.

The proposed rule also solicited comment as to whether non-domestic benefits and costs of regulations, when examined, should be reported separately from domestic benefits and costs of such regulations, analogous to the proposed requirement for a separate presentation of benefits limited to those targeted by the relevant statutory provision or provisions. The EPA received wide ranging comments on this issue. Many commenters voiced support for separately reporting, or only reporting, domestic benefits and costs. These commenters stated that separate reporting of domestic and non-domestic benefits and costs would allow stakeholders to better understand who would experience the costs and benefits before regulatory action is taken. Several commenters also stated that a disaggregated reporting would be consistent with guidance in OMB *Circular A–4* that states that the ''. . . . analysis should focus on benefits and costs that accrue to citizens and residents of the United States;'' and in the case where a regulation is evaluated that ''is likely to have effects beyond the borders of the United States, these effects should be reported separately.'' One commenter stated that separate reporting of domestic impacts would assist EPA in transparently fulfilling the CAA's primary purpose ''to protect and enhance the quality of the Nation's air resources.'' Many other commenters were opposed to disaggregated reporting of domestic and non-domestic benefits and costs. Some stated that separate reporting is unnecessary and counterproductive. For example, one commenter stated that identification and communication of subcategories of benefits (such as benefits accruing outside the United States), where practical, is already accommodated and frequently done under existing procedures. Others stated that a policy of breaking out non-domestic benefits only ''when examined'' de-values non-domestic benefits and ignores the impacts that occur outside of the United States but that harm individuals in and outside of the United States directly and indirectly. Others emphasized that certain classes of effects cannot be meaningfully disaggregated. Some argued that a BCA which does not allow for benefits and costs to be calculated outside of the United States fails to include the ''best available science''. These commenters stated that EPA's request for comment on separate presentation of domestic benefits and costs vs. non-domestic benefits presumes, wrongly, that ''non-domestic'' benefits and costs can be accounted separately while meeting the agency's obligations to use the ''best available science'' and reasoned decision-making. One commenter pointed to recent National Academies findings that the calculation of a domestic benefit in the case of greenhouse gas emissions reductions cannot be credibly done using current models, as they ignore important spillover effects given the global nature of climate change (National Academies 2017).

None of the comments received pertaining to the proposed additional presentation of benefits limited to those targeted by the relevant statutory provision have led the EPA to materially change its views from the proposal. The EPA disagrees with the comment that distinguishing the benefits pertaining to the CAA statutory objective means that other benefits (or disbenefits) are not to

be considered. The proposed presentational requirements do not bar consideration of any part of the BCA. As described in Section V.D of this preamble, the final rule requires that the Agency consider the BCA in the decision-making process when permitted to do so. However, the EPA declines to formulate a specific test or mandate of how to consider the BCA or what weight the BCA, or particular elements of it, should be given in such a future rulemaking. The precise details of what test would be appropriate could differ from one CAA provision to another, and the EPA has not proposed or requested comment on how such tests would be formulated under those specific provisions.

On the issue of separate reporting of domestic and non-domestic benefits and costs, the EPA agrees with commenters who stated that this disaggregation would enhance transparency. Separate reporting is consistent with both guidance in OMB's *Circular A–4* and with the CAA which is concerned with ''enhanc[ing] the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population'' (CAA 101(b)). The EPA disagrees with commenters who stated that a disaggregation would de-value non-domestic benefits and ignore the impacts that occur outside of the United States but that harm individuals in and outside of the United States directly and indirectly. A separate reporting does not prohibit calculating or considering non-domestic benefits, but rather helps to allow costs and benefits to be compared in an apples-to-apples manner, whether domestic or not.

Aside from separate reporting of domestic impacts, the EPA disagrees with commenters who stated that additional disaggregation of benefit and cost results in the preamble presentation are needed to enhance transparency. For example, CAA rules will continue to comply with the requirements of the Regulatory Flexibility Act so it is unclear why an additional requirement to discuss or present impacts to small entities is needed in this final rule. Therefore, the EPA is finalizing the presentational requirements as proposed, as described in detail below, along with two additional requirements. First, the final rule requires that any benefits and costs accruing to non-U.S. populations be reported separately to the extent possible in the summary of BCA results in the preamble. Second, the final rule requires that the BCA include a description in the preamble of how the Agency considered the results of the BCA.

Following the principle of transparency, the EPA agrees with commenters that when presenting the results of a BCA, it is important to clearly distinguish between the social benefits attributable to the specific pollution reductions or other environmental quality goals that are targeted by the statutory provisions that give rise to the regulation, and other welfare effects. The disaggregation of welfare effects will be important to ensure that the BCA may provide, to the maximum extent feasible, transparency in decision-making. These other welfare effects could include both favorable and adverse impacts on societal welfare. Analogous to how a regulation's interactions with existing imperfections or distortions in other markets (*e.g.,* due to pre-existing taxes) could lead to additional social costs, a regulation could ameliorate or exacerbate other pre-existing externalities. For example, more stringent vehicle emissions standards could affect upstream refinery emissions or reduce the marginal cost of driving due to greater fuel efficiency and could lead to an increase in vehicle miles traveled that affects road safety, congestion, and other transport-related externalities.

Other welfare effects could also occur as a direct or indirect result of the compliance approaches used by regulated entities. For example, changes in other environmental contaminants may arise from the regulated sources. Likewise, the use of an abatement technology that reduces the emissions of hazardous air pollutants into one medium (*e.g.,* air) may change the emissions of another pollutant into the same medium (*e.g.,* coming out of the same smokestack) or cause changes in emissions of pollutants into another medium (*e.g.,* water) by the regulated sources. Changes in other environmental contaminants may also occur as a result of market interactions induced by the regulation. For example, a regulation may cause consumers or firms to substitute away from one commodity towards another, whose increased production may be associated with changes in various environmental contaminants or other externalities.

The welfare effects associated with these changes should be accounted for in a BCA to the extent feasible, as it is the total willingness to pay for all changes induced by a regulation that determines their relative importance in evaluating economic efficiency.

Disaggregating benefits into those targeted and ancillary to the statutory objective of the regulation may cause the EPA to explore whether there may be more efficient, lawful and defensible, or otherwise appropriate ways of obtaining ancillary benefits, as they may be the primary target of an alternative regulation that may more efficiently address such pollutants, through a more flexible regulatory mechanism, better geographic focus, or other factors. This may be relevant when certain benefits are the result of changes in pollutants that the EPA regulates under a different section of the CAA or under another statute.

In this final rule, the EPA is codifying into regulation several presentational requirements for the preamble of all future significant CAA regulations.

First, in order to ensure standardized presentation of the summary of the BCA results consistent with E.O. 12866 in CAA rulemakings, the EPA is codifying into regulation the requirement to present a summary in the preamble of the overall BCA results, including total benefits, costs, and net benefits. Within this summary presentation, if any benefits and costs accrue to non-U.S. populations they must be reported separately to the extent possible.

Second, to enhance transparency about the extent to which a rule is achieving its statutory objectives, the EPA is required to provide, in addition to a clear reporting of the overall results of the BCA, an additional presentation in the preamble of the public health and welfare benefits that pertain to the specific objective (or objectives, as the case may be) of the CAA provision or provisions under which the rule is promulgated. This second presentation would include a listing of the benefit categories arising from the environmental improvement that is targeted by the relevant statutory provision, or provisions and would report the monetized value to society of these benefits. If these benefit categories cannot be monetized, the final rule requires the EPA to report the quantified estimates of these benefits to the extent practicable and to provide a qualitative characterization if they cannot be quantified. Similarly, if the statute directs or allows the Agency to consider costs, the EPA should also provide a disaggregation of all relevant cost categories to the extent feasible in this section. This requirement would serve as a supplement to the BCA that is developed and presented according to best practices as outlined in Section V.E of this preamble. It does not replace or change any part of the RIA or the section of the preamble that summarizes the BCA results consistent with E.O. 12866.

Finally, as described in Section V.D of this Preamble, to provide the public with as much information and

transparency as possible, the EPA will be required per the final rule to identify when the CAA provision or provisions under which the future rule is promulgated permit consideration of the BCA, and if so, the Agency is required to provide a description in the preamble of how the results of the BCA were considered. If the provision or provisions under which the rule is promulgated prohibit the consideration of the BCA, the final rule requires the Agency to identify the specific provision which bars such consideration. The presentational requirements described above should be provided in the same section of the preamble of future CAA significant rulemakings.

G. Additional Comment Responses

1. Planning for Retrospective Analysis. As discussed in the ANPRM, a lack of data, and a lack of a regularized process for ongoing or retrospective review after rules have been implemented, inhibits the EPA's ability to gain insights about the realized costs and benefits of actions that may help inform how the Agency designs future regulations and conducts prospective BCA of future rules. Many previous administrations have periodically undertaken programs of retrospective review or issued executive orders urging or requiring agencies to reassess existing regulations and to eliminate, modify, or strengthen those regulations that have become outmoded in light of changed circumstances. But for the most part, retrospective review has not become institutionalized practice within the EPA. When they occur, these reviews rarely involve ex post BCA of the original EPA regulations. The EPA received many comment letters on the ANPRM voicing support for increased retrospective analysis of Agency rules or programs to evaluate the effectiveness of regulations, to design future improvements to increase efficiency, and to improve methods of ex ante analysis. In the proposed rule, the EPA requested comments on this issue, including whether EPA should include a requirement for conducting retrospective analysis of significant CAA rulemakings and how the Agency can overcome the challenges for conducting retrospective analysis in cases where the EPA's ability to collect information about the costs of compliance is limited or otherwise influenced by other statutes.

The EPA received comments from a variety of stakeholders supporting the idea of conducting more retrospective analysis. Many commenters emphasized that retrospective analyses could provide useful data to help the EPA improve environmental outcomes while minimizing regulatory burdens, promulgate better regulations, and improve the analytical framework the Agency uses to make regulatory decisions. However, some questioned the need and appropriateness of a rule-based approach to institutionalizing the practice of retrospective analysis of existing regulations. Some commenters stated that the Agency should not compel companies to provide information necessary to conduct high quality retrospective analysis unless the impacted industry is interested and willing to participate in a retrospective review prior to beginning the information collection process. Others recommended that the EPA adopt specific guidance establishing a retrospective analytic process within its rulemaking procedures. One commenter specified that this guidance should include criteria for selecting the set of rules to be studied and establishing at the outset a rule design that facilitates such analyses; that the plan for ex post review should identify at the time of rulemaking the measurable outcomes to be chosen for retrospective analysis, the data needs, the time period for evaluation, and set out and justify a specific plan for data collection. Others stated that any potential requirements regarding retrospective analysis should be concretely proposed in a separate notice that fully explains the need for a rule-based solution to this issue and that allows a new and adequate opportunity for public comment. Finally, some commenters voiced concern that retrospective economic analyses have always been problematic and have many practical challenges. These commenters noted the difficulty in obtaining updated, accurate data for use in retrospective analyses and believe the EPA should focus its efforts to invest in high-quality, robust economic analyses using best-available science and following best economic practices in BCAs prepared for current rulemakings. Additionally, some commenters argued that retrospective analyses could lead to unacceptable regulatory and legal uncertainty especially should previously implemented regulations be undone and past investments based on those regulatory decisions be undermined or reversed.

The EPA agrees with commenters that conducting retrospective analyses of an implemented regulation can provide valuable information that, if considered, can more fully inform public decision-making. In many cases, retrospective analysis provides an opportunity to understand whether a regulation achieved its objectives—for example, whether the regulation, once implemented, promoted economic efficiency as expected compared to a baseline without the regulation. Retrospective analyses may also lead to improved methods for prospective analysis and ultimately improvements in regulatory design. The Agency also agrees with those commenters that said guidance was a more appropriate way to better institutionalize best practices when planning for and conducting retrospective analysis. This approach is also consistent with recent recommendations the EPA received from the SAB during the course of their review of the forthcoming update of the EPA's *Guidelines.* In that review, the SAB recommends that the EPA should consider expanding discussion in the *Guidelines* of how regulatory approaches can be designed to promote effective retrospective analysis and, in the future, possibly devote a chapter to best practices for conducting such analysis.

Given this advice, the EPA is not including a requirement in this final rule that retrospective analysis be undertaken for all significant regulations. Instead, EPA is committing to taking additional steps to better institutionalize the practice of conducting high quality retrospective review and analysis, which could be accomplished through the development of guidance on best practices for conducting retrospective analysis and how to plan for different types of retrospective analysis within its rulemaking procedures including how to address data needs. This guidance could, for example, include criteria for identifying rules that might be most amenable to retrospective analysis and direction on how to identify analytic requirements for such analysis at the outset when a regulation is promulgated. Data needs could be identified and avenues for ex post data collection integrated into the regulation (while also accounting for the cost and time needed for firms to collect such information). In this way, the EPA could learn from past experience and improve both policy designs and analytic approaches to prospective benefit and cost estimation. Regardless of the specific administrative procedure pursued for institutionalizing retrospective analysis at the EPA, it is the intention of the Agency to engage experts, including academics and practitioners, and to ultimately peer review any guidance that is developed.

2. Comments pertaining to Executive Order 12898. Numerous commenters

contended that the EPA's proposed rule did not consider E.O. 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations) and commenters stated that the proposal language incorrectly asserts that ''this proposed action is not subject to Executive Order 12898 . . . because it does not establish an environmental health or safety standard.'' Commenters further stated that air pollution disproportionately impacts minority communities and the proposed rule would obstruct efforts to address this disparity. Commenters further argued the proposed rule was unclear on how the proposal's BCA analysis requirements would ascribe benefits to communities of color that frequently bear the brunt of environmental risks. One of these commenters contended that, although the list of elements to consider in the BCA includes vulnerable and highly impacted communities, the proposal failed to describe how these communities are to be ''considered.''

The EPA considered these comments but reiterates that this rule, as a procedural rule, is focused on best practices for conducting BCA analysis for CAA rulemaking with an aim to increase consistency and transparency for these BCA analyses. As such, it does not establish an environmental health or safety standard and is not subject to E.O. 12898. However, the EPA asserts that with the focus on increased transparency and providing access to the underlying data as provided in this final rule's provisions, the requirements will increase the consistency and transparency of E.O. 12898 analyses. The additional information available as a result of compliance with this final rule's requirements will provide a better foundation for upcoming E.O. 12898 analyses of future CAA rulemakings and will improve the understanding of the underlying issues highlighted by the commenters.

VI. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by the EPA, including documents referenced within the documents that are included in the docket, even if a referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under the ''For Further Information Contact'' section above.

1. U.S. EPA (U.S. Environmental Protection Agency). Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process; Advance notice of proposed rulemaking. (83 FR 27524, June 13, 2018).

2. OMB (Office of Management and Budget). (1996). Economic Analysis of Federal Regulations Under Executive Order 12866.

3. OMB (Office of Management and Budget). (2003). Circular A–4, ''Regulatory Analysis.''

4. U.S. EPA (U.S. Environmental Protection Agency). (2010). Guidelines for Preparing Economic Analyses.

5. Arrow, K., M. Cropper, G. Eads, R. Hahn, L. Lave, R. Noll, P. Portney, M. Russell, R. Schmalensee, V. Smith, and R. Stavins. 1996a. Benefit-Cost Analysis in Environmental, Health, and Safety Regulation: A Statement of Principles. Washington, DC: American Enterprise Institute, The Annapolis Center, and Resources for the Future.

6. Arrow et al. 1996b. Is There a Role for Benefit-Cost Analysis in Environmental, Health, and Safety Regulation? Science 272: 221–222.

7. Institute of Medicine (IOM). 2011. Finding What Works in Health Care: Standards for Systematic Reviews. Washington, DC: The National Academies Press. *https://www.nap.edu/catalog/13059/finding-what-works-in-health-care-standards-for-systematic-reviews.*

8. National Research Council. 2014. Review of EPA's Integrated Risk Information System (IRIS) Process.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the OMB for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA does not anticipate that this rulemaking will have an economic impact on regulated entities. This is a rule of agency procedure and practice.

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

This action is not subject to Executive Order 13771 because this final rule is a rulemaking of agency organization, procedure, or practice.

C. Paperwork Reduction Act (PRA)

This action does not contain any information collection activities and therefore does not impose an information collection burden under the PRA.

D. Regulatory Flexibility Act (RFA)

I certify that this action would not have a significant economic impact on a substantial number of small entities under the RFA. This action would not impose any requirements on small entities. This action would not regulate any entity outside the federal government and is a rule of agency procedure and practice.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated as a significant energy action by the Administrator of the Office of Information and Regulatory Affairs.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

L. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 40 CFR Part 83

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

Andrew Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA amends title 40, chapter I of the Code of Federal Regulations by adding part 83 to read as follows:

PART 83—INCREASING CONSISTENCY AND TRANSPARENCY IN CONSIDERING BENEFITS AND COSTS IN CLEAN AIR ACT RULEMAKING PROCESS

Sec.

Subpart A—Analysis of Air Regulations

Authority: 42 U.S.C. 7601(a)(1).

Subpart A—Analysis of Air Regulations

§ 83.1 What definitions apply to this subpart?

Baseline means the best assessment of the way the world would evolve absent the regulation. It is the primary point of comparison for assessing the effects of the regulatory options under consideration.

Benefit-cost analysis (BCA) means an evaluation of the social benefits and social costs of a policy action and other policy alternatives. The social benefits of a policy are measured by society's willingness-to-pay for the policy outcome. The social costs are measured by the opportunity costs of adopting the policy. BCA addresses the question of whether the benefits for those who gain from the action are sufficient to, in principle, compensate those burdened by costs such that everyone would be at least as well off as before the policy. The calculation of net benefits (benefits minus costs) answers this question and helps ascertain the economic efficiency of the policy. Where all regulation attributable benefits and costs can be quantified and expressed in monetary units, BCA provides decision makers with a clear indication of the most economically efficient alternative, that is, the alternative that generates the largest net benefits to society (ignoring distributional effects).

Compliance cost means the private cost that a regulated entity incurs to comply with a regulation, such as through planning, design, installation, and operation of pollution abatement equipment.

Data means the set of recorded factual material commonly accepted in the scientific community as necessary to validate research findings in which obvious errors, such as keystroke or coding errors, have been removed and that is capable of being analyzed by both the original researcher and an independent party.

Endpoint is the specific manifestation of the documented effect that is to be quantified for the benefits analysis. It is a metric (*e.g.,* number of hospital admissions) that acts as a surrogate for some aspect of a health or public welfare effect (*e.g.,* respiratory system effects).

Expected value is the probabilistically weighted outcome that defines a statistical mean and a measure of the central tendency of a set of data. For a variable with a discrete number of outcomes, the expected value is calculated by multiplying each of the possible outcomes by the likelihood that each outcome will occur and then summing all of those values.

Model means a simplification of reality that is constructed to gain insights into select attributes of a physical, biological, economic, or social system. A formal representation of the behavior of system processes, often in mathematical or statistical terms. The basis can also be physical or conceptual.

Opportunity cost means the value of the next best alternative to a particular activity or resource.

Publicly available means lawfully available to the general public from federal, state, or local government records; the internet; widely distributed media; or disclosures to the general public that are required to be made by federal, state, or local law.

Regulatory options means:

(1) The proposed or finalized option, and at a minimum the following;

(2) A more stringent option which contributes to the stated objectives of the Clean Air Act and that achieves additional benefits (and presumably costs more) beyond those realized by the proposed or finalized option; and

(3) A less stringent option which contributes to the stated objectives of the Clean Air Act and that costs less (and presumably generates fewer benefits) than the proposed or finalized option.

Sensitivity Analysis means an analysis that is used to assess how the final results or other aspects of an analysis change as input parameters change, particularly when only point estimates of parameters are available. Typically, a sensitivity analysis measures how a model's output changes as one of the input parameters change. Joint sensitivity analysis (varying more than one parameter at a time) is sometimes useful as well.

Significant regulation means a proposed or final regulation issued pursuant to authority provided by the Clean Air Act that is determined to be a ''significant regulatory action'' pursuant to Section 3(f) of E.O. 12866 or is otherwise designated as significant by the Administrator.

Social benefits, or benefits, means the sum of all positive changes in societal well-being experienced as a result of the regulation or policy action.

Social costs, or costs, means the sum of all opportunity costs, or reductions in societal well-being, incurred as a result of the regulation or policy action. These opportunity costs consist of the value lost to society of all the goods and services that will not be produced and consumed as regulated entities reallocate resources to comply with the regulation.

Systematic Review Process is the process for evaluating the scientific literature that includes:

(1) Identification of the specific question to be addressed in the review;

(2) Pre-specified methods used to address the question, making these methods and the review process transparent);

(3) A search strategy written into the protocol that explicitly states the inclusion and exclusion criteria for studies; and

(4) A description of the structured approach used to draw conclusions

considering all appropriate and available lines of evidence, including epidemiologic, toxicologic, and mechanistic lines of evidence.

§ 83.2 How do the provisions of this subpart apply?

(a) After December 23, 2020, the Agency must prepare a benefit-cost analysis (BCA) for all significant proposed and final regulations, except that the requirement to prepare a BCA for significant final regulations does not apply to final regulations proposed on or before December 23, 2020. Except where explicitly stated otherwise, the provisions of this subpart do not apply to any other type of agency action, including individual party adjudications, enforcement activities, or actions taken in permit proceedings.

(b) Except where the provision or provisions under which a significant regulation is promulgated prohibit the consideration of the BCA, the Agency must consider the BCA in promulgating the regulation.

§ 83.3 What requirements apply to EPA's preparations of Benefit-Cost Analyses (BCAs) under the Clean Air Act?

(a) A BCA prepared pursuant to this subpart must be developed by the Agency in accordance with best available scientific information and best practices from the economic, engineering, physical, and biological sciences according to paragraphs (a)(1) through (12) of this section.

(1) The BCA must include the following information:

(i) A statement of need as defined in paragraph (a)(2) of this section;

(ii) An examination of regulatory options as defined in paragraph (a)(3) of this section; and

(iii) To the extent feasible, an assessment of all benefits and costs of these regulatory options relative to the baseline scenario.

(2) The BCA must include a statement of need that provides a clear description of the problem being addressed, the reasons for and significance of any failure of private markets or public institutions causing this problem, and the compelling need for federal government intervention in the market to correct the problem.

(3) The BCA must include an analysis of the benefits and costs of regulatory options, which would contribute to the stated objectives of the Clean Air Act and an explanation as to why these regulatory options were selected. Where there is a continuum of options (such as options that vary in stringency), the regulatory options must include at a minimum (as provided in § 83.1): The proposed or finalized option; a more stringent option that achieves additional benefits (and presumably costs more) beyond those realized by the proposed or finalized option; and a less stringent option that costs less (and presumably generates fewer benefits) than the proposed or finalized option. When a continuum of options is not applicable, the regulatory options can include variation of key parameters, such as different compliance dates, enforcement methods, standards by size or location of facilities, and regulatory designs. If fewer than three options are analyzed relative to the baseline, or if there is a continuum of options and the options analyzed do not include at least one more stringent (or otherwise more costly) and one less stringent (or otherwise less costly) option than the proposed or finalized option, then the Agency must provide an explanation of why it is not appropriate to analyze more options.

(4) The BCA must include a baseline that appropriately considers relevant factors and relies on transparent and reasonable assumptions. The baseline must account for, but is not limited to, the following factors:

(i) Exogenous changes in the economy that may affect benefits and costs (*e.g.,* changes in demographics, economic activity, consumer preferences, or technology);

(ii) Regulations promulgated by the Agency or other government entities; and

(iii) The degree of compliance by regulated entities with other regulations.

In rulemaking actions where the Agency determines it is appropriate to consider more than one baseline (*e.g.,* one that accounts for another EPA regulation being developed at the same time that affects the same environmental condition), the BCA must include a reasoned explanation for the selection of the baselines used and must identify the key uncertainties in the forecast(s).

(5) In preparing the BCA, the Agency must rely on the use of a framework that is appropriate for the characteristics of the regulation being evaluated and must provide an explanation for the approach adopted.

(6) The Agency must consider how costs and benefits may be affected by consumer and producer behavior in the baseline and potential behavioral changes from the policy scenarios.

(7) The BCA must include an estimation of benefits that links regulatory requirements to the value that individuals place on the change in benefit endpoints that can be meaningfully attributed to those requirements.

(8) The BCA must include, to the extent supported by scientific literature as well as practicable in a given rulemaking:

(i) A quantification of all benefits;

(ii) A monetization of all the benefits that follows well-defined economic principles using well-established economic methods, appropriate data and/or studies; and

(iii) A qualitative characterization of benefits that cannot be quantified or monetized.

(9) The process of selecting and quantifying human health benefit endpoints in the BCA must be conducted according to paragraphs (a)(9)(i) through (vii) of this section:

(i) The process of selecting human health benefit endpoints will be based upon scientific evidence that indicates there is:

(A) A clear causal or likely causal relationship between pollutant exposure and effect, and

(B) Sufficient data and understanding to allow the agency to reasonably model the anticipated change in that effect in response to changes in environmental quality or exposures expected as a result of the regulation under analysis.

(ii) For human health endpoints, a systematic review process must be used to evaluate the hazard data for the purposes of determining which endpoints to include in a BCA and what concentration-response functions to use to quantify changes in these endpoints. A study's inclusion in the review must not depend upon that study's findings. More weight should be given to higher quality studies or analyses that have been peer reviewed.

(iii) The studies or analyses used to quantify the concentration-response relationships should take into account the breadth and quality of the available evidence regarding the nature and magnitude of the risk to the populations affected by the regulation. To the extent possible, the studies or analyses should be:

(A) Based upon human data when available;

(B) Specific to the exposure route, duration, and levels, with preference given to those studies assessing exposure similar to those experienced by the general population;

(C) Employ a design or analysis that adequately addresses relevant sources of potential critical confounding;

(D) Consider how exposure is measured, particularly those that provide measurements at the level of the individual and that provide actual measurements of exposure; and

(E) Reliably distinguish the presence or absence (or degree of severity) of health outcomes.

(iv) When utilizing multiple concentration-response functions to estimate impacts on a single health endpoint, the BCA must quantify risks in such a way that the heterogeneity in the estimated health impacts is clearly characterized.

(v) The presentation of results should characterize the sensitivity of the choice of the concentration-response function on the magnitude and the uncertainty associated with estimated benefits.

(vi) When sufficient data exist, a probability distribution of risk is appropriate to use when determining the expected benefits for CAA regulations. When it is infeasible to estimate a probability distribution, measures of the central tendency of risk may be used. Upper-bound risk estimates must not be used without also presenting lower bound and central tendency estimates.

(vii) Consistent with the general systematic review process, the evaluation and model specification processes conducted under all subsections of (9) must emphasize transparency and replicability. This includes:

(A) An explanation of the basis for significant judgments, assumptions, data, models, and inferences used or relied upon in the assessment and decisions regarding the selection and quantification of health endpoints; and

(B) A description of the sources, extent and magnitude of significant uncertainties associated with the assessment.

(10) The BCA must include an identification of uncertainties underlying the estimation of both benefits and costs and, to the extent feasible and appropriate, quantitatively analyze those that are most influential; and must present benefits and cost estimates in ways that convey their uncertainty, including acknowledging unquantified benefits and costs, where appropriate. The BCA must include a reasoned explanation for the scope and specific quantitative or qualitative methods chosen to analyze uncertainties. Specifically, the explanation must include the following:

(i) To the extent feasible and appropriate, the BCA must apply quantitative methods to analyze uncertainties that have the largest potential effect on benefits or cost estimates and include a description of such methods.

(ii) The BCA must characterize, preferably quantitatively, sources of uncertainty in the assessment of costs, changes in air quality, assessment of likely changes in health and welfare endpoints, and the valuation of those changes. For example, the BCA could characterize statistical, model or parameter uncertainty.

(iii) Where data are sufficient to do so, the BCA must include a consideration of sources of uncertainty both independently and jointly.

(iv) To the extent feasible and appropriate, the BCA must also include a consideration, and transparent acknowledgement of, the extent to which qualitatively-assessed costs or benefits are characterized by uncertainty.

(v) When simpler quantitative analysis may not sufficiently describe uncertainty, and where probability distributions for relevant input assumptions are available and can be feasibly and credibly combined, the BCA must include a characterization of how the probability distributions of the relevant input assumption uncertainty would impact the resulting distribution of benefit and cost estimates.

(vi) Except as provided in this paragraph, the BCA must include a characterization of the range of likely outcomes, including expected value estimates of benefits and costs as well as distributions about each of the estimates. In cases where estimates based on expected values are not feasible or appropriate, the BCA must present a range of benefits and costs.

(11) The BCA must include a presentation that includes the following elements:

(i) A presentation of the overall results of the BCA (benefits, costs, and net benefits of each regulatory option evaluated in the BCA) in a manner designed to be objective, comprehensive, reproducible to the extent reasonably possible, and easily understood by the public.

(ii) A description of how the benefits and costs were estimated in the BCA, including the assumptions made for the analysis. The description must include the models, data, and assumptions used to estimate benefits and costs, and the evaluation and selection process for these analytical decisions. The description must also include an explanation of procedures used to select among input parameters to the benefit and cost models, and any methods used to quantify risk and to model fate and transport of pollutants.

(iii) A description, consistent with the best available scientific information, of the non-monetized and non-quantified benefits and costs of the action. The description must include available evidence on non-monetized and non-quantified benefits and costs, including explanations as to why they are not being monetized or quantified and discussions of what the potential impact of those benefits and costs might be on the overall results of the BCA.

(iv) A presentation of the results of an assessment of the sources of uncertainty that are likely to have a substantial effect on the results of the BCA and present the results of this assessment. The presentation must identify any data and models used to analyze uncertainty in the BCA, and the quality of the available data shall be discussed.

(v) A reasoned explanation for any departures from best practices in the BCA, including a discussion of the likely effect of the departures on the results of the BCA.

(12) To the extent permitted by law, the Agency must ensure that all information (including data and models) used in the development of the BCA is publicly available while consistent with protections for privacy, confidentiality, confidential business information (CBI), and national and homeland security. If data and models are proprietary, the Agency must make available, to the extent practicable, the underlying inputs and assumptions used, equations, and methodologies used by EPA.

(b) [Reserved]

§ 83.4 What additional requirements apply to EPA's presentation of BCA results for all significant regulations promulgated under the Clean Air Act?

(a) The Agency must provide a summary in the preamble of each significant regulation of the overall BCA results, including total benefits, costs, and net benefits. Within this summary, if any benefits and costs accrue to non-U.S. populations they must be reported separately to the extent possible.

(b) The Agency must provide an additional presentation in the preamble of each significant regulation of the public health and welfare benefits that pertain to the specific objective (or objectives, as the case may be) of the CAA provision or provisions under which the significant regulation is promulgated.

(1) This presentation must list the benefit categories arising from the environmental improvement that is targeted by the relevant statutory provision and report the monetized value to society of these benefits.

(2) If these benefit categories cannot be monetized, the Agency must report the quantified estimates of these benefits to the extent possible and provide a qualitative characterization if they cannot be quantified.

(c) When the CAA provision or provisions under which the significant regulation is promulgated require the consideration of specific costs, the Agency must provide a transparent presentation of how those specific costs relate to total costs, to the extent possible.

(d) When the CAA statutory provision or provisions under which the significant regulation is promulgated does not prohibit the consideration of the BCA, the Agency must provide a description in the preamble of how the Agency considered the BCA. If the provision or provisions under which the significant regulation is promulgated prohibit the consideration of the BCA, the Agency must identify the specific provision which bars such consideration.

(e) The summary, description and presentations specified in paragraphs (a), (b), (c), and (d) of this section must be placed in the same section in the preamble of the regulation.

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Part III

Department of Homeland Security

8 CFR Part 208

Department of Justice

Executive Office for Immigration Review

8 CFR Part 1208
Security Bars and Processing; Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 208

RIN 1615–AC57

[Docket No: USCIS 2020–0013]

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1208

[Dir. Order No. 11–2021]

RIN 1125–AB08

Security Bars and Processing

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security (''DHS''); Executive Office for Immigration Review, Department of Justice (''DOJ'')

ACTION: Final rule.

SUMMARY: On July 9, 2020, DHS and DOJ (collectively, ''the Departments'') published a notice of proposed rulemaking (''NPRM'') clarifying that the danger to the security of the United States statutory bar to eligibility for asylum and withholding of removal may encompass emergency public health concerns. This final rule responds to comments received in response to the NPRM and reflects (and in some instances, modifies) intervening changes made to the regulatory framework by Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, published December 11, 2020 (''Global Asylum Final Rule''). Namely, it amends existing regulations to clarify that in certain circumstances there are ''reasonable grounds for regarding [an] alien as a danger to the security of the United States'' or ''reasonable grounds to believe that [an] alien is a danger to the security of the United States'' based on emergency public health concerns generated by a communicable disease, making the alien ineligible to be granted asylum in the United States under section 208 of the Immigration and Nationality Act (''INA'') or the protection of withholding of removal under the INA (''statutory withholding of removal'') or subsequent regulations (because of the threat of torture). The final rule further allows DHS to exercise its prosecutorial discretion regarding how to process individuals subject to expedited removal who are determined to be ineligible for asylum and withholding of removal in the United States because they are subject to the danger to the security of the United States. Finally, the rule modifies the process in expedited removal proceedings for screening aliens for potential eligibility for deferral of removal (who are ineligible for withholding of removal as subject to the danger to the security of the United States bar).

DATES: This final rule is effective January 22, 2021.

FOR FURTHER INFORMATION CONTACT:

FOR USCIS: Andrew Davidson, Asylum Division Chief, Refugee, Asylum and International Affairs Directorate, U.S. Citizenship and Immigration Services, DHS; telephone 202–272–8377 (not a toll-free call).

For EOIR: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

On July 9, 2020, the Departments published an NPRM entitled Security Bars and Processing. 85 FR 41201 *et seq.* (July 9, 2020). In this final rule, the Departments respond to comments received in response to the NPRM and changes made to the regulatory framework by the Global Asylum Final Rule, in order to mitigate the risk of aliens bringing a serious communicable [1] disease to the United States, or further spreading it within our country. Thus, the Departments make three fundamental and necessary reforms to the Nation's immigration system: (1) Clarifying that the statutory ''danger to the security of the United States'' bars to eligibility for asylum and withholding of removal apply in certain contexts involving public health crises caused by communicable diseases so that aliens can be expeditiously removed, as appropriate, (2) as to aliens determined during credible fear screenings to be ineligible for asylum and withholding of removal on the basis of the danger to the security of the United States bars or ineligible for asylum for having failed to apply for protection from persecution in a third country where potential relief is available while en route to the United States pursuant to Asylum Eligibility and Procedural Modifications, 85 FR 82260 (December 17, 2020) (''Third-Country Transit Final Rule''), streamlining screening for potential eligibility for deferral of removal in the expedited removal process to similarly allow for the expeditious removal of aliens ineligible for deferral, and (3) as to aliens determined during credible fear screenings to be ineligible for asylum and withholding of removal on the basis of the danger to the security of the United States bars or ineligible for asylum for having failed to apply for protection from persecution in a third country where potential relief is available while en route to the United States pursuant to the Third-Country Transit Final Rule, but who nevertheless establish that they are more likely than not to be tortured in the prospective country of removal, allowing DHS to utilize its prosecutorial discretion to either place the aliens into asylum-and-withholding-only removal proceedings under 8 CFR 208.2(c)(1) and 8 CFR 1208.2(c)(1) (''asylum-and-withholding-only proceedings'') [2] or to remove them to third countries where they would not be more likely than not to be tortured.

The amendments made by this final rule will apply to aliens who enter the United States after the rule's effective date, except that the amendments will not apply to aliens who had, before the date of an applicable joint Secretary of Homeland Security and Attorney General designation of an area or areas of the world as to which it is necessary for the public health that certain aliens who were present there be regarded as a danger to the security of the United States, (1) filed asylum and withholding of removal applications, or (2) indicated a fear of return in expedited removal proceedings.

II. Background

The preamble discussion in the NPRM is generally incorporated by reference in this final rule.[3] As of the date the NPRM was published on July 9, 2020, 3,239,412 persons in the United

[1] The Department of Health and Human Services defines a communicable disease as ''an illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from an infected person or animal or a reservoir to a susceptible host, either directly, or indirectly through an intermediate animal host, vector, or the inanimate environment.'' 42 CFR 71.1(b).

[2] Asylum-and-withholding-only proceedings are adjudicated in the same manner that had applied to certain alien crewmembers, stowaways, and applicants for admission under the Visa Waiver Program, among other categories of aliens who are not entitled by statute to removal proceedings under section 240 of the INA, 8 U.S.C. 1229a. 8 CFR 208.2(c)(1)(i)–(viii), 1208.2(c)(1)(i)–(viii). These proceedings generally follow the same rules of procedure that apply in section 240 proceedings, but the immigration judge's consideration is limited solely to a determination on the alien's eligibility for asylum, withholding of removal and deferral of removal (and, if the alien is eligible for asylum, whether he or she should receive it as a matter of discretion). 8 CFR 208.2(c)(3)(i), 1208.2(c)(3)(i).

[3] The preamble discussion is not incorporated to the extent specifically noted in this final rule, or in the context of proposed regulatory text that is not contained in this final rule.

States were reported to have contracted COVID–19 and 136,145 had died.[4] The number of persons infected has now reached 16,519,668 and the death toll has reached 302,992 (as of December 15, 2020).[5]

As of December 2020, the impact of the COVID–19 pandemic has been similar to that pandemic impact feared by then-Secretary of Homeland Security Michael Chertoff in 2006—''[a] severe pandemic . . . may affect the lives of millions of Americans, cause significant numbers of illnesses and fatalities, and substantially disrupt our economic and social stability''.[6]

On December 16, 2020, the Federal Reserve Board's Open Market Committee (''FOMC'') projected that real gross domestic product (''GDP'') in fiscal year 2020 would fall by 2.4 percent and that the national unemployment rate would be 6.7 percent.[7] As a result of COVID–19, the national unemployment rate rose from 3.5 percent in February 2020 to a peak of 14.7 percent in April, before subsequently declining, most recently to 6.7 percent in November.[8] The FOMC also projected that GDP will rebound by 4.2 percent in fiscal year 2021 and the national unemployment rate will fall to 5.0 percent.[9] On December 16, 2020, the FOMC issued a statement finding that:

> The COVID–19 pandemic is causing tremendous human and economic hardship across the United States and around the world. Economic activity and employment have continued to recover but remain well below their levels at the beginning of the year. . . . The path of the economy will depend significantly on the course of the virus. The ongoing public health crisis will continue to weigh on economic activity, employment, and inflation in the near term, and poses considerable risks to the economic outlook over the medium term.[10]

After evaluating the effects of voluntary and mandatory containment measures, the International Monetary Fund (''IMF'') reported in October that:

> If lockdowns were largely responsible for the economic contraction, it would be reasonable to expect a quick economic rebound when they are lifted. But if voluntary social distancing played a predominant role, then economic activity would likely remain subdued until health risks recede.
>
> [T]he analysis suggests that lockdowns and voluntary social distancing played a near comparable role in driving the economic recession. The contribution of voluntary distancing in reducing mobility was stronger in advanced economies, where people can work from home more easily and sustain periods of temporary unemployment because of personal savings and government benefits.
>
> When looking at the recovery path ahead, the importance of voluntary social distancing as a contributing factor to the downturn suggests that lifting lockdowns is unlikely to rapidly bring economic activity back to potential if health risks remain. . . . These findings suggest that economies will continue to operate below potential while health risks persist, even if lockdowns are lifted.[11]

IV. Public Comments on the Proposed Rule

A. Summary of Public Comments

On July 9, 2020, the Departments published the NPRM (docket USCIS–2020–0013). The comment period closed on August 10, 2020. The Departments received a total of 5,044 submissions. While some of the comments expressed general support for the proposed rule or expressed a mixed opinion of the rule, the majority of commenters opposed the rule. Of the 5,044 total submissions, 1,417 were unique, nonduplicative submissions.

Overall, and as discussed in more detail below, the Departments generally decline to adopt the recommendations of comments that misstate the NPRM, offer broad and dire hypothetical or speculative effects without any support, are contrary to facts or law or otherwise untethered to a reasoned basis, or lack an understanding of relevant law and procedures regarding the overall immigration system.

B. Comments Expressing General Support for the Proposed Rule

Comment: At least two organizations and other individual commenters expressed general support for the rule. Commenters who supported the rule considered the health and safety of American citizens as paramount and agreed that public health concerns should be a consideration in evaluating dangers to the national security and considering asylum applications. These commenters supported protecting Americans from the spread of communicable diseases and urged the U.S. government to prevent the healthcare system from becoming overburdened by aliens seeking medical care in the United States.

One commenter noted an increase in COVID–19 cases at border crossings and considered aliens infected with COVID–19 as a threat to Americans' health and a financial burden to the country. Another commenter expressed support for the rule, stating that it was unfair for American taxpayers to pay for the healthcare of aliens.

Some commenters stated that the rule protected U.S. citizens from individuals who abuse the law and take advantage of the United States' generosity and asylum system.

Response: The Departments note and appreciate these commenters' support for the rule.

C. Comments Expressing General Opposition for the Proposed Rule

Comment: At least 3,570 commenters, including 2,635 submissions associated with form letter campaigns, expressed general disagreement with the proposed rule. Many commenters characterized the rule as racist, unfair, or otherwise morally wrong. Moreover, some commenters interpreted the rule as discriminatory against black, brown, indigenous persons, and immigrants. Additionally, commenters characterized the rule as an immigration or asylum ban and expressed concerns that the rule would make immigration to the United States more difficult or eliminate the availability of asylum and

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[4] WorldMeter, COVID–19 Tracking Tool, *https://www.worldometers.info/coronavirus/#countries* (last visited November 3, 2020).

[5] CDC COVID Data Tracker, *https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days* (last visited December 17, 2020).

[6] DHS, *Pandemic Influenza: Preparedness, Response, and Recovery: Guide for Critical Infrastructure and Key Resources,* Introduction at 1 (2006) (Michael Chertoff, Secretary of Homeland Security), *https://www.dhs.gov/sites/default/files/publications/cikrpandemicinfluenzaguide.pdf.*

[7] FOMC, Federal Reserve System, *December 16, 2020: FOMC Projections Materials, Accessible Version* (table 1). The 2.4 percent fall in GDP is the median projection of Federal Reserve Board members and Federal Reserve Bank presidents from the 4th quarter of 2019 to the 4th quarter of 2020 under each participant's assessment of appropriate monetary policy, with the upper end of central tendency (which excludes the three highest and three lowest projections) a decrease of 2.2 percent and the lower end of central tendency at drop of 2.5 percent. The 6.7 percent unemployment rate is the median projection of the average civilian unemployment rate in the 4th quarter of 2020, with the upper end of central tendency at 6.8 percent and the lower end of range at 6.7 percent.

[8] Bureau of Labor Statistics, U.S. Department of Labor, *The Employment Situation—June 2020* (table A–1) and *The Employment Situation—November 2020* (table A–1) (both providing the seasonally adjusted unemployment rate for the civilian noninstitutional population, persons 16 years old and over).

[9] *December 16, 2020: FOMC Projections Materials, Accessible Version* (table 1). The 4.2 percent rise in GDP is the median projection of Federal Reserve Board members and Federal Reserve Bank presidents from the 4th quarter of 2020 to the 4th quarter of 2021 under each participant's assessment of appropriate monetary policy, with the upper end of central tendency an increase of 5.0 percent and the lower end of central tendency an increase of 3.7 percent. The 5.0 percent unemployment rate is the median projection of the average civilian unemployment rate in the 4th quarter of 2021, with the upper end of central tendency at 5.4 percent and the lower end of range at 4.7 percent.

[10] FOMC, Federal Reserve System, *Federal Open Market Committee Statement* (December 16, 2020).

[11] IMF, *World Economic Outlook: Chapter 2: The Great Lockdown: Dissecting the Economic Effects* at 65–66 (October 2020).

withholding of removal in the United States. Some commenters stated that asylum-seekers do not pose a security or safety threat to the United States on the basis of having traveled through other countries.

Many commenters stated that the rule conflicts with American values and the country's deeply rooted policy of welcoming immigrants and refugees, and they asserted that its implementation would damage the United States' standing and reputation in the world. Commenters believed that the United States should welcome asylum-seekers, and that immigration benefits the United States both economically and culturally. Some commenters believed the rule unlawfully infringes on aliens' rights to asylum in the United States.

Many commenters also generally asserted that the rule provides inadequate policy justification or legal analysis, which commenters asserted is evidence that it was inappropriately motivated by the Administration's personal animus against immigrants. Some commenters also rejected the public health rationale, claiming that alternative measures could be taken to protect the American public, and that the rule would do little to mitigate the spread of disease. Additionally, commenters believed that it is unreasonable for the Departments to make decisions regarding public health.

Multiple commenters wrote that the rule would be discriminatory. These commenters claimed the rule would generally contravene international laws against discrimination, including Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (''CAT''),[12] the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the United States' obligations under the 1951 Convention relating to the Status of Refugees (''Refugee Convention'') [13] and the 1967 Protocol relating to the Status of Refugees (''Refugee Protocol''),[14] and Article 7 of the International Covenant on Civil and Political Rights. Some commenters claimed that the rule specifically discriminates on the basis of national origin because applicants could be barred from asylum eligibility on the basis of the countries through which they have travelled.

Some commenters said the rule violates guidance provided by the United Nations High Commissioner for Refugees (''UNHCR'') because it denies asylum in ''blanket terms'' based on consideration of the prevalence of a disease in the countries through which asylum seekers have travelled and because the standard of evidence for triggering the bar is low.

Response: To provide an overview of the Departments' response to these comments, the Departments emphatically disagree with contentions that the rule is immoral, motivated by racial animus, or promulgated with discriminatory intent. This rulemaking applies equally to all asylum seekers. The demographics of asylum seekers are as vast and varied as the number of countries around the globe and the Departments did not promulgate this rule to impact any particular race, religion, nationality, or category of aliens who may seek asylum.

The Departments also strongly disagree that this rule illegally infringes on the right to seek asylum. Unlike statutory withholding of removal and protections under the regulations issued pursuant to the legislation implementing Article 3 of CAT (''CAT regulations''), asylum is a discretionary benefit. No one has the right to be granted asylum in the United States and this rule does not alter an alien's ability to seek asylum through the statutorily-prescribed channels, including credible fear interviews for aliens in expedited removal proceedings. Additionally, aliens subject to the bars imposed by this rule on asylum and withholding of removal may still receive protection against removal if they establish they are eligible for deferral of removal under the CAT regulations.

The United States continues to fulfill its international commitments as implemented by domestic law. This rule merely reflects the need to protect the American public during times of extraordinary threats to the public health from pandemic diseases, as permitted by those laws.

The Departments have considered and rejected alternatives to mitigate the spread of communicable disease within U.S. Customs and Border Protection (''CBP'') facilities at the border. Although CBP has policies and procedures in place to handle communicable diseases, CBP is not equipped to provide medical support sufficient to meet the unique and specialized challenges posed by particularly infectious or highly contagious illnesses or diseases brought into CBP facilities. Of the 136 CBP facilities along the land and coastal borders, only 46 facilities, all located on the southern land border with Mexico, have contracted medical support on location. Even that support is not currently designed to diagnose, treat, and manage certain infectious or highly contagious illnesses or diseases—particularly novel diseases. Moreover, many CBP facilities, particularly along the southern land border, are located in remote locations distant from hospitals and other medical care and supplies. In short, if a highly contagious illness or disease were to be transmitted within a CBP facility, CBP operations could face significant disruption.

As the Departments explain below, the U.S. government is not bound by UNHCR guidance. And the Departments disagree with the premise that the rule's standards for triggering the bars to eligibility for asylum and withholding of removal are inadequate. The Departments proposed the rule to clarify that authorities provided by Congress can be used to mitigate harms arising from the spread of communicable disease to DHS officers on the border, aliens in DHS custody, and the general public, as well as significant operational and resource strains associated with public health procedures and protocol the Departments must implement, and in the case of COVID–19, are implementing, to mitigate the spread of communicable disease. Additionally, the rule requires that the application of the security bars to asylum and withholding of removal be tailored to the specific threat posed by the relevant public health emergency.

D. Basis for the Rule

1. Legal Authority

Several commenters generally argued that the proposed rule is contrary to international or domestic law, including the Refugee Convention and Refugee Protocol, CAT, and the INA, and is contrary to Congressional intent in enacting these laws and ratifying these treaties to provide protection to those fleeing persecution or torture.

[12] CAT, art. 3(1), December 10, 1984, S. Treaty Doc. No. 100–20 (1988), 1465 U.N.T.S. 84.

[13] July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150.

[14] Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 268. Article 33.1 of the Refugee Convention states that ''[n]o Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers or territories *where his life or freedom would be threatened* on account of his race, religion, nationality, membership or a particular social group or political opinion.'' 19 U.S.T. 6259, 6276, 189 U.N.T.S. 150, 176 (emphasis added). In 1968, the United States acceded to the Refugee Protocol, which bound parties to comply with the substantive provisions of Articles 2 through 34 of the Convention with respect to refugees. *See I.N.S.* v. *Cardoza-Fonseca,* 480 U.S. 421, 429 (1987).

Antiterrorism and Effective Death Penalty Act of 1996 (''AEDPA'')

Comment: Commenters argued that the proposed rule ignores or contradicts Congressional intent by not acknowledging the distinction between national security and economic concerns in AEDPA, citing legislative history and sections 413 and 421 of the legislation, which incorporated the terrorism-related removal grounds at INA 212(a)(3)(B)(i) and 237(a)(4)(B) as mandatory bars to eligibility for asylum and withholding of removal. The commenters argued that Congress intended for these provisions to limit the scope of danger to the security of the United States bars to those aliens who have engaged in violent acts or other terrorism-related activity, in marked contrast to the type of threat posed by a communicable disease.

Response: The Departments disagree with the commenters' analysis of sections 413 and 421 of AEDPA. As discussed in the NPRM, with respect to aliens whom there are reasonable grounds for regarding or believing are a danger to the security of the United States and thus ineligible for asylum and withholding of removal, the scope of the term extends well beyond terrorism considerations, and national defense considerations as well. The Attorney General has previously determined that ''danger to the security of the United States'' in the context of the bar to eligibility for withholding of removal encompasses considerations of defense, foreign relations, and the economy, finding that:

> The INA defines ''national security'' [in the context of the designation process for foreign terrorist organizations] to mean ''the national defense, foreign relations, or economic interests of the United States.'' Section 219(c)(2) of the Act, 8 U.S.C. 1189(c)(2) (2000). Read as a whole, therefore, the phrase ''danger to the security of the United States'' is best understood to mean a risk to the Nation's defense, foreign relations, or economic interests.[15]

The INA's definition of ''national security'' referred to by the Attorney General provides additional evidence that the term—along with the term ''danger to the security of the United States''—should be read to encompass concerns beyond those concerning national defense and terrorism. In fact, the definition was enacted in 1996 as section 401(a) of title IV of AEDPA and was added as enacted by the House-Senate Conference Committee.[16] The proposed legislation as originally passed by the Senate defined ''national security'' to mean ''the national defense and foreign relations of the United States.'' [17] That version of the bill may have considered economic concerns as separate from national security concerns. For example, it provided that in designating a foreign terrorist organization, the Secretary of State would have had to find that ''the organization's terrorism activities threaten the security of United States citizens, national security, foreign policy, or the economy of the United States''—listing ''national security'' and ''the economy'' as two independent considerations.[18] In addition, the section included a finding that also differentiated between national security concerns and those related to foreign policy and the economy. Congress found that:

> (B) [T]he Nation's security interests are gravely affected by the terrorist attacks carried out overseas against United States Government facilities and officials, and against American citizens present in foreign countries;
>
> (C) United States foreign policy and economic interests are profoundly affected by terrorist acts overseas directed against foreign governments and their people . . . .[19]

But Congress then seemingly abandoned this bifurcation between security and the economy. First, the Conference Report merged economic considerations into the definition of national security. Therefore, to the extent one accepts legislative history as a relevant consideration when interpreting the meaning of statutory terms, the change in phrasing in the Conference Report suggests a conscious decision that economic considerations are subsumed within a general reference to national security. Second, the explicit reference to economic considerations in the earlier draft of the legislation, when discussing the threats posed by terroristic activities, also implies a connection between national security and economic concerns—suggesting that considerations related to security in this context are quite broad. Finally, the definition in AEDPA operated in the context of the designation of foreign terrorist organizations. When national security is considered in a much broader context beyond the risk of terrorism, as is the case in this rule, it makes even greater sense for it to encompass economic concerns (and, consequently, public health concerns of such magnitude that they become economic concerns). A pandemic can cause immense economic damage, in addition to the human toll of the illness. Thus, the entry of aliens who may carry communicable diseases to our country or facilitate the spread of such disease within the interior of the country could pose a danger to U.S. security well within the scope of the statutory bars to eligibility for asylum and withholding of removal. The entry of such aliens could also pose a danger to national security by threatening DHS's ability to secure our border and facilitate lawful trade and commerce.

Finally, while aliens who are described in the terrorism-related removal grounds fall under the ''danger to security'' bars to asylum and withholding, there is nothing in the language of those sections limiting the application of those bars to terrorism grounds. In fact, terrorism-related activity is a separate statutory bar to asylum eligibility from the danger to the security of the United States bar. And the INA specifies that an alien engaging in such activity ''shall be considered to be an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States,'' INA 241(b)(3)(B), 8 U.S.C. 1231(b)(3)(B), thus indicating such an alien represents only a subset of the larger category of aliens for whom there are reasonable grounds to believe are a danger to the security of the United States.

The Departments are not making changes to the final rule in response to these comments.

Refugee Convention, Refugee Protocol, UNHCR Guidance and Statements, the Universal Declaration of Human Rights, and the International Health Regulations

Comment: Several commenters claimed that the NPRM is inconsistent with U.S. obligations under the Refugee Convention and the Refugee Protocol, including the principal of nonrefoulement, and that those obligations have been implemented into domestic U.S. law through the Refugee Act of 1980. They argued that domestic statutes must be interpreted consistently with international law where possible, and cite sources relating to the U.S. role in negotiation of the Refugee Convention and in the ratification of the Refugee Protocol evincing the intent of the U.S. not to exclude refugees from protection for reasons of health. Commenters argued that the danger to the security of the United States bars to asylum and withholding of removal derive from Articles 32 and 33(2) of the

[15] *Matter of A–H-,* 23 I&N Dec. 774, 788 (AG 2005).

[16] H.R. Rep. No. 104–518, at 38 (1996) (Conf. Rep.).

[17] 142 Cong. Rec. H2268–03, at H2276 (Mar. 14, 1996) (S. 735, title VI, 401(a)).

[18] Section 401(a) of title IV of S. 735 (as passed the Senate on June 7, 1995), 141 Cong. Rec. S7864 (July 7, 1995).

[19] *Id.*

Refugee Convention. They claimed that these provisions regarding national security do not encompass health concerns. Several commenters also pointed out that withholding of removal is not a discretionary benefit but instead a mandatory protection under Article 33 of the Refugee Convention as codified at section 241(b)(3) of the INA. Two commenters cited UNHCR's guidance and academic papers in arguing that the danger to the security of the United States bars must be based on individualized determinations. Another commenter specifically argued that the ''reasonable person'' standard proposed by the rule, and the possibility that a person could be expelled for passing through a country where COVID–19 was prevalent without proof of that person's infection (via testing), violates UNHCR guidance against refoulement without evidence of a health risk. An individual also commented that such a denial would violate Article 14 of the Universal Declaration of Human Rights, which guarantees the right to seek and enjoy asylum from persecution. A legal services provider cited to UNHCR guidance,[20] as well as U.S. correspondence during the formulation of the Refugee Protocol, in arguing the invalidity of security bars applying to an entire class of asylum seekers. Another commenter cited to the 2006 UNHCR guidance for the propositions that (1) the dangers to the security of the United States bars must be restrictively interpreted; (2) the danger posed to national security must be sufficient to justify refoulement; and (3) refoulement must be proportionate to the danger presented.[21] The commenter then concluded that the proposed rule would fail under all three considerations. Another commenter stated that not considering an asylum seeker's intent with respect to conduct that could give rise to a security bar would be contrary to the humanitarian social purpose of the Refugee Act and the Refugee Convention. Multiple commenters also cited to 2020 UNHCR guidance,[22] as prohibiting the closure of borders for public health reasons without preserving asylum seekers' rights under international law, noting that the guidance recommended relying on the screening and quarantine of asylum seekers, stated that refoulement could not be justified on a public health basis and stated that a total lock-out of asylum seekers would violate rules of proportionality.

Several commenters stated that the rule breaches international health regulations that bind the United States and require it to exercise health powers with full respect for human rights. A legal services provider commented that the international health regulations provide for the humane treatment of migrants during a screening or quarantine period.

Response: The United States has undertaken certain obligations under the Refugee Protocol, which incorporates Articles 2–34 of the Refugee Convention. Article 33 of the Refugee Convention, as understood in U.S. law, generally precludes state parties from removing individuals to any country where their lives or freedom would be threatened on account of their race, religion, nationality, political opinion, or membership in a particular social group. Congress made the decision to implement its non-refoulement obligations under the Refugee Protocol through the protection of statutory withholding of removal at section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), and in the Foreign Affairs Reform and Restructuring Act (''FARRA''), to implement its CAT non-refoulement obligations through regulations, which resulted in withholding and deferral of removal protections under the CAT regulations.[23] It was Congress's deliberate decision to establish a requirement that an alien show it is more likely than not that his or her ''life or freedom would be threatened'' for statutory withholding of removal, the standard designed to meet U.S. obligations under the Refugee Protocol. The Supreme Court stated in *INS* v. *Stevic* that ''it seems clear that Congress understood that refugee status alone did not require [statutory] withholding of deportation, but rather, the alien had to satisfy the [more likely than not] standard'' under statutory withholding of removal.[24]

An alien who can demonstrate that he or she would more likely than not face persecution on account of a protected ground or torture is entitled to withholding of removal or, if more likely than not to be tortured but subject to a mandatory bar to eligibility for withholding, is entitled to CAT deferral of removal. As the Tenth Circuit has stated, ''the Refugee Convention's non-refoulement principle—which prohibits the deportation of aliens to countries where the alien will experience persecution—is given full effect by the Attorney General's withholding-only rule''.[25] And the Ninth Circuit explained that Article 3 of the CAT was implemented in the United States by the FARRA and its implementing regulations.[26] The Departments also note that neither of these treaties is self-executing and therefore they are not directly enforceable in the U.S. legal context except to the extent that they have been implemented by domestic legislation.[27]

Article 33 of the Refugee Convention includes an exception from non-refoulement obligations, similar to the section 241(b)(3)(B)(iv) security exception, which provides that the benefit of those obligations ''may not . . . be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is.'' Rejection of withholding of removal claims from aliens who would risk bringing in or further spreading a communicable disease such as COVID–19 into the United States is therefore consistent with the non-refoulement provisions of the Refugee Convention and the Refugee Protocol, as national security concerns encompass the security risks associated with an international public health emergency like the COVID–19 pandemic, or other communicable diseases of public health significance that may arise in the future.

Asylum under the immigration laws, on the other hand, is a discretionary form of relief. Section 208 of the INA reflects the fact that Article 34 of the Refugee Convention is precatory and accordingly provides that aliens meeting the eligibility requirements for asylum ''may'' be granted asylum and contains various bases upon which an alien meeting the definition of a refugee is

[20] UNHCR, *Advisory Opinion from the UNHCR on the Scope of the National Security Exception Under Article 33(2) of the 1951 Convention Relating to the Status of Refugees* 5 (2006).

[21] *See, e.g.,* Message from the President of the United States, Transmitting the Protocol Relating to the Status of Refugees, at VIII (1968); Dep't of Health, Education, and Welfare (''HEW''), *Memorandum for Ambassador Graham Martin re: Protocol Relating to the Status of Refugees* (July 22, 1968); HEW, *Letter to Ambassador Graham Martin re: Protocol Relating to the Status of Refugees* (July 16, 1968).

[22] UNHCR, Key Legal Considerations on Access to Territory for Persons in Need of International Protection in the Context of the COVID–19 Response (Mar. 2020).

[23] Public Law 105–277, div. G, subdiv. B, title XXII, sec. 2242 (b), 112 Stat. 2681–822 (1998), codified at 8 U.S.C. 1231 note; 8 CFR 208.16(b)–(c), 208.17, 208.18; 1208.16(b)–(c), 1208.17, 1208.18.

[24] 467 U.S. 407, 428 (1984) (citation omitted). *See Cardoza-Fonseca,* 480 U.S. at 440–41.

[25] *R–S–C* v. *Sessions,* 869 F.3d 1176, 1188 & n.11 (10th Cir. 2017); *see also Cazun* v. *U.S. Att'y Gen.,* 856 F.3d 249, 257 & n.16 (3d Cir. 2017),,); *Ramirez-Mejia* v. *Lynch,* 813 F.3d 240, 241 (5th Cir. 2016).

[26] *Maldonado* v. *Lynch,* 786 F.3d 1155, 1162 (9th Cir. 2015).

[27] *Al-Fara* v. *Gonzales,* 404 F.3d 733, 743 (3d Cir. 2005) (''The 1967 Protocol is not self-executing, nor does it confer any rights beyond those granted by implementing domestic legislation.''); *Auguste* v. *Ridge,* 395 F.3d 123, 132 (3d Cir. 2005) (CAT ''was not self-executing'').

nonetheless ineligible to apply for or receive asylum and authorizes the creation of new eligibility bars through regulation.[28] The federal judiciary has rejected arguments that the Refugee Protocol, as implemented in domestic law, requires that every qualified refugee receive asylum.[29]

The Supreme Court has ruled that while UNHCR's interpretation of (or recommendations regarding) the Refugee Convention and Refugee Protocol, such as set forth in the UNHCR Handbook, ''may be a useful interpretative aid,'' [30] it is not binding on the U.S. government, recognizing that ''[i]ndeed, the Handbook itself disclaims such force, explaining that 'the determination of refugee status under the [Refugee] Convention and the [Refugee] Protocol . . . is incumbent upon the Contracting State in whose territory the refugee finds himself.' '' [31]

The Universal Declaration of Human Rights is a non-binding instrument, not an international agreement; thus, it does not impose obligations on the United States.[32] Moreover, although it proclaims the right of ''everyone'' to ''seek and to enjoy'' asylum, it does not purport to state specific standards for establishing asylum eligibility, and it certainly cannot be read to impose an obligation on the United States to grant asylum to ''everyone.'' [33]

The Departments do not agree with the commenters' assertions that the rule is inconsistent with the International Health Regulations. This rule implements the immigration authorities of the Departments with respect to eligibility for asylum and withholding of removal, rather than any public health authorities. Specifically, the rule clarifies the Departments' understanding of the bars to eligibility for asylum and withholding of removal based on their being reasonable grounds for regarding or believing an alien to be a danger to the security of the United States. The International Health Regulations do not purport to address or govern asylum eligibility, and the regulations specifically exclude ''security measures'' from the definition of ''health measures.'' [34] Accordingly, the Departments believe the rule is sufficiently tailored to permit the U.S. government to implement recommendations stemming from the International Health Regulations in concert with the application of the danger to security of the United States bars to asylum and withholding of removal in contexts where the Secretary and Attorney General determine, in consultation with the Secretary of Health and Human Services, per the framework established by this rule, such recommendations are insufficient to ensure the security of the United States. Likewise, the Departments disagree that the International Health Regulations otherwise bind the Departments from employing this statutory authority.

The Departments are not making changes to the final rule in response to these comments.

Unaccompanied Alien Children and the Trafficking Victims Protection Reauthorization Act of 2008

Comment: Several commenters expressed concern about the proposal's impact on unaccompanied alien children (UAC). Some commenters noted protections provided for UAC by the Trafficking Victims Protection Reauthorization Act of 2008 (''TVPRA''), which they argue demonstrates a general intent by Congress to protect UAC. A legal services provider described details of the TVPRA's provisions requiring UAC whom DHS seeks to remove to be placed into removal proceedings under section 240 of the INA, 8 U.S.C. 1229a (''section 240 proceedings''), rather than into expedited removal proceedings, and mandating that asylum officers within DHS exercise initial jurisdiction over asylum applications filed by UAC. The commenter wrote that the proposed rule could undermine Congress' intent and deprive UAC of access to benefits such as Special Immigrant Juvenile classification. Another commenter argued that turning away children at the border, even if they are assessed to have been exposed to a covered disease, would be in violation of TVPRA, adding that they must be transferred to Office of Refugee Resettlement custody and offered the ability to seek protection from removal. An advocacy group commented that the proposal could deny statutorily-protected due process rights to UAC, writing that the possibility of a UAC being barred from asylum on the basis of passing through a country, despite being exempted by Congress from a bar ''related to the availability of protection'' in the same country, would be absurd. It stated that other immigration law provisions related to public health or medical examination do not bar eligibility for humanitarian or TVPRA protections. It further argued that while it is true that the INA exempts UAC from expedited removal proceedings, and thus that they cannot be expelled from the United States before they have the opportunity to make their case, the proposed rule would still remove UAC's due process protections and subject them to refoulement. Commenters argued that the NPRM is contrary to the best interests of children generally, contravening State child welfare laws and the Convention on the Rights of the Child. The campaign argued that the proposal would violate UAC's right to safety by returning them to abusers, persecutors, and traffickers for reasons outside of their control.

Response: It is certainly true that not all of the statutory bars to the right to apply for asylum are applicable to UAC (including INA section 208(a)(2)(A) regarding aliens who can be removed to a safe third country pursuant to a bilateral or multilateral agreement and INA section 208(a)(2)(B) regarding aliens who file asylum applications more than one year of their arrival). That said, nothing in this rule negates the statutory rights and protections of UAC, including under the TVPRA. For instance, UAC retain the right to apply for asylum notwithstanding section 208(a)(2)(A)–(B) of the INA. INA 208(a)(2)(E). Notably, however, Congress did not exempt UAC from any of the statutory bars to asylum eligibility. As a result, UAC seeking asylum, like all other asylum seekers, are ineligible for asylum if they are subject to any of the mandatory bars at section 208(b)(2)(A)(i)–(vi) of the Act, 8 U.S.C. 1158(b)(2)(A)(i)–(vi)—including the danger to the security of the United States bar—and if subject to any additional bars implemented pursuant to the Attorney General's and the

[28] Article 34 states: ''The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.'' *See also R-S-C,* 869 F.3d at 1188; *Mejia* v. *Sessions,* 866 F.3d 573, 588 (4th Cir. 2017), *Cazun,* 856 F.3d at 257 & n.16; *Ramirez-Mejia,* 813 F.3d at 241.

[29] *DHS* v. *Thuraissigiam,* 140 S. Ct. 1959, 1965 n.4 (2020) (''[E]ven if an applicant qualifies, an actual grant of asylum is discretionary.''); *See also Cardoza-Fonseca,* 480 U.S. at 441, *Grace* v. *Sessions,* 856 F.3d 27, 40 (1st Cir. 2017) (''[W]ithholding of removal has long been understood to be a mandatory protection that must be given to certain qualifying aliens, while asylum has never been so understood'').

[30] *INS* v. *Aguirre-Aguirre,* 526 U.S. 415, 427 (1999).

[31] *Id.*

[32] *Sosa* v. *Alvarez-Machain,* 542 U.S. 692, 728, 734–35 (2004) (citing John P. Humphrey, *The U.N. Charter and the Universal Declaration of Human Rights,* in The International Protection of Human Rights 39, 50 (Evan Luard ed., 1967) (quoting Eleanor Roosevelt as stating that the Declaration is '' 'a statement of principles . . . setting up a common standard of achievement for all peoples and all nations' and 'not a treaty or international agreement . . . impos[ing] legal obligations.' '')).

[33] Art. 14(1).

[34] World Health Organization, International Health Regulations, Art. 1 (3d ed. 2005).

Secretary's authority to establish additional limitations on asylum eligibility by regulation. INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). Unfortunately, UAC are not immune from pandemic disease, and those bringing such a disease to the United States would have the same impact on the security of the United States as any other aliens seeking asylum.

The rule also does not curtail any other rights or protections to which UAC are entitled under statute. As commenters note, UAC from contiguous territories may withdraw their applications for admission and voluntarily return if it is determined that they are not at risk of trafficking or persecution and that they are capable of making an independent decision to withdraw. 8 U.S.C. 1232(a)(2). All federal agencies must transfer UAC to HHS custody within 72 hours of determining their UAC status (absent exigent circumstances). 8 U.S.C. 1232(b)(3). UAC from non-contiguous countries whom DHS seeks to remove must be placed in section 240 proceedings, 8 U.S.C. 1232(a)(5)(D), where they can pursue asylum or any other relief or protection for which they may be eligible and where immigration judges may make some modifications to ordinary courtroom proceedings to account for their status.[35] If UAC do apply for asylum, including after they have been placed into section 240 proceedings, USCIS has initial jurisdiction over their claims. INA 208(b)(3)(C). As UAC are not amenable to expedited removal, they will not be impacted by the reforms to the expedited removal process contained in this rule.

Thus, the Departments are not making changes to the final rule in response to these comments.

Public Health Service Act of 1944

Comment: A legal services provider argued that the proposed rule is not supported by the Public Health Service Act of 1944 (''PHSA''). The commenter wrote that, as an initial matter, the Centers for Disease Control and Prevention's reliance on that statute in ordering the expulsion of certain aliens is improper. The commenter cited articles in arguing that PHSA is a quarantine law and not an immigration law, and thus that it can only be used for the suspension of entry without regard for immigration status rather than as an ''extrajudicial deportation system.''

Response: The authority for this rule is contained in title 8 of the U.S. Code's INA, not title 42's PHSA. The rule is intended to clarify and operationalize the Departments' understanding of INA 208(b)(2)(A)(iv) and 241(b)(3)(B)(iv). Accordingly, arguments regarding the propriety of the use of the PHSA for expulsions is outside the context of this rule. The Departments are not making changes to the final rule in response to these comments.

The Departments would also note that when Congress created the INA a mere eight years after the enactment of the PHSA, it explicitly considered and affirmed the use of the INA to protect the nation from pandemic diseases (though in the context of a different provision, as asylum and withholding of removal in their current forms would not exist for many years). On April 25, 1952, during House floor consideration of H.R. 5678, to be enacted as the (McCarran-Walter) Immigration Act of 1952, the bill's author, Francis Walter, entered into a debate regarding Abraham Multer's amendment (which was decisively defeated) to limit the bill's grant to the President of the power to bar the entry of aliens (now found at INA section 212(f)). Mr. Multer stated that:

> As the bill is presented, we find a provision . . . which provides that at any time the President finds the entry of any aliens or class of aliens would be detrimental to the interests of the United States he may by proclamation suspend the entry of those aliens. The first part of my amendment simply provides that instead of being able to do that at any time, the President may make a proclamation and effectuate such a suspension only in the event of a national emergency, or a state of war.[36]

Mr. Walter responded that:

> I rise in opposition to the amendment . . . . [T]his language ''whenever the President finds that the entry of any aliens or class of aliens in the United States would be detrimental to the interests of the United States'' is absolutely essential because when there is an outbreak of an epidemic in some country, whence these people are coming, it is impossible for Congress to act. People might conceivably in large numbers come to the United States and bring all sorts of communicable diseases with them. . . . In the judgment of the committee, it is advisable at such times to permit the President to say that for a certain time we are not going to aggravate that situation.[37]

Other Comments Concerning Legal Authority

Comment: One commenter stated that ''the danger of persecution should generally outweigh all but the most egregious of adverse factors'' and that the proposal fails to operate by this principle. Another cited 2011 U.S. Immigration and Customs Enforcement (''ICE'') guidance and emphasized that that guidance interpreted the public health removal priority narrowly and only when ''articulable'' public safety issues were present. The commenter also cited a 2014 DHS memorandum as providing that immigrant health concerns should result in the delay, rather than expedition, of removal proceedings. One commenter stated that, under the INA, asylum seekers cannot be penalized where their country is unable or unwilling to protect them from persecution. The commenter argued that the proposed rule would impute the failure of a country to contain an outbreak to an individual and thus contravene this principle.

Response: The principle that the danger of persecution should generally outweigh all but the most egregious of adverse factors derives from the Board of Immigration Appeals decision in *Matter of Pula,*[38] which addressed the exercise of discretion to grant or deny asylum to an applicant who had already established eligibility for asylum. This final rule, however, addresses a quite distinct question by clarifying the Departments' understanding of the mandatory bars to eligibility for asylum (and withholding of removal), not an asylum officer's or immigration judge's exercise of discretion once an applicant establishes such eligibility. If there are reasonable grounds for regarding or believing an applicant to be a danger to the security of the United States, he or she is statutorily ineligible for asylum and withholding of removal, and the adjudicator would not have the discretion to grant either form of protection.[39]

The ICE guidance concerning removal priorities and the DHS memorandum cited by the commenter are unrelated to eligibility for asylum or withholding of removal or the interpretation of the

[35] EOIR, *Operating Policies and Procedures Memorandum 17–03: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children* (Dec. 20, 2017), *https://www.justice.gov/eoir/file/oppm17-03/download.*

[36] 98 Cong. Rec. 4423 (April 25, 1952).

[37] *Id.*

[38] 19 I&N Dec. 467 (BIA 1987).

[39] Moreover, the Supreme Court has determined that in assessing the ''serious nonpolitical crime'' bar to eligibility for withholding of removal, adjudicators need not weigh the risk of persecution in determining the applicability of that bar, finding that ''[a]s a matter of plain language, it is not obvious that an already-completed crime is somehow rendered less serious by considering the further circumstance that the alien may be subject to persecution if returned to his home country.'' *INS* v. *Aguirre-Aguirre,* 526 U.S. at 426.

statutory bars for aliens for whom there are reasonable grounds for regarding or believing are dangers to the security of the United States. Finally, the rule seeks to mitigate the risk of a serious communicable disease being brought to the United States, or being further spread within the country, by clarifying that such public health threats must be considered when determining whether there are reasonable grounds for regarding or believing an alien to be a danger to the security of the United States. The rule does not seek to penalize asylum seekers for the action or inaction of another country, but is rather intended to safeguard the public health and the security of the United States. Accordingly, the Departments are not making changes to the final rule in response to these comments.

2. Substantive Comments on Need/Rationale for the Rule

Comment: Many commenters provided input on the rationale for the proposed rule or other feedback on whether the rule is necessary to serve its stated goals. Several commenters claimed that its public health claims are specious. Many commenters claimed that the rule would block asylum eligibility on the pretext of a pandemic response, and that the rule improperly assigns a public health risk to asylum-seekers.

Commenters also expressed opposition on the basis that the rule contains no objective standard for applying the proposed health measures. Some suggested that the rule should take into account the availability of effective treatments in applying the bars. One criticized the rule for not taking into account whether a disease is more prevalent in the United States than in the asylum seeker's country of origin and that this oversight undermines the rule's rationale. Another requested information about the empirical basis for the rule, including the number of asylum seekers who have brought contagious diseases into the United States, the source of that data, the effects of those diseases on the general population, and how such a disease could spread in the process of detention and deportation, and argued that limiting asylum can only be justified by compelling answers to these inquiries. Likewise, a few individual commenters stated that the Departments must prove that asylum seekers and other immigrants embody a substantial and direct threat to U.S. health and safety during a pandemic.

Multiple commenters said that the Departments' justification for the rule is at odds with the administration's messaging regarding the severity of the COVID–19 pandemic within the United States.

Some commenters mischaracterized the rule as a travel ban rather than a clarification as to bars to asylum and withholding of removal eligibility. These commenters stated that the rationale for the rule is flawed because it limits nonessential travel across the southern border and denies entry to asylum seekers arriving by land, but grants broad exceptions for travel by U.S. citizens, lawful permanent residents, and people engaged in trade or education. The commenters believe that other individuals traveling across the border are just as likely to transmit COVID–19, and therefore questioned the Departments' logic in creating the danger to the security of the United States bars.

Many commenters claimed that the public health objectives of the proposed rule could be achieved through alternative means without affecting aliens' eligibility to receive asylum or withholding of removal. These commenters stated that the United States has existing procedures to address communicable diseases without targeting asylum eligibility. A few commenters argued that COVID–19 can be managed through sensible policies, including implementing quarantine policies, social distancing, testing, education and trainings, medical treatment, use of personal protective equipment, and contact tracing, citing the advice of public health experts. Similarly, a commenter suggested that additional legal representation and medical services at the border should be considered instead of this rule.

Many commenters suggested eliminating or altering detention policies, or improving conditions of detention, instead of implementing the rule. Some argued that the Departments' rationale that asylum seekers held in congregate settings pose a risk to staff and other detainees is pretextual because the Federal Government has the discretion and authority to release asylum seekers and unaccompanied minors from custody. These commenters proposed reducing the population of aliens in detention centers by releasing aliens on bond and encouraging them to stay with friends and family (some citing data stating that 92 percent of asylum seekers have friends and family in the United States with whom they could shelter) in lieu of the proposed rule. Commenters also claimed that communicable diseases are often designated as public health threats because they require timely diagnosis, treatment, and contact tracing, but the rule does not include provisions for an appropriate public health response (such as testing, treatment, and contact tracing where appropriate). Other commenters argued the proposed rule is pretextual because UAC are currently being released by ICE only after they test negative for COVID–19, citing a recent news publication.

Many commenters compared the proposed rule to other countries' responses to the COVID–19 pandemic, stating that other countries have adopted immigration policies that protect against the pandemic without eliminating eligibility for asylum protection. Several commenters said these countries prove that asylum seekers can be safely processed during a pandemic by adopting enhanced health measures and quarantine requirements. Another commenter argued that the proposal cannot be justified by a lack of COVID–19 testing capacity in the United States.

Many commenters stated that COVID–19 is not a reasonable basis for the proposed restrictions on asylum because the United States has one of the highest per capita infection and mortality rates for COVID–19, belying the proposed rule's claim to protect Americans from COVID–19. Commenters cited data showing that some countries, including Canada and Mexico, have fewer COVID–19 cases than the United States, arguing that the rule is unnecessary because United States poses the greater threat of spreading COVID–19. Several commenters said that the United States' COVID–19 high infection rate makes removing asylum seekers to other countries a significant public health threat to other countries and to asylum seekers themselves.

Some commenters added that the diseases listed in the rule do not pose a risk to the general public or are not subject to U.S. quarantine laws. Other commenters argued that regulations to control the spread of disease should not apply to treatable conditions, especially the ones that do not pose a significant health risk to the public.

A commenter claimed that the fact that the rule creates a judicial review process is evidence that the proposed rule uses public health as a pretext to deny asylum and withholding of removal. This commenter argued that because asylum seekers often remain in detention for longer than the prescribed 7 to 10 days for judicial review, aliens would remain at risk to contract or spread disease during this prolonged time period. The commenter concluded the proposed rule is an ineffective protection against the spread of disease.

Another commenter stated that the proposed rule cannot be justified by the length of the adjudication process for asylum seekers. The organization asserted that the DOJ's own policies contribute to the immigration court backlog, including increasing the number of respondents in removal proceedings and changing policies for asylum seekers who are eligible for bond. The commenter concluded that the Departments should not use the consequences of their policies as the basis for banning the same asylum seekers from humanitarian relief.

Response: The Departments disagree that the rule lacks an objective basis for applying the danger to the security of the United States bars to asylum and withholding of removal. This rule specifically provides that aliens whose entry poses a public health danger to the United States constitute a ''danger to the security of the United States'' and thus are ineligible for asylum or withholding of removal protections in the United States under INA 208 and 241, 8 U.S.C. 1158 and 1231, and 8 CFR 208.16 and 1208.16. The bars apply to aliens whose entry poses a heightened risk of bringing into the United States or further spreading within our country serious contagious diseases, posing a danger to the security of the United States, during times of declared public health emergencies in the United States or because of conditions in their country of origin or point of embarkation to the United States. More specifically, the bars apply in certain delineated instances after a communicable disease has triggered an ongoing declaration of a public health emergency under Federal law. They also apply after the Secretary and the Attorney General, in consultation with the Secretary of Health and Human Services, have jointly determined that the physical presence in the United States of aliens who are coming from areas of the world where a communicable disease of public health significance is or was prevalent or epidemic would cause a danger to the public health in the United States, and they consequently jointly designated the relevant areas and the period of time or circumstances under which it is necessary for the public health that aliens or classes of aliens who have come from those areas (and are still within the number of days equivalent to the longest known incubation and contagion period for the disease) be regarded as a danger to the security of the United States. The Departments note that many comments referred to factors or facts specific to the ongoing COVID–19 pandemic, but that the rule is intended to address future pandemics and is not limited to current circumstances.

These factors are consistent with the Attorney General's determination that ''danger to the security of the United States'' in the context of the bar to eligibility for withholding of removal encompasses considerations of defense, foreign relations, and the economy.[40] In that decision, the Attorney General made clear that the ''nontrivial degree of risk'' standard is satisfied where there is a reasonable belief that an alien poses a danger.[41] In *Yusupov* v. *Attorney General,*[42] the Third Circuit determined that the Attorney General's understanding that the bar to eligibility for statutory withholding of removal ''applied to any 'nontrivial level of danger' or 'nontrivial degree of risk' to U.S. security'' was a reasonable interpretation of the INA, and the court deferred to the Attorney General in upholding that statutory interpretation. The court explained that the eligibility bar ''does not easily accord acceptable gradations, as almost any 'danger' to U.S. security is serious.'' [43] It concluded that ''Congress did not announce a clear intent that the danger to U.S. security be 'serious' because such a modifier likely would be redundant. . . . [I]t would be illogical for us to hold that Congress clearly intended for an alien to be non-removable if he poses only a moderate danger to national security.'' [44] As discussed in detail in the NPRM and above, epidemics and pandemics, such as the COVID–19 crisis, pose a danger to the United States.

The Departments disagree with commenters who stated that to be barred from eligibility asylum or withholding of removal under this rule, the Departments must prove that an alien poses a substantial and direct threat to the health and safety of the United States residents during a pandemic. As explained above, the Attorney General has clarified that the appropriate standard to apply is a ''nontrivial degree of risk.'' Pandemics such as COVID–19 can cause serious illness or death on a mass scale, and inflict serious, or even catastrophic, damage to the country's economy, and thus, to the security of the United States.

Applying the danger to the security of the United States bars to eligibility for asylum and withholding of removal is necessary to reduce health and safety dangers to DHS personnel and to the public. On this, the Departments defer to the expertise of the CDC,[45] which has determined that the introduction into Border Patrol stations and POEs of those aliens traveling from Canada and Mexico who are usually held for ''material lengths of time'' in the congregate areas of these facilities ''increases the serious danger of introducing COVID–19 to others in the facilities—including DHS personnel, U.S. citizens, U.S. nationals, and LPRs, and other aliens—and ultimately spreading COVID–19 into the interior of the United States.'' [46] The CDC based its assessment on the fact that:

> [T]here are structural and operational impediments to quarantining and isolating [such] aliens in CBP facilities that neither HHS/CDC nor CBP can overcome, especially given the large number of [such] aliens that move through the congregate areas of the facilities. Border Patrol stations and POEs were designed for short-term holding of individuals in congregate settings [and were] not designed and equipped with sufficient interior space or partitions to quarantine potentially infected persons, or isolate infected persons. They also are not equipped to provide on-site care to infected persons who present with severe disease.[47]

CDC laid out the consequences of placing such aliens CBP facilities:

> The public health risks . . . include transmission and spread of COVID–19 to CBP personnel, U.S. citizens, lawful permanent residents, and other persons in the POEs and Border Patrol stations; further transmission and spread of COVID–19 in the interior; and the increased strain that further transmission and spread of COVID–19 would put on the United States healthcare system and supply chain during the current public health emergency.[48]

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[40] *Matter of A–H-,* 23 I&N Dec. at 788.

[41] *Id.*

[42] 518 F.3d 185 (3rd Cir. 2008) (as amended Mar. 27, 2008).

[43] *Id.* at 204.

[44] *Id.*

[45] Courts routinely recognize the CDC's public health expertise. *See, e.g., Bragdon* v. *Abbott,* 524 U.S. 624, 650 (1998) (''the views of public health authorities, such as the U.S. Public Health Service, CDC, and the National Institutes of Health, are of special weight and authority''); *In re Approval of Judicial Emergency Declared in Eastern District of California,* 956 F.3d 1175, 1181 (9th Cir. 2020) (determining that it would not be safe to resume normal court operations until ''the CDC lifts its guidance regarding travel-associated risks and congregate settings and physical distancing''); and *Hickox* v. *Christie,* 205 F. Supp. 3d 579, 598–99 (D.N.J. 2016) (relying on CDC recommendations to determine the legality of state-mandated quarantine in light of the risk of Ebola posed by persons entering the United States after treating Ebola patients).

[46] Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right To Introduce and Prohibition of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes, 85 FR 56424, 56433 (final rule) (September 11, 2020).

[47] *Id.*

[48] Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists, 85 FR 65806, 65807 (October 16, 2020) (notice).

The Departments have also considered the array of alternatives commenters argued the Departments could implement to reduce the risk of aliens spreading communicable disease in the United States. The Departments disagree that the rule is unnecessary because of the availability of the alternatives posed, which include quarantines, social distancing, testing, education and trainings, medical treatment, use of personal protective equipment, and contact tracing.

In the context of COVID–19, the CDC has already determined these alternatives to not be sufficient to adequately protect the public health. The CDC has determined that ''quarantine, isolation, and conditional release are still not workable options on the scale that would be needed for protecting U.S. public health from the introduction of COVID–19'' [49] and that ''Federal Orders requiring the quarantine, isolation, or conditional release of persons arriving into the United States from foreign countries may be inadequate to protect public health from the serious danger of the introduction into the United States of a quarantinable communicable disease.'' [50]

As to quarantines, the CDC has concluded that:

> Federal quarantine and isolation . . . where HHS/CDC funds and operates residential facilities with 24-hour wrap-around services for persons arriving into the United States from a foreign country may be scalable and effective for hundreds of persons, but not thousands of them. Even then, Federal quarantine and isolation require substantial resources and are not sustainable for extended periods of time.[51]
>
> A Federal quarantine and isolation of covered aliens would have likely required the procurement or construction and equipping of numerous permanent or temporary facilities across the Northern and Southern land borders, in close proximity to the POEs and Border Patrol stations. The facilities would have to accommodate a rotating population of covered aliens—including family units, single adults, and children with varying countries of origin, social customs, and criminal histories—for the duration of each covered alien's quarantine or isolation period. During that period, HHS/CDC and CBP would have to shelter, feed, and provide medical services to each covered alien onsite. The burden of undertaking such a joint public health and safety mission across thousands of miles of territory during a pandemic is impracticable. [T]o the knowledge of HHS/CDC, the largest Federal quarantine and isolation operation in modern U.S. history is the one that HHS/CDC and other agencies conducted in early 2020 [in response to COVID–19] for the approximately 3,200 persons who disembarked from cruise ships in U.S. ports or were repatriated from Asia. That operation would have been dwarfed by an ongoing quarantine and isolation mission for covered aliens. . . . HHS/CDC and CBP could not have . . . . quarantined or isolated a daily average population of 3,292 covered aliens from March 21, 2020 to the present. The relevant agencies simply lack the personnel and resources to operate such a large and complex Federal quarantine and isolation program, spread over thousands of miles of territory, and a period of many months, during a global pandemic. This is especially true when HHS/CDC and CBP must prioritize their finite resources for the benefit of the public health and safety, respectively, of the domestic population.[52]

The Departments also disagree with suggestions that increased testing of aliens could serve as an adequate alternative to the rule. In many cases, it is not possible to know whether an individual is infected at the time of processing or apprehension. Where testing is available, the time frame required to obtain test results may both be operational unfeasible and expose DHS officers, other aliens, and domestic communities to possible infection while results are pending. The CDC concluded that:

> HHS/CDC considered whether it could avert the serious danger of the introduction of COVID–19 into CBP facilities through COVID–19 testing. Specifically, HHS/CDC considered the asymptomatic transmission of COVID–19; the lack or limited availability of diagnostic testing for COVID–19; the time required to obtain diagnostic test results; the need to prioritize testing resources for the domestic population . . . . In any pandemic caused by a novel virus that spreads asymptomatically there will be a period when diagnostic testing is not widely available due to the time necessary to create, manufacture, distribute, administer, and receive the results of diagnostic tests. Even then, it may be appropriate to prioritize diagnostic testing for some populations over others, and diagnostic testing may produce at least some false negatives.[53]
>
> In congregate settings, travelers infected with a quarantinable communicable disease (whether asymptomatic or symptomatic) may spread the disease to other travelers or government personnel or private sector workers who may, in turn, spread disease to the domestic population. In such a scenario, the subsequent separation of the original, infected traveler would not mitigate the spread of disease through other individuals who interacted with the traveler in the congregate setting.[54]

The Departments disagree with commenters' suggestions that public health interests would be better served if the Departments eliminated detention pending proceedings. The INA requires that all aliens placed into expedited removal proceedings are subject to mandatory detention from the commencement of proceedings until their credible fear interviews, INA 235(b)(1)(B)(iii)(IV), subject to mandatory detention if found not to have a credible fear, *id.,* and also subject to mandatory detention if found to have a credible fear ''for further consideration of their application for asylum'' in asylum-and-withholding-only proceedings. Such aliens can be released by paroling them pursuant to section 212(d)(5) of the INA or on bond.[55] As explained in the NPRM, once a non-detained alien is placed into such proceedings, it can be months or years before their cases are adjudicated, as immigration courts in EOIR have a backlog of more than 1,000,000 pending cases, at least 517,000 of which include an asylum application. Of those released, many simply abscond without pursuing their asylum claims. There were 595,430 fugitive aliens at the end of fiscal year 2019.[56] In 2003, DOJ's Inspector General issued a report that found that the former INS had successfully carried out removal orders with respect to only 13 percent of non-detained aliens who were subject to final removal orders—and was able to remove only three percent of non-detained aliens who had unsuccessfully

[49] Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right To Introduce and Prohibition of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes, 85 FR at 56455.

[50] *Id.* at 56526.

[51] *Id.*

[52] *Id.* at 56433. The CDC noted that ''the Federal government no longer operates Public Health Service hospitals capable of acting as dedicated quarantine and isolation facilities able to house hundreds of people for multiple weeks. The securing of sites was challenging because when the agencies identified suitable facilities, local officials sometimes objected to the use of the facilities.'' *Id.* at 56430.

[53] *Id.* at 56433–34 n.70.

[54] *Id.* at 56426.

[55] In *Matter of X-K-,* 23 I&N Dec. 731, 736 (BIA 2005), the BIA concluded that arriving aliens at POEs found to have a credible fear and placed into section 240 proceedings were subject to mandatory detention, but those apprehended between POEs were eligible for bond. The Attorney General overruled *Matter of X-K-* in *Matter of M-S-,* 27 I&N Dec. 509 (A.G. 2019), and determined that all aliens found to have a credible fear were subject to mandatory detention (and thus only releasable on parole). However, in *Padilla* v. *ICE,* 953 F.3d 1134, 1143 (9th Cir. 2020) (petition for cert. filed Aug. 24, 2020), the Ninth Circuit upheld a district court's grant of a nationwide preliminary injunction requiring, in part, that all aliens found to have a credible fear be eligible for a bond hearing and possible release (not through parole) on bond.

[56] Enforcement and Removal Operations, ICE, *U.S. Immigration and Customs Enforcement Fiscal Year 2019 Enforcement and Removal Operations Report* at 10. Alien fugitives are those who had failed to leave the United States based upon a final order of removal or who had failed to report to ICE after receiving notice to do so. *Id.* at 10 n.9.

sought asylum.[57] Recent initiatives to track family unit cases revealed that close to 82 percent of completed cases have resulted in an in absentia order of removal. It has been reported that EOIR's immigration courts have higher failure to appear rates than any other state or federal courts in the country.[58] In fiscal year 2017, 44 percent of never detained aliens, 41 percent of released aliens, and 49 percent of unaccompanied alien minors (who have generally been released to sponsors, 8 U.S.C. 1232(c)(2)–(3)) who received removal orders received them in absentia for failing to appear.[59] Even putting aside the issue of absconders, releasing aliens with a communicable disease from detention merely transfers the risk from DHS officers and other detainees to the general public.

The Departments also reject the notion of stopping or reducing the enforcement of immigration laws as a means of reducing the strain on the nation's immigration system. The solution is not to ignore the rule of law but to find ways to promote compliance with the law and to increase the efficiency of the nation's immigration system.

As to simply allowing aliens to reside with friends and family pending their asylum-and-withholding-only proceedings, this would reduce the transmission of disease within detention centers themselves. However, as the CDC concluded, such a practice would merely transfer the risk from DHS officers and other detainees to the general public and could exacerbate community spread within the interior. The CDC has also found that:

> [I]t is not reasonable to assume that all . . . aliens [entering the United States illegally or without proper documents, who would need to be placed in congregate setting,] can or will comply with conditional release orders or safely self-quarantine or self-isolate after introduction into the country. That has not been HHS/CDC's experience with foreign nationals arriving in the United States on commercial flights, which require valid travel documents and clearance of customs. Even some foreign nationals who produce valid travel documents, fly internationally, and clear customs do not comply with self-quarantine or self-isolation protocols, or provide contact information to HHS/CDC for use in public health monitoring and contract tracing investigations. . . . Persons who are unprepared to comply with U.S. legal processes and lack transportation and a permanent U.S. residence would likely encounter difficulties complying with conditional release orders or self-quarantine or self-isolation protocols. For such orders or protocols to be effective, persons who HHS/CDC temporarily apprehends and then conditionally releases with orders—or, alternatively, persons to whom HHS/CDC recommends self-quarantine or self-isolation—must be able to travel to suitable quarantine or isolation locations, and then quarantine or isolate for the time period prescribed or recommended by HHS/CDC. Many [aliens entering the United States illegally or without proper documents, who would need to be placed in congregate settings,] would have to overcome significant hurdles to meet those basic requirements. Moreover, implementation of conditional release orders for covered aliens would divert substantial HHS/CDC resources away from existing public health operations during the COVID–19 pandemic. . . .
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> To implement conditional release orders for covered aliens, HHS/CDC would have to open and operate new quarantine stations at numerous Border Patrol stations and POEs, surge technical support to CBP at the same locations, or do some combination of both. HHS/CDC would also have to monitor the health of tens of thousands of . . . aliens introduced into the United States, and alert public health departments about any health issues that need follow-up. HHS/CDC does not have resources and personnel available to execute those additional functions; HHS/CDC would have to reallocate personnel from existing quarantine operations, which would jeopardize the effectiveness of those operations, endanger public health, and impose additional costs on U.S. taxpayers.[60]

Further, the Departments strongly disagree with comments that suggested the rule is pretextual, unnecessary, or ineffective because of the high rate of COVID–19 infections in the United States. Rather, the Departments defer to the expertise of the CDC, which has concluded that the introduction of additional cases, in addition to threatening the health and safety of DHS officers and other aliens, could exacerbate the spread of disease in the general public and further strain medical providers in many communities, presenting a serious threat to the security of the United States. As the CDC has stated, ''even if persons or property in the United States are already infected or contaminated with a quarantinable communicable disease, the introduction of one or more additional persons capable of disease transmission in the same or different localities can nevertheless present a serious danger of the introduction of the disease into the United States'' [61] and ''helping to slow the community transmission of COVID–19 and the number of new COVID–19 cases in the States in the U.S.-Mexico border region . . . helps protect the domestic population from COVID–19.'' [62] For these reasons, the Departments see no need to provide additional empirical data, as requested by commenters, regarding the number of asylum seekers who have brought contagious diseases into the United States, the source of that data, the effects of those diseases on the general population, and how such a disease could spread in the process of deportation, including while an alien is in ICE custody. In addition, ''arbitrary and capricious'' review is ''highly deferential, presuming the agency action to be valid.'' [63] It is ''reasonable for the [agency] to rely on its experience'' to arrive at its conclusions, even if those conclusions are not supported with ''empirical research.'' [64]

The Departments also disagree with commenters who argued that the fact that other countries have not curtailed asylum eligibility because of the COVID–19 pandemic proves that the NPRM is unnecessary or pretextual. The Departments are utilizing longstanding authority under domestic law to mitigate the danger of aliens bringing into the United States or exacerbating the spread within the United States of a serious contagious disease and thereby mitigate a threat to the security of the United States. It is outside the scope of this rule to evaluate the availability of legal tools to foreign governments regarding restricting asylum eligibility based on a threat to the national security. Further, the Departments disagree with comments that state that the risk of spreading a contagious disease or illness to the alien's home country or country of removal outweighs the Federal government's interest in preventing or mitigating potentially catastrophic harm to the health and security of the United States or is even a relevant consideration in interpreting the applicability of section 208(b)(2)(A)(iv) or section 241(b)(3)(B)(iv) of the INA, which are solely focused on the danger to the security of the United States. As the CDC has concluded, the ''faster a[n alien who will be placed in a congregate setting] is returned . . . the lower the

[57] Office of the Inspector General, Evaluation and Inspections Division, DOJ, *The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders* (I–2003–004) at i, ii (2003).

[58] Mark Metcalf, *U.S. Immigration Courts & Aliens Who Disappear Before Trial,* 2019 Center for Immigration Studies at 1, 7–8 n.1–2.

[59] Planning, Analysis & Statistics Division, EOIR, DOJ, *Statistics Yearbook: Fiscal Year 2017,* at 33 (figure 25).

[60] Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right To Introduce and Prohibition of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes, 85 FR at 56452–53.

[61] *Id.* at 56454.

[62] *Id.* at 56456.

[63] *Sacora* v. *Thomas,* 628 F.3d 1059, 1068 (9th Cir. 2010) (*citing Motor Vehicle Mfrs Ass'n* v. *State Farm Mut. Auto Ins. Co,* 463 U.S. 29, 43 (1983)).

[64] *Id.* at 1069.

risk the alien poses of introducing transmitting, or spreading COVID–19 into POEs, Border Patrol stations, other congregate settings, and the interior [of the United States].'' [65]

Some commenters opposed the NPRM because they believed that the diseases referred to in the NPRM do not present a significant risk to the general public or are treatable. To the contrary, the diseases are serious by any measure. The term ''communicable disease of public health significance'' includes any of the following diseases:

(1) Communicable diseases as listed in a Presidential Executive Order, as provided under Section 361(b) of the Public Health Service Act. . . .[66]

(2) Communicable diseases that may pose a public health emergency of international concern if it meets one or more of the factors listed in [42 CFR] § 34.3(d) and for which the Director has determined a threat exists for importation into the United States, and such disease may potentially affect the health of the American public. . . .

(i) Any of the communicable diseases for which a single case requires notification to the World Health Organization (WHO) as an event that may constitute a public health emergency of international concern, or

(ii) Any other communicable disease the occurrence of which requires notification to the WHO as an event that may constitute a public health emergency of international concern. . . .

(3) Gonorrhea.

(4) Hansen's disease, infectious.

(5) Syphilis, infectious.

(6) Tuberculosis, active.[67]

Under section 1 of Executive Order 13295, as amended:

Based upon the recommendation of the Secretary of Health and Human Services . . ., in consultation with the Surgeon General . . . the following communicable diseases are hereby specified pursuant to section 361(b) of the [PHSA]:

(a) Cholera; Diphtheria; infectious Tuberculosis; Plague; Smallpox; Yellow Fever; and Viral Hemorrhagic Fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named).

(b) Severe acute respiratory syndromes, which are diseases [other than influenza] that are associated with . . . pneumonia or other respiratory illness, are capable of being transmitted from person to person, and that either are causing, or have the potential to cause, a pandemic, or, upon infection, are highly likely to cause mortality or serious morbidity if not properly controlled. . . .

In addition, the bars will only apply (1) to communicable diseases that have triggered an ongoing declaration of a public health emergency under Federal law, and (2) where the Secretary and the Attorney General have, in consultation with HHS, jointly determined that, because a communicable disease of public health significance (in accordance with HHS regulations) is prevalent or epidemic in an area of the world, the physical presence in the United States of an alien or a class of aliens who have come from such area during a period in which the disease is or was prevalent or epidemic there would cause a danger to the public health in the United States, and have consequently designate the place, the period of time, or circumstances under which they deem it necessary for the public health that such alien or class of aliens be regarded as a danger to the security of the United States. The Departments believe this framework provides the Departments sufficient flexibility to apply the bars in cases of potential future pandemics or public health crises while ensuring that the bars are only applied in situations that present a public health crisis sufficient to threaten the security of the United States.

In addition, the Departments disagree that the availability of treatment is an adequate marker to determine whether a contagious disease poses a threat to the security of the United States such that the bar to asylum and withholding of removal should apply. Treatment may only, and to a partial extent at that, ameliorate symptoms without curing a disease, and may be prohibitively expensive or resource-intensive.

The Departments note that as to the ''judicial review protocol,'' it is prescribed by statute and is not something the Departments created through regulation. Section 235(b) of the INA, 8 U.S.C. 1225(b), provides that:

The Attorney General shall provide by regulation and upon the alien's request for prompt review by an immigration judge of a determination . . . that the alien does not have a credible fear of persecution. Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination . . . .

The Departments disagree with comments suggesting that the rule's rationale is flawed because the United States has been allowing certain classes of individuals to travel to the United States and because the rule does not apply to U.S. citizens, lawful permanent residents, and people engaged in trade and education. Of course, only aliens may receive asylum and withholding of removal. Aliens seeking asylum or withholding of removal, including aliens with a lawful immigration status, are subject to the bar, which the Departments have put in place to protect the United States from those who are determined to be a danger to the Nation's security.[68]

Finally, the Departments disagree that protecting the security of the United States is inconsistent with the administration's messaging regarding the COVID–19 pandemic and decline to further respond on the basis that such messaging is outside the scope of this rule.

E. Proposed Changes to the Rule

1. Clarifying Application of ''Danger to the Security of the United States'' Bars to Eligibility for Asylum and Withholding of Removal

Categorical Nature of the Bars

Comment: One commenter stated that denying asylum seekers ''categorically'' would contravene the intent of U.S. immigration law and especially the Refugee Act. Relying on the plain language of the statute, a legal services provider argued that the proposal exceeds its statutory authority by potentially barring, without time limitation, thousands of individuals on a class-wide basis who pose no risk to the United States. Similarly, a group of commenters cited *Grace* v. *Whitaker,*[69] and an advocacy group provided citations to additional cases, in arguing that asylum determinations must be made on an individualized basis. Other commenters argued that no individualized determination would be possible under the NPRM as it instructs adjudicators that they ''may consider'' symptoms and travel history for a determination as to whether an alien is subject to the danger to the security of the United States bars and simultaneously instructs adjudicators that the Secretary of Homeland Security and the Attorney General have already ''deem[ed]'' entire classes of individuals to be regarded as a danger to the security of the United States. More specifically, commenters argued that:

[65] Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 FR 17060, 17067 (Mar. 20, 2020).

[66] The current list of quarantinable communicable diseases is available at *http://www.cdc.gov* and *http://www.archives.gov/federal-register.*

[67] 42 CFR 34.2(b).

[68] When evaluating aliens' eligibility for asylum and withholding of removal, this rule does not apply the public health bars to those aliens who file such an application upon return from Canada pursuant to the U.S.-Canada safe third country agreement.

[69] 344 F. Supp.3d 96 (D.D.C. 2018), *aff'd in part and vacated in part by Grace* v. *Barr,* 965 F.3d 883 (D.C. Cir. 2020).

''[p]roposed 8 CFR 208.13(c)(10) and 1208.13(c)(10) do not provide clear guidance as to whether adjudicators are required to apply an individualized or a categorical bar, and in some circumstances appears to entirely remove discretion from adjudicators and require a blanket determination that a person be subject to the bar, without an individualized determination.''

Response: The commenters raised a valid concern that the NPRM did not provide sufficiently clear guidance as to whether adjudicators are required to apply the proposed bars in an individualized or categorical fashion. Of course, all statutory bars to eligibility, including the danger to the security of the United States bars, for asylum and withholding of removal are ''categorical,'' in that any alien to whom they apply is ineligible for asylum.'' As to asylum, ''[p]aragaph (1) [describing which aliens may be granted asylum] *shall not apply* to an alien if the [Secretary or the] Attorney General determines that . . . .'' INA 208(b)(2)(A), 8 U.S.C. 208(b)(2)(A) (emphasis added). As to withholding of removal, ''[s]ubparagraph (A) [describing which aliens may not be removed to a country where their life or freedom would be threatened] *does not apply* to an alien . . . if the [Secretary or the] Attorney General decides that . . . .'' INA 241(b)(3)(B), 8 U.S.C.(b)(3)(B) (emphasis added). The parameters under which an alien is considered ineligible for asylum and withholding of removal in order to protect law enforcement officers and the public during a public health crisis are ones that should be decided by the Secretary and the Attorney General, taking into consideration the advice of governmental experts, not individual officials or adjudicators on an ad hoc basis. The role of individual officials and adjudicators should be to determine whether aliens in fact meet the criteria for ineligibility that have been set forth to protect our country.

Therefore, the final rule clarifies that the bars established by the rule (implementing the Departments' understanding of the danger to the security of the United States bars) are ''categorical'' in the following manner. First, if a communicable disease has triggered an ongoing declaration of a public health emergency under Federal law, such as under section 319 of the Public Health Service Act, 42 U.S.C. 247d, or section 564 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3, then an alien is ineligible for asylum and withholding of removal (on the basis of there being reasonable grounds for regarding the alien as a danger to the security of the United States) if the alien either exhibits symptoms indicating that he or she is afflicted with the disease, per guidance issued by the Secretary or the Attorney General, as appropriate, or has come into contact with the disease, per guidance issued by the Secretary or the Attorney General, as appropriate.

Second, if, regarding a communicable disease of public health significance as defined at 42 CFR 34.2(b), the Secretary and the Attorney General, in consultation with the Secretary of Health and Human Services, have jointly

- Determined that the physical presence in the United States of aliens who are coming from a country or countries (or one or more subdivisions or regions thereof), or who have embarked at a place or places where such disease is prevalent or epidemic (or had come from that country or countries (or one or more subdivisions or regions thereof), or had embarked at that place or places, during a period in which the disease was prevalent or epidemic there), would cause a danger to the public health in the United States, and
- Designated the foreign country or countries (or one or more subdivisions or regions thereof), or place or places, and the period of time or circumstances under which they jointly deem it necessary for the public health that aliens or classes of aliens described in the first bullet point who were present in an impacted region within the number of days equivalent to the longest known incubation and contagion period for the disease be regarded as a danger to the security of the United States, including any relevant exceptions as appropriate,

Then, an alien or class of aliens are ineligible for asylum and withholding of removal (on the basis of there being reasonable grounds for regarding the alien or class of aliens as a danger to the security of the United States) if the alien or class of aliens are described in the first bullet point and are regarded as a danger to the security of the United States as provided in the second bullet point.

While the discretionary/categorical distinction was not discussed in the NPRM, as the D.C. Circuit ruled in *Nat'l Mining Ass'n* v. *Mine Safety and Health Admin:*

> An agency's final rules are frequently different from the ones it published as proposals. The reason is obvious. Agencies often ''adjust or abandon their proposals in light of public comments or internal agency reconsideration.'' . . . Whether in such instances the agency should have issued additional notice and received additional comment on the revised proposal ''depends, according to our precedent, on whether the final rule is a 'logical outgrowth' of the proposed rule.'' . . . While we often apply the doctrine simply by comparing the final rule to the one proposed, we have also taken into account the comments, statements and proposals made during the notice-and-comment period. . . . In *South Terminal Corp.* v. *EPA,* the case that gave birth to the ''logical outgrowth'' formulation, the court did the same. 504 F.2d 646, 659 (1st Cir. 1974). The court held that the final rule was ''a logical outgrowth''-not simply of the proposed rule—but ''of the hearing and related procedures'' during the notice and comment period.[70]

As the Circuit had realized earlier in *Int'l Harvester Co.* v. *Ruckelshaus,*[71] ''[a] contrary rule would lead to the absurdity that in rule-making under the [Administrative Procedure Act] the agency can learn from the comments on its proposals only at the peril of starting a new procedural round of commentary.''

As illustrated by the thoughtful comments the Departments received highlighting the need to clarify whether the NPRM was discretionary or categorical, the clarification in the final rule meets any ''logical outgrowth'' requirements under the APA.

Applicability to Aliens Who Are Applying for Asylum or Withholding of Removal in the United States Upon Return From Canada (Pursuant to the Agreement Between the Government of the United States and the Government of Canada for Cooperation in the Examination of Refugee Status Claims From Nationals of Third Countries)

Comment: Several commenters cited litigation in Canada surrounding the ''safe third country'' agreement between the United States and Canada and noted that a Canadian federal court found the agreement to be unconstitutional. One commenter stated that if published, this final rule would further damage the reputation of the United States as a leader in providing humanitarian protection.

Response: The Departments note that maintenance of the United States' reputation as a leader in providing humanitarian protection must not eclipse the importance of maintaining a strong and effective safe third country agreement with our Canadian partners. Accordingly, this rule provides for an exemption for those aliens who apply for asylum or withholding of removal upon return from Canada to the United States pursuant to the U.S.-Canada safe third country agreement.

[70] 512 F.3d 696, 699 (D.C. Cir. 2008) (citations omitted).

[71] 478 F.2d 615, 632 n.51 (D.C. Cir. 1973).

Level of Danger Required To Invoke the Danger to Security Bars to Asylum and Withholding of Removal

Comment: Several commenters argued, citing *Yusupov* v. *Att'y Gen. of U.S.,* that the danger to the security of the United States bars to eligibility for asylum and withholding of removal may only be applied to an applicant who poses an ''actual'' threat rather than a possible or potential threat or to one who ''may'' pose a danger. The commenters contend that the rule is impermissibly broad because it applies the bars to those who do not actually carry a communicable disease, contrary to the actual threat standard.

One commenter also wrote that *Yusupov* requires that security bars apply only in a narrow set of circumstances and that, given the widespread nature of the COVID–19 pandemic even within the United States, the proposal contravenes this requirement. The commenter further asked that the Departments demonstrate how border enforcement personnel face a higher risk from asylum seekers than from others those officials regularly encounter in their own communities and how finding an applicant ineligible for asylum would reduce the risk to enforcement personnel. Another legal services provider wrote that the Departments' focus on the probable cause standard is a ''distraction'' and cannot allow the Departments to rely on a potential risk rather than an actual one as the grounds for a security bar. A professional association expressed worry that the proposed rule could apply an asylum bar to an applicant on the basis of a probable cause standard and using evidence that does not meet the standard of admissibility for court proceedings.

Additionally, commenters argued that the mere potential exposure of an asylum seeker to a disease or the untrained opinion of a non-expert adjudicator of a person's symptoms could not provide a reasonable basis for barring the applicant from eligibility for asylum.

Another commenter added that the threat posed by an individual asylum applicant's health falls below the ''non-trivial'' standard set forth in *Matter of A-H-,*[72] arguing that the threat of migrants must be viewed individually.

Response: The Departments fully acknowledge that an alien must actually pose the requisite level of danger, noting the Ninth Circuit's conclusion that ''[t]he bottom line in *Yusupov,* which we adopt, is that . . . the alien must 'actually pose a danger' to United States security . . . .'' [73] However, as the Departments stated in the NPRM, it also must be recognized that the danger posed by aliens during a pandemic is unique. In many cases it will not be possible to know whether any particular individual is infected at the time of apprehension or application. As the CDC has explained, depending on the disease at issue, many individuals who are actually infected may be asymptomatic, reliable testing may not be available, and, even where available, the time frame required to obtain test results may both be operationally unfeasible and expose DHS officers, other aliens, and domestic communities to possible infection while results are pending. In conclusion, an alien who arrives from a location in which the spread of a communicable disease already poses a serious danger and who will need to be placed in a congregate setting represents on their own a danger to the security of the United States.

Of course, this rule cannot eliminate all risk that border enforcement personnel may face in their communities related to a communicable disease of public health significance. It is not designed to do so, nor could it. The final rule is designed to ameliorate the specific risk identified by the CDC of their being placed in close personal contact in congregate settings with aliens at a heightened risk of infection.

Finally, the Departments reject that reliance on the probable cause standard is a ''distraction.'' It is the legal standard set forth in binding precedent and is necessary to understand the ''reasonable grounds'' component of the danger to the security of the United States bars to eligibility for asylum and withholding of removal. In *Matter of A-H-*, the Attorney General determined that ''reasonable'' in the context of the danger to the security of the United States bar to withholding of removal ''implied the use of a 'reasonable person' standard'' that was ''substantially less stringent than preponderance of the evidence,'' and instead akin to ''probable cause.'' [74] The standard ''is satisfied if there is information that would permit a reasonable person to believe that the alien may pose a danger to the national security.'' [75]

Accordingly, the Departments are not making changes to the final rule in response to these comments.

Public Health Concerns as a Basis for Finding ''Danger to the Security of the United States'' or Otherwise Bar Eligibility for Asylum

Comment: Several commenters argued that public health concerns should not be a basis for denying asylum or for finding reasonable grounds for regarding an applicant to be a danger to the security of the United States. Some commenters argued that the rule exceeds the Departments' authority, as only Congress can expand upon the ''danger to security'' bar or define the bounds of asylum eligibility. Commenters contended that section 208(b)(2)(C) of the INA does not give the Departments authority to add new bars to asylum eligibility and that the INA unambiguously defines ''dangers to the security of the United States'' without reference to public health and thus that the NPRM is an unlawful attempt to expand the statute.

Commenters also argued that section 208 of the INA intentionally omits public health concerns as a basis of denial (such as by not incorporating the INA's health-related inadmissibility grounds, INA 212(a)(1), 8 U.S.C. 1182(a)(1), as a basis for finding an alien ineligible for asylum) and that when Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA'') it could have defined the danger to the security of the United States bar, but chose not to do so. One commenter cited dictionary definitions of ''reasonable'', ''danger'', and ''security'' to argue that the proposed rule contravenes the INA. Another argued that the NPRM is unjust and inconsistent with the character of the INA in that it applied a bar based on a factor outside of an asylum seeker's control.

Another commenter argued that the ''expresio unis'' canon of construction, whereby when multiple items of a category are expressly mentioned, others in the same class are excluded, leads to the conclusion that because the three statutory bars to applying for asylum, INA 208(a)(2), do not include public health concerns, such concerns should not bar an alien from being able to apply for asylum. Another commenter argued more generally that the NPRM violates section 208(a)(1) of the INA, which guarantees the right of every alien physically present in the United States to apply for asylum, by denying asylum seekers who arrive in the United States the right to seek refuge.

Other commenters argued that the danger to the security of the United

[72] *Matter of A-H-,* 23 I&N Dec. 774, 788 (A.G. 2005).

[73] *Malkandi* v. *Holder,* 576 F.3d 906, 914 (9th Cir. 2009).

[74] 23 I&N Dec. at 788–89.

[75] *Id.* at 789 (citation omitted).

States bars should only be read to apply to criminal and/or terrorist-related concerns, one arguing that because other mandatory bars to asylum found in INA 208(b)(2)(A) include references to crimes, the term danger to the security of the United States must be read narrowly to involve considerations of criminal threats or intentional harm to others rather than for any type of harm. The commenter cited the ''ejusdem generis'' canon of construction whereby when ''a more general term follows more specific terms in a list, the general term is usually understood to embrace only objects similar in nature to those objects enumerated by the preceding specific words.'' Several commenters argued that the bars should be limited to terrorism-related threats and that the proposed rule misinterprets *Matter of A–H-,* reasoning that ''economic interests'' should be understood as economic interests that could be targeted by terrorists, not those affected by public health concerns. Another group of commenters stated that nothing in the INA permits a definition of ''economic interests'' which includes public health concerns.

Response: The Departments disagree with comments stating that public health concerns cannot constitute reasonable grounds for regarding or believing an alien as a danger to the security of the United States. As then-Secretary of Homeland Security, Michael Chertoff, stated in 2006, ''[a] severe pandemic . . . may affect the lives of millions of Americans, cause significant numbers of illnesses and fatalities, and substantially disrupt our economic and social stability.'' [76] In addition, components of the U.S. military have indicated that the global spread of pandemics can impact military readiness, thus posing a direct threat to U.S. national security.[77] For example, the risk of further spread of COVID–19 this year has led to the cancellation or reduction of various large-scale military exercises and a 60-day stop-movement order.[78]

The Departments reject the argument that because the statutory bars to eligibility for asylum and withholding of removal do not specifically reference the health-related inadmissibility grounds found at section 212(a)(1)(A) of the INA, that no public health concerns can be considered in assessing an applicant's potential danger to the security of the United States. This rule was never designed to incorporate all these health-related grounds—which can make an alien inadmissible as a result of the lack of immunization, physical or mental disorders that may pose or have posed a threat to the property, safety, or welfare of the alien or others, and drug abuse and addiction—into the bars to eligibility for asylum and withholding. It is only in limited circumstances involving declared Federal public health emergencies or joint determinations by the Secretary of Homeland Security and Attorney General that aliens coming from areas of the world where a communicable disease of public health significance is prevalent or epidemic would constitute a danger to public health and that an asylum or withholding applicant would be considered to pose a danger to the security of the United States. Similarly, the Departments reject commenters' arguments that because the asylum bars do not specifically mention public health concerns, that the bar regarding danger to the security of the United States should be interpreted to exclude such concerns.

Additionally, the rule does not contravene section 208(a)(1) of the INA since it does not create a bar to applying for asylum. Rather, it clarifies the Departments' understanding of a longstanding statutory bar to asylum eligibility. Finally, the bars to applying for asylum at section 208(a)(2) and the bars to asylum eligibility at section 208(b)(2) in fact do include factors that are outside an applicant's control or ''categorical,'' such as the existence of a safe third country agreement. INA 208(a)(2)(A).

The Departments are not making changes to the final rule in response to these comments.

Guidance and Training for Officers Determining Application of the Bars

2. Application of the Danger of the Security of the United States Bars in Credible Fear Screenings in the Expedited Removal Process

Comment: Several commenters expressed concern about applying the danger to the security of the United States bars at the credible fear stage, where previously negative credible fear determinations could not be based on aliens being subject to such bars. Commenters argued that this would deny individuals with a well-founded fear of persecution the opportunity to establish their eligibility for humanitarian protection, that it would eliminate all exercise of judgement or discretion, and make it nearly impossible to disprove the application of the bars, which deprives asylum seekers of the opportunity to seek asylum in court before an immigration judge.

Other commenters argued that the proposed rule is *ultra vires* by creating an ''infectious disease'' bar to asylum and withholding of removal that would disqualify applicants at the credible fear stage, when such individuals (even if infected with COVID–19 at the time of arrival) would be unlikely to remain infectious by the time of adjudication of their applications for asylum or withholding of removal. They argued that the NPRM would not protect border security personnel from a communicable disease or prevent spread in border facilities or the community, because the period when an applicant is most likely to spread a communicable disease is during the credible fear process (including the credible fear interview and review by an immigration judge) that can take from seven to ten days. The commenters stated that this timeline was not sufficiently addressed in the proposed rule and expressed concern that CBP and ICE would continue holding individuals in ''congregate settings'' during the credible fear process, a practice that would put many others at risk prior to the application of the NPRM's changes to the credible fear process. The commenters also questioned why DHS could not test each asylum seeker upon apprehension and provide results within the time required for a credible fear interview and review by an immigration judge.

An individual commenter asked several questions about the procedural steps that would be involved should asylum seekers stop exhibiting the perceived symptoms that led to a determination that they may have COVID–19. Specifically, the commenter asks whether an immigration judge could overturn a negative credible fear finding and whether the BIA could overturn a denial of asylum when the applicant has ceased exhibiting the symptoms that were the basis of the determination.

Another commenter argued that the agencies' assertion that the NPRM's impact on time spent making and reviewing screening decisions ''would be minimal'' was incorrect because

[76] DHS, *Pandemic Influenza: Preparedness, Response, and Recovery: Guide for Critical Infrastructure and Key Resources,* Introduction at 1 (2006) (Michael Chertoff, Secretary of Homeland Security), *https://www.dhs.gov/sites/default/files/publications/cikrpandemicinfluenzaguide.pdf.*

[77] Diane DiEuliis & Laura Junor, *Ready or Not: Regaining Military Readiness During COVID19,* Strategic Insights, U.S. Army Europe (Apr. 10, 2020), *https://www.eur.army.mil/COVID-19/COVID19Archive/Article/2145444/ready-or-not-regaining-military-readiness-during-covid19/* (discussing the spread within the military of twentieth-century pandemics and consequences of the spread this year of COVID–19).

[78] *See id.*

adding the consideration of a danger to the security of the United States bars in the screening process would ''exponentially increase the length and complexity of the adjudication.'' Another legal services provider expressed concern that the proposal's anticipation of ''minimal'' review time indicates the review will be ''cursory and not appropriately detailed.''

Response: The rule does not create an ''infectious'' or ''communicable'' disease bar to asylum and withholding of removal. Rather, the rule clarifies the Departments' understanding of the existing statutory bars regarding aliens who are reasonably regarded to be dangers to the security of the United States.

The Departments acknowledge that an applicant may be most likely to spread a communicable disease upon and soon after arrival, which coincides with the period in which an alien placed into expedited removal proceedings would be going through credible fear screening. However, this is not always true. As the CDC has stated, there is an ''ever-present risk that future pandemics may present new or different challenges . . . . A new virus could have a longer incubation period than . . . the virus that causes COVID–19 . . . or cause a disease that takes longer to run its course.'' [79] By way of example, the incubation period for tuberculosis can be years in length, and that of hepatitis B can be up to 180 days.[80]

The Departments did consider limiting the scope of this rule, such as by only applying the bars to those aliens who are symptomatic. But as the CDC has determined in the context of COVID–19:

> Identifying those infected with COVID–19 can be difficult, as asymptomatic cases are currently believed to represent roughly 40% of all COVID–19 infections. The infectiousness of asymptomatic individuals is believed to be about 75% of the infectiousness of symptomatic individuals. HHS/CDC's current best estimate is that between 40 to 50% of infections are transmitted prior to symptom onset (pre-symptomatic transmission).[81]

The Departments note that the final rule is not, as the NPRM proposed, modifying the regulatory framework to apply the danger to the security of the United States bars at the credible fear stage. In the interim between the NPRM and the final rule, the Global Asylum Final Rule did so for all of the bars to eligibility for asylum and withholding of removal. In any event, the Departments do not intend for asylum officer and immigration judge assessments of the applicability of the security bars in the credible fear process to be ''cursory and not appropriately detailed.'' As stated in the proposed rule, it is anticipated that asylum officers and immigration judges will need to spend additional time during the credible fear process to determine whether an alien is ineligible for asylum or withholding of removal based on the security bars. However, the Departments believe that the additional time spent making such determinations will be minimal because the issues to be explored by the asylum officer and the immigration judge will usually be fairly straightforward and not involve complex analysis, *e.g.,* the place and time of an alien's embarkation.

The Departments are not making changes to the final rule in response to these comments.

Higher Standard for Credible Fear Determinations

Comment: Multiple commenters argued that the rule impermissibly raises the standard for demonstrating a credible fear and imposes the burden onto the asylum seeker to ''disprove the assumption that they are a danger to security due to public health.'' The commenters state that asylum seekers would be ill equipped to meet the proposed higher standards in the credible fear screening process due to trauma, lack of evidence or key information when they arrive at the border, lack of legal representation, and lack of English proficiency, all of which renders them incapable of contributing meaningfully to their own defense. Another commenter added that the rule denies asylum seekers the opportunity to receive meaningful administrative or judicial review. Another noted that asylum seekers would have difficulty proving they do not have a disease at this stage in the process because they would not have access to physicians, medical screenings, or tests while in detention. Another commenter argued that the burden of proof concerning credible fear and application of the national security bars should fall to the government, given the danger, including death, that some asylum seekers may face upon return to their home country.

Response: The rule does not, and could not, alter the standard for demonstrating a credible fear of persecution, which is set by statute as a ''significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum . . . .'' INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). Asylum officers and immigration judges will continue to assess credible fear for purposes of potential eligibility for asylum by determining whether there is a significant possibility that the alien can establish eligibility for asylum—which of necessity requires the alien to demonstrate a significant possibility of each element of asylum eligibility. Thus, to meet the credible fear standard, the alien need only establish a significant possibility that the danger to the security of the United States bar does not apply and a significant possibility of meeting the other relevant eligibility criteria.

The Departments do not agree that it is appropriate to place the burden on the government concerning the application of the danger to the security of the United States bars, or that they could even do so consistent with the INA. Section 235(b)(1)(B)(iii)(II) of the INA, which requires an asylum officer to prepare a written record of a negative credible fear determination analyzing why ''the alien has not established a credible fear of persecution,'' states that it is the alien's responsibility to establish a credible fear of persecution. While the burden lies with the alien, the officer is charged with eliciting (in a non-adversarial manner) relevant information that bears on whether the alien has a credible fear of persecution, including whether there is a significant possibility that the danger to the security of the United States bars does or does not apply. 8 CFR 208.30(d). The Departments point out that testimony alone, if otherwise credible, can be sufficient to meet the alien's burden of proof.[82]

[79] Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right To Introduce and Prohibition of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes, 85 FR at 56527.

[80] Illinois Department of Public Health, *available at https://dph.illinois.gov/sites.default/files/publications/commchartschool-032817.pdg* (last visited on October 15, 2020); Center for Acute Disease Epidemiology, Iowa Department of Public Health, *The Epidemiology of Common Communicable Diseases,* available at *https://idph.iowa.gov/Portals/1/userfiles/79/Documents/Epi%20of%20Common%20Communicable%20Diseases%20June%202013%20-%20FINAL.pdf* (last visited on October 15, 2020).

[81] Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right To Introduce and Prohibition of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes, 85 FR at 56429.

[82] INA 208(b)(1)(B)(ii) and 241(b)(3)(C), 8 U.S.C. 1158(b)(1)(B)(ii) and 1231(b)(3)(C); 8 CFR 208.13(a), 208.16, and 208.16(c)(2).

The Departments are not making changes to the final rule in response to these comments.

Role of Asylum Officers and Border Agents

Comment: Several commenters raised concerns that the rule, by placing this inquiry in the credible fear stage of the removal process, increases the decision-making authority of ''low-level immigration officials,'' including border agents and asylum officers, to make complex national security determinations without the proper expertise and without the ''significant pre-hearing preparations'' that would accompany removal proceedings before an immigration judge. Several commenters posed questions about what kind of guidance, training, or other measures would be implemented to enable CBP officers, asylum officers, and immigration judges to determine whether an asylum seeker is exhibiting symptoms consistent with a contagious disease. Others asked whether such trainings would address implicit and explicit bias in making such determinations, and how such determinations would be tracked and measured. Another commenter argued that requiring asylum officers to make determinations about withholding of removal under the CAT regulations violates 8 CFR 208.16(a), which states that asylum officers ''shall not'' decide withholding claims.

Response: As noted, the final rule is not, as the NPRM proposed, modifying the regulatory framework to apply the danger to the security of the United States bars at the credible fear stage because, in the interim between the NPRM and the final rule, the Global Asylum Final Rule did so for all of the bars to eligibility for asylum and withholding of removal. In any event, the application of asylum eligibility bars at the credible fear stage has no bearing on how asylum officers or immigration judges assess alleged trauma during the screening process. Adjudicators in both Departments are trained to make these assessments and are well versed in assessing the credibility of applicants, including accounting for trauma as relevant. Regarding commenters' concerns about requiring asylum officers to determine whether the bars apply during the credible fear interview, the Departments note that asylum officers are well trained in asylum law and are more than capable of determining whether statutory bars apply, especially in the credible fear-screening context. An asylum officer must have ''had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications [for asylum],'' and ''is supervised by an officer who [has had similar training] and has had substantial experience adjudicating asylum applications.'' INA 235(b)(1)(E), 8 U.S.C. 1235(b)(1)(E)); 8 CFR 208.1(b). DHS asylum officers regularly make determinations on a variety of issues surrounding eligibility in a manner consistent with their extensive and multi-faceted training and country conditions and other resources at their disposal. Asylum officers receive extensive training in all the requirements for asylum eligibility, international human rights law, non-adversarial interviewing techniques, and other national and international refugee laws and principles. 8 CFR 208.1(b). This training includes specific lessons on cross-cultural communication; interviewing survivors of torture; and working with an interpreter, all of which touch on explicit and implicit bias. With the publication of this rule, asylum officers will receive additional training on the standards and requirements set forth in this rule. The Departments also note that even before promulgation of the Global Asylum Final Rule, asylum officers already elicited testimony related to mandatory bars to asylum and/or withholding of removal in the credible fear context—they simply did not apply them under then-current regulations.[83]

Lastly, responding to commenters' concerns that such determinations would be ''final,'' 8 CFR 208.16(a) provides that an asylum officer ''shall not decide whether . . . removal of an alien . . . must be withheld.'' The rule provides for the asylum officer to conduct a screening for potential eligibility for withholding and deferral of removal. Asylum officer screening for these protections is currently part of the credible fear process and do not result in a grant or denial of withholding or deferral of removal, which can only be done by an immigration judge, 8 CFR 208.16(a), 208.17, 1208.16(a), and 1208.17. An asylum officer's determination following a credible fear interview can be reviewed by an immigration judge, either as part of a de novo review of a negative credible fear determination, or in asylum-and-withholding-only proceedings, where the immigration judge is not bound by findings of the asylum officer. As the Supreme Court has observed, ''[a]n alien subject to expedited removal thus has an opportunity at three levels to obtain an asylum hearing, and the applicant will obtain one unless the asylum officer, a supervisor, and an immigration judge all find that the applicant has not asserted a credible fear.'' [84]

The Departments have reviewed and considered the comments and are not making changes to the final rule in response to these comments.

Confidentiality of Health Information

Comment: One commenter stated that the rule violates asylum seekers' right to privacy and confidentiality by requiring them to disclose health information to immigration officers. The commenter also faulted the rule for failing to include specifics on how asylum seekers' personal health information, medical records, and health data would be collected, stored, and transmitted.

Response: Information voluntarily provided to DHS for purposes of adjudicating a requested benefit often contains sensitive personally identifiable information. In particular, health information that is collected and maintained within DHS systems of records, for example in the context of the health ground of inadmissibility, INA 212(a)(1), 8 U.S.C. 1182(a)(1); INA 237(a)(1)(A), 8 U.S.C. 1227((a)(1)(A), as it applies to applications for adjustment of status, INA 245(a)(2), 8 U.S.C. 1255(a)(2), is appropriately protected and handled in the same manner as other sensitive information possessed by DHS. Information about the safeguarding of health information and other sensitive information may be found in the various System of Records Notice and Privacy Impact Assessments that DHS and its components are statutorily required to prepare.[85] Moreover, asylum, credible fear, reasonable fear and by policy, refugee information, enjoy heighted

[83] *See* Government Accountability Office, *Actions Needed to Strengthen USCIS's Oversight and Data Quality of Credible and Reasonable Fear Screenings* (Feb. 2020) at 10 (''In screening non-citizens for credible or reasonable fear. . . [a] USCIS asylum officer is to determine if the individual has any bars to asylum or withholding of removal that will be pertinent if the individual is referred to immigration court for full removal proceedings.''), *https://www.gao.gov/assets/710/704732.pdf;* USCIS Refugee, Asylum, and International Operations, *Lesson Plan on Credible Fear of Persecution and Torture Determinations* (Apr. 30, 2019) at 31 (''Even though the bars to asylum do not apply to the credible fear determination, the interviewing officer must elicit and make note of all information relevant to whether a bar to asylum or withholding applies or not.''), *https://fingfx.thomsonreuters.com/gfx/mkt/11/10239/10146/2019%20training%20document%20for%20asylum%20screenings.pdf.*

[84] *Thuraissigiam,* 140 S. Ct. at 1965–66.

[85] Available at *https://www.dhs.gov/uscis-pias-and-sorns.*

confidentiality protections provided for in accordance with 8 CFR 208.6.

Written Record and Immigration Judge Review of Negative Credible Fear Determinations

Comment: One commenter addressed the proposed provision at 8 CFR 208.30(e)(1), which calls for a written record in the credible fear proceeding ''subject to (e)(5)''. The commenter stated this amendment was unclear and warned that excusing any credible fear interview from the written record requirement violates the statute at 8 U.S.C. 1225(b)(1)(B)(iii)(II).

Response: The Departments appreciate the comment received and acknowledge the ambiguity that may have been created from the proposed amendment to section 208.30(e)(1). The proposed language was intended to simply clarify that when an asylum officer creates a written record of his or her determination following a credible fear interview, the officer should, as applicable, include a written record of their determination as to whether the alien has demonstrated that it is more likely than not that he or she would be tortured in the country of removal. After considering the comment, the Departments have revised the language of the proposed amendment (now at section 208.30(e)(4) following the promulgation of the Global Asylum Final Rule) to make this clearer.

Violation of Congressional Intent for Credible Fear Screening Process

Comment: A joint submission argued that Congress did not grant DHS authority to create bars to credible fear that are unrelated to asylum eligibility at the time of the adjudication of an application. Multiple commenters argued that Congress intended for the credible fear process to employ a ''low screening standard'' in order to ensure that asylum seekers with genuine claims have access to the full asylum process and are not returned to persecution, and faulted the proposal for raising this standard.

Response: The NPRM did propose to modify the then-existing regulatory framework in order to apply the danger to the security of the United States bars at the credible fear stage. However, subsequent to the publication of the NPRM, the intervening Global Asylum Final Rule amended the regulatory framework to apply all bars to eligibility for asylum and withholding of removal—including the danger to the security of the United States bars—at the credible fear stage. This rule does not make additional revisions to that regulatory framework.

In any event, the final rule does not create a ''bar'' to credible fear unrelated to asylum eligibility. The Departments will continue to employ the ''low screening standard'' prescribed in statute and regulations—a significant possibility that the alien could establish eligibility for asylum. However, pursuant to the Global Asylum Final Rule, asylum officers must determine whether aliens are subject to a bar to relief as part of the significant possibility anaylsis. Accordingly, the Departments are not making changes to the final rule in response to these comments.

3. Streamlining Screening for Deferral of Removal Eligibility in Expedited Removal

Ability of Asylum Seekers To Meet Higher Standard for Protection Under CAT in Credible Fear Screenings

Comment: The Departments received multiple comments concerning the provisions of the rule that amend the screening standard for potential eligibility for deferral of removal under the CAT regulations. Under the rule, section 208.30(e)(5)(i)(B) is amended to provide that where the asylum officer determines that the applicant is subject to the danger to the security of the United States bars to asylum and withholding of removal, the officer will screen for potential deferral of removal protection under the CAT regulations for an alien who has raised a fear of torture by determining whether the alien is able to establish that it is more likely than not that he or she would be tortured in the prospective country of removal, rather than whether there is a reasonable possibility that the alien would be tortured in the prospective country of removal. Several commenters stated that the ''more likely than not'' standard is unreasonable in the context of a credible fear screening and argued that this standard was only appropriate for a full immigration hearing before an immigration judge, where a ''more likely than not standard'' is used as the eligibility standard for deferral of removal. The commenters further argued that raising the standard of proof to the level of a full immigration hearing was inappropriate because individuals in screenings are likely to have less than the required amount of evidence at the time of their arrival and insufficient time to prove their case. Multiple commenters argued that applying the ''more likely than not'' standard at the expedited removal stage violates the expedited removal standard that was intentionally designed by Congress to be ''generous'' and ''over-inclusive'' to avoid the risk of refoulement. The commenters said requiring individuals subject to a danger to the security of the United States bar to prove they are ''more likely than not'' to be tortured in the country of removal was an unlawful change to the credible fear standard intended by Congress and clearly articulated in the text and legislative history of IIRIRA. Other commenters noted that those seeking protection under the CAT regulations who have suffered recent trauma and psychological harm would have difficulty understanding complex legal requirements and would be unable to fully disclose everything that has happened to them in a ''rushed'' interview with a stranger, resulting in an undue risk that those facing torture would not be provided appropriate protection. Another commenter added that allowing removal to a third country at the early screening stage would mean that no thorough record will exist as to a person's risk of torture in that third country, a risk the commenter argued may be very high considering the permeability of borders and ease of movement of persecutors between Mexico and Central American countries.

Response: The Departments first note that the expedited removal provisions of the INA do not even reference screening for withholding or deferral of removal under the CAT regulations. The rule continues to apply the credible fear standard required by statute, defined as a significant possibility that the alien can establish eligibility for asylum. INA 235(b)(1)(B)(v). It is only when the alien is determined not to meet that significant possibility standard due to the application of the danger to the security of the United States bars (subject to review by an immigration judge), and determined not to meet the screening standard for withholding of removal (a reasonable possibility of persecution on account of a protected ground and a reasonable possibility of torture), that DHS will use the ''more likely than not'' standard to screen for potential eligibility for deferral of removal. There is no statutory requirement to even screen for deferral of removal, putting aside the screening standard used by DHS when it voluntarily engages in screening.

The Departments note that the utilization of the ''more likely than not'' standard in deferral screenings only applies to aliens determined by DHS to be ineligible for asylum and withholding of removal pursuant to the danger to the security of the United States eligibility bars (or ineligible for asylum pursuant to the Third-Country Transit Final Rule). Aliens determined

by asylum officers to be ineligible for asylum or withholding of removal pursuant to the other mandatory bars will continue to be screened for deferral of removal under the reasonable possibility of torture standard, as provided by the Global Asylum Final Rule.

Sending an alien to immigration court for a deferral of removal adjudication often results in his or her release into the United States for periods of years while the aliens await decisional finality. The need to streamline and expedite screening for deferral of removal is especially great in the context of outbreaks of communicable disease to prevent infected aliens from release into the United States when they are not even ultimately eligible for deferral. As the CDC has concluded, the ''faster a covered alien [86] is returned . . . the lower the risk the alien poses of introducing, transmitting, or spreading COVID–19 into POEs, Border Patrol stations, other congregate settings, and the interior [of the United States].'' [87]

The Departments disagree that the ''more likely than not'' standard is an inappropriate screening standard for potential protection under the CAT regulations. In fact, Congress made clear that in providing protection under the CAT regulations, the government should not grant protection to aliens barred from eligibility for withholding of removal ''[t]o the maximum extent consistent with the obligations of the United States under [CAT].'' [88] The sole purpose of CAT deferral is to provide protection to such aliens (barred from eligibility for withholding of removal) in order ensure that they are not refouled to a country where it is likely that they will be tortured. The preamble to the 1999 CAT rule stated that ''[d]eferral of removal will be granted . . . to an alien who is likely to be tortured in the country of removal but who is barred from withholding of removal[,]'' [89] and the regulatory text itself states that to be eligible for deferral an alien must be ''subject to the provisions for mandatory denial of withholding of removal under § 208.16(d)(2) or (d)(3).'' [90]

This rule furthers Congress's mandate that the withholding of removal eligibility bars apply to aliens seeking protection under the CAT regulations ''[t]o the maximum extent consistent with the obligations of the United States under [CAT]'' by requiring that aliens meet at the credible fear stage their ultimate burden to demonstrate eligibility for deferral of removal—*i.e.,* that it is more likely than not that they would be tortured in the country of removal. 8 CFR 208.16(c)(2), 208.17(a).

Regarding the commenter's concern about the alien's ability to meet his or her burden with respect to possible torture, as the Departments have noted, asylum officers are trained to research and consider country conditions information, and engage in non-adversarial interview techniques that are designed to elicit all relevant information.[91] And, as the Departments have noted, testimony alone, if otherwise credible, can be sufficient to meet the alien's burden.[92] The Departments are confident that officers will be able to access and consider all relevant information that may bear on an alien's potential risk of torture in any particular country.

Regarding commenters' concerns that this standard is higher than the asylum standard, the ''more likely than not'' standard better aligns the initial screening standard of proof with the higher standard used to determine whether aliens are in fact eligible for this form of protection when applying before an immigration judge (than the ultimate standard for asylum eligibility). As noted, Congress intended the ''more likely than not'' standard to meet United States' non-refoulement obligations in Article 33(1) of the Refugee Convention, not the lower asylum standard.

The Departments recognize that a higher screening standard may make it more difficult to receive a positive fear determination, though that standard is consistent with the higher burden of proof required for considerations of the merits. However, the Departments disagree with commenters that raising the screening standard for deferral of removal will require aliens to submit significantly stronger documentary evidence. Just as in screenings for asylum and withholding of removal eligibility, the testimony of the applicant, if credible, may be sufficient to sustain the alien's burden of proof without corroboration. 8 CFR 208.17(a). At the credible fear interview stage, these claims rest largely on the applicant's testimony, which does not require any additional evidence gathering on the applicant's part. Additionally, an alien who receives an adverse ''more likely than not'' determination by an asylum officer may seek review of such determination by an immigration judge.

Requirement To Affirmatively Raise and Affirmatively Establish Likelihood of Torture in Prospective Country of Removal

Comment: Several commenters argued that, since asylum seekers fleeing torture often experience trauma and lack of understanding of U.S. immigration law, they should not be required to make an affirmative statement in credible fear interviews that they may be tortured if returned to their home country. Some commenters opposed the requirement that an asylum seeker in the expedited removal process ''affirmatively establish'' that torture in the prospective country of removal is more likely than not. A group of commenters said the rule would essentially require asylum seekers to somehow ''affirmatively establish'' eligibility for withholding of removal or protection under the CAT regulations in an unknown third country. Another commenter said it is unclear how the Departments understand ''affirmatively establish'' (in the proposed regulations) in relation to ''affirmatively raise'' (only stated in the preamble). The commenter said the shift to ''affirmatively establish'' in the proposed regulations appears to suggest a heightened burden on the asylum seeker, in addition to raising the required risk of torture, signaling a burden of presenting affirmative proof of torture at the credible or reasonable fear interviews. The commenter said it is unclear and confusing as to what standard the Departments are inserting.

Response: The Departments appreciate the comments concerning the ''affirmatively establish'' language that appeared in the regulatory language of the proposed rule. The adverb was included to make clear that the alien has the burden of proof to establish that torture is more likely than not to occur in the prospective country of removal. After considering the comments, the Departments have concluded that the term ''affirmatively'' may cause confusion and is not necessary to clarify the burden of proof, which clearly rests with the alien. Accordingly, the term ''affirmatively'' has been deleted from

[86] In the context of the CDC Order, a ''covered alien'' includes those ''persons who are traveling from Canada or Mexico (regardless of their country of origin), and who must be held longer in congregate settings in POEs or Border Patrol stations to facilitate immigration processing, would typically be aliens seeking to enter the United States at POEs who do not have proper travel documents, aliens whose entry is otherwise contrary to law, and all aliens who are apprehended near the border seeking to unlawfully enter the United States between POEs.'' 85 FR at 17067.

[87] *Id.*

[88] FARRA sec. 2242(c), 8 U.S.C. 1231 note (c).

[89] Regulations Concerning the Convention Against Torture, 64 FR 8478, 8480 (Feb. 19, 1999).

[90] 8 CFR 208.17(a), 1208.17(a).

[91] 8 CFR 208.30(d).

[92] INA 208(b)(1)(B)(ii) and 241(b)(3)(C), 8 U.S.C. 1158(b)(1)(B)(ii) and 1231(b)(3)(C); 8 CFR 208.13(a), 208.16, and 208.16(c)(2).

the regulatory text in the final rule at sections 208.30(e)(5)(i)(B)(3), (e)(5)(iii)(B), (e)(5)(iii)(B)(3), and 1208.30(g)(2)(iv)(A). An alien's obligation is simply to ''establish.''

As to ''affirmatively raises'', the preamble to the NPRM stated that ''[i]f the alien *affirmatively raises* fear of torture . . . the asylum officer will then assess, as appropriate, the alien's eligibility for deferral of removal under the CAT regulations'' and that ''[a]n alien who is found by the asylum officer to be subject to the bars and who *affirmatively raises* a fear of torture but does not establish that it is more likely than not that he or she would be tortured can obtain review of both of those determinations by an IJ.'' [93] The Departments have concluded that the phrase ''affirmatively raises'' could cause confusion, and thus incorporate the preceding sentences by reference in this final rule with the understanding that ''affirmatively raises'' should read, ''has raised''.

The INS and now DHS's longstanding practice has been to ask every alien subject to expedited removal about a potential fear of return. The regulatory text at 8 CFR 235.3(b)(2)(i), which is not changed by this rule, does not state this explicitly, providing that:

> In every case in which the expedited removal provisions will be applied and before removing an alien from the United States pursuant to this section, the examining immigration officer shall create a record of the facts of the case and statements made by the alien. This shall be accomplished by means of a sworn statement using Form I–867AB . . . . The examining immigration officer shall read (or have read) to the alien all information contained on Form I–867A.

However, the preamble to the regulation made clear that all aliens placed into expedited removal were to be questioned about a fear of return:

> Service procedures require that all expedited removal cases will be documented by creation of an official Service file, to include a complete sworn statement taken from the alien recording all the facts of the case and the reasons for a finding of inadmissibility. This sworn statement will be taken on a new Form I–867AB, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act. The form will be used in every case where it is determined that an alien is subject to the expedited removal process, and contains a statement of rights, purpose, and consequences of the process. . . . The final page of the form contains a standard question asking if the alien has any fear or concern of being removed or of being sent home.[94]

Accordingly, CBP/ICE officers ask aliens these questions during the expedited removal process:

- Why did you leave your home country or country of last residence?
- Do you have any fear or concern about being returned to your home country or being removed from the United States?
- Would you be harmed if you are returned to your home country or country of last residence?

The alien's answers to these questions are memorialized on the I–867B Form.[95]

Thus, all aliens receiving credible fear screening interviews will already have been asked whether they have a fear of return and have answered in the affirmative (triggering the credible fear process). Aliens with a fear of return based on torture would presumably have stated such a fear at that time.

Unidentified Third Country

Comment: Many commenters stated that the rule would eliminate even the prospect of protection under the CAT regulations because DHS officials would be permitted to send an alien to a third country unless the alien proves during a credible fear interview that they would be persecuted or tortured in that specific country—without any requirement that the person be informed of the identity of the country in advance, which one commenter argued is nonsensical, immoral, and cruel. Without notice of the country a person would be sent to, these commenters said asylum applicants would face a near-impossible burden to avoid being sent to a place where they may be tortured.

Response: The Departments appreciate the comments and agree that an alien should be informed of the identity of a prospective country of removal, provided with an opportunity to raise a fear of torture if removed to that country, and to have that fear assessed to determine whether he or she has established that it is more likely than not that they will be tortured in that country. That was always the Departments' intent, and the Departments accordingly include language in the final rule clarifying that aliens must be notified of the identity of the proposed country.

Unclear Process for Removability Determinations

Comment: Some commenters stated that the proposed rule is unclear as to the process by which determinations about removability to a third country will be made for individuals who have shown a credible fear of persecution or torture in their home country. The commenters said that given that asylum seekers only request withholding or deferral of removal in removal proceedings before an immigration judge *after* the credible fear process is completed, it is unclear when and how asylum seekers would be advised of the potential for removal to a third country and provided an opportunity to withdraw their request in order to prevent removal to the third country. Another commenter said asylum seekers will be confused by this advisal and feel coerced into abandoning any claim for protection out of fear that they might be removed to a country that they may never have been to, and where they have no support system or means of ensuring their safety or survival. Other commenters said the rule fails to include an exception for LGBTQ persons who may not be able to survive in a third country due to on-the-ground homophobia or transphobia, as it remains illegal or fundamentally dangerous to openly identify as LGBTQ (or even be perceived as LGBTQ) in over 80 countries around the world.

Response: The Departments appreciate the comments concerning the rule's requirement that aliens be notified of the possibility of third country removal at the time of requesting withholding or deferral of removal and provided an opportunity to withdraw their request in order to prevent removal to the third country. However, after considering the comments, the Departments are not making changes to the final rule.

Once an asylum officer determines that an alien has not established the requisite fear with respect to potential eligibility for asylum and withholding of removal because they are subject to the danger to the security of the United States eligibility bars, if the alien had raised a fear of torture in the prospective country of removal, the asylum officer will assess whether it is more likely than not that the alien would be tortured in that country of removal, and thus potentially eligible for deferral of removal. Prior to that assessment, the alien would be notified of the possibility of removal to a third country and provided the opportunity to proceed to removal pursuant to INA 241(b), as appropriate.

The Departments do not view the process as coercive as suggested by the commenters. Rather, the process provides applicants with an opportunity to avoid an outcome that already exists.

[93] Security Bars NPRM, 85 FR at 41213 (emphasis added).

[94] Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10319 (Mar. 6, 1997) (interim rule with request for comments) (emphasis added).

[95] DHS, Form I–867B (08/01/07) (Jurat for Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act).

Under current regulations, an alien who is granted withholding or deferral of removal is protected from removal only to a particular country, and remains subject to removal to other countries. 8 CFR 1208.30(f). This rule provides the alien with the option to return to his or her home country rather than to seek withholding or deferral protection, which could lead to such third country removal.

As stated previously, asylum officers are trained to research and consider country conditions information and engage in non-adversarial interview techniques designed to elicit all relevant information. Accordingly, the Departments are confident that officers will be able to access and consider all relevant information that may bear on an LGBTQ person's potential risk of torture in any particular country.

Similarities With the MPP Process

Comment: Several commenters raised concerns related to the Migrant Protection Protocols (MPP), which implement DHS's authority under INA 235(b)(2)(C), 8 U.S.C. 1225(b)(2)(C), to return certain aliens temporarily to Mexico during the pendency of their section 240 removal proceedings. They argued that the Departments failed to acknowledge and discuss adverse legal precedent issued in the MPP context and claimed that this rule broadens the ''disastrous humanitarian consequences'' caused by the MPP. Specifically, one commenter noted that under the MPP, individuals must ''affirmatively'' express a fear of return to Mexico and then prove that it is ''more likely than not'' that they ''will face persecution or torture if returned to Mexico,'' the same standards used to avoid being sent to a third country under the NPRM. Further, they pointed out that in *Innovation Law Lab* v. *Wolf,*[96] the Ninth Circuit held that the MPP ''does not comply with the United States' anti-refoulement obligations,'' and the commenter claimed that the use of the same standards in the third country removal process also does not provide sufficient protection against non-refoulement.

Response: This rule is in no way related to the MPP and does not constitute an expansion or modification of the MPP. The MPP implements DHS's authority under INA 235(b)(2)(C), 8 U.S.C. 1225(b)(2)(C), to return certain aliens temporarily to Mexico during the pendency of their section 240 removal proceedings. The MPP does not involve or implement any bars to eligibility for asylum or withholding of removal.

This rule, on the other hand, allows the Departments to consider emergency public health concerns when determining whether there are reasonable grounds for regarding or believing an alien to be a danger to the security of the United States'' and, thus, ineligible to be granted asylum or withholding of removal. Although the Ninth Circuit held that the plaintiffs in *Innovation Law Lab* were likely to succeed on the merits of their claim that the MPP's non-refoulment screening procedures did not meet U.S. non-refoulment obligations, the Departments disagree, and the question remains in litigation. The Supreme Court granted a stay of the district court's preliminary injunction, declining to halt the use of the MPP non-refoulment screening procedures,[97] and the Supreme Court has granted a petition for certiorari.[98]

To the extent that commenters refer to country conditions in Mexico, this final rule permits removal to any third country (in which the alien has not demonstrated that he or she would be more likely than not persecuted because of a protected ground or tortured). Therefore, conditions in any specific country are no more relevant than conditions in any other country, and it is merely speculative as to which third countries DHS might consider in the future.

The Departments also point out that the Ninth Circuit concluded that ''plaintiffs have shown a likelihood of success on the merits of their claim that the MPP does not comply with the United States' anti-refoulement obligations'' [99] presumably based upon ''several features of the MPP that, in [plaintiffs'] view, provide insufficient protection against refoulement'' [100] features that are not present in this final rule. Unlike under the expedited removal process, under the MPP (1) aliens ''must volunteer, without any prompting, that they fear returning,'' [101] (2) aliens must demonstrate that it is more likely than not that they will be persecuted,[102] and (3) ''an asylum seeker is not entitled to advance notice of, and time to prepare for, the hearing with the asylum officer; to advance notice of the criteria the asylum officer will use; to the assistance of a lawyer during the hearing; or to any review of the asylum officer's determination.'' [103]

Accordingly, the Departments conclude that MPP procedures and related litigation are not relevant to this rule, and the Departments are not making changes to the final rule in response to these comments.

4. Restoring Prosecutorial Discretion With Regard to Third Country Removal

Comment: Several commenters claimed that the rule would put protection from removal from the United States, including deferral of removal under the CAT regulations, out of reach for virtually everyone at the border and force those within the Unites States to play a ''game of roulette'' in which they could be removed to virtually any country in the world unless they withdraw their application for deferral. The commenters opposed the NPRM, stating that it would leave the United States government providing essentially no protection to those fleeing persecution or torture. Other commenters similarly stated that the rule threatens to eliminate the prospect of protection under the CAT regulations by allowing removal to third countries. Another advocacy group said asylum seekers sent to third countries would be unable to challenge DHS' decision to do so, and the only option left for them would be to withdraw their application for protection altogether.

Response: The Departments have reviewed and considered comments that have expressed concerns regarding the exercise of discretion to remove aliens to third countries who are only potentially eligible for deferral of removal under the CAT regulations due to the security bars to eligibility for

[96] 951 F.3d 1073 (9th Cir. 2020).

[97] *Wolf* v. *Innovation Law Lab,* No. 19A960 (Mar. 11, 2020).

[98] *Wolf* v. *Innovation Law Lab,* No. 19–1212, __ S. Ct.__, 2020 WL 6121563, 20 Cal. Daily Op. Serv. 10,700 (petition for cert. granted Oct. 19, 2020).

[99] *Id.* at 1093.

[100] *Id.* at 1088.

[101] *Id.* at 1089. As previously noted, DHS's longstanding practice has been to ask every alien subject to expedited removal about a potential fear of return.

[102] *Id.* at 1088–89. In credible fear screenings in the expedited removal process, aliens need to show only a significant possibility that they would be eligible for asylum or a reasonable possibility that they would be persecuted or tortured for purposes of demonstrating potential eligibility for withholding of removal. INA 235(b), 8 U.S.C. 1225(b); 8 CFR 208.30.

[103] *Id.* at 1089. In the expedited removal process, an alien may seek review of a negative credible fear determination by an immigration judge. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III). Aliens are entitled to a ''consultation period'' before their credible fear interview. INA 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv) (''An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof . . . .''). The current period is 48 hours. Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10320 (1997) (interim rule with request for comments). Aliens in expedited removal proceedings know of the charges against them, as aliens are only eligible for expedited removal if they are inadmissible on the basis of section 212(a)(6)(C) or (a)(7) of the INA, 8 U.S.C. 1182(a)(6)(C) or (a)(7).

asylum and withholding of removal. The Departments remind commenters that third country removal is already authorized by statute and utilized in cases where the United States government has a safe third country agreement with another country. INA 208(a)(2)(A).[104] And, unlike asylum, statutory withholding of removal and protection under the CAT regulations provide protection from removal only to the particular country regarding which an alien has established he or she is more likely than not to be persecuted or tortured if removed there. An alien can be removed to another country where the alien has not established that he or she is more likely than not to be persecuted (and is not subject to a bar to eligibility for withholding) or tortured if removed to that particular country. INA 241(b), 8 U.S.C. 1231(b). As DOJ stated in the final rule implementing the U.S.-Canada Safe Third Country Agreement:

> [I]t is essential to keep in mind that, in order to be entitled to [statutory withholding of removal or protection under the CAT regulations], an alien must demonstrate that it is more likely than not that he or she would be persecuted, or tortured, in the particular removal country. That is, withholding or deferral of removal relates only to the country as to which the alien has established a likelihood of persecution or torture—the alien may nonetheless be returned, consistent with CAT and section 241(b)(1) and (b)(2) of the Act [INA], to other countries where he or she would not face a likelihood of persecution or torture.[105]

The Departments note that restoring DHS's discretionary ability to remove certain aliens to third countries only applies to aliens determined to be ineligible for asylum and withholding of removal pursuant to the danger to the security of the United States eligibility bars, or ineligible for asylum pursuant to the Third-Country Transit Final Rule. Aliens determined by asylum officers to be ineligible for asylum or withholding pursuant to the other mandatory bars will continue to be screened for deferral of removal under the reasonable possibility of torture standard, as provided by the Global Asylum Final Rule, and placed in immigration court for asylum-and-withholding-only removal proceedings should they establish such a reasonable possibility.

As noted previously, sending aliens to immigration court for a deferral adjudication often results in their release into the United States for periods of years. Restoring DHS's ability to instead remove such aliens to third countries is especially important in the context of outbreaks of communicable disease. As the Departments explained in the NPRM, this would give DHS flexibility to quickly process aliens during national health emergencies during which placing an alien into section 240 proceedings (now, pursuant to the Global Asylum Final Rule, into asylum-and-withholding-only proceedings) may pose a danger to the health and safety of other aliens with whom the alien is detained, or to DHS officials who come into close contact with the alien. The government's interest in protecting the security of the United States outweighs an alien's interest in receiving protection in the country of their choosing. UNHCR itself has concluded that ''refugees do not have an unfettered right to choose their 'asylum country,' '' that, even if their ''intentions . . . ought to be taken into account,'' they and ''may be returned or transferred to a state where they had found, could have found or, pursuant to a formal agreement, can find international protection.'' [106] UNHCR explained that ''[t]he 1951 Convention relating to the Status of Refugees and its 1967 Protocol do not prohibit such return or transfer.'' [107] As discussed, pandemics (*e.g.,* COVID–19) can inflict catastrophic damage to America's, and the world's, economy and thus, to the security of the United States. To the extent that such damage has it origin with or can be exacerbated by infected aliens seeking to enter the United States illegally or without proper documents, the Departments believe the entry and presence of potentially infected aliens in certain circumstances warrant the use of discretion to remove aliens placed into expedited removal proceedings to third countries, avoiding the need for their lengthy detention or release into American communities during the pendency of their asylum-and-withholding-only proceedings. Accordingly, the Departments disagree with commenters that suggest the rule should permit aliens who are subject to the danger to the security of the United States bars to challenge DHS's exercise of prosecutorial discretion in removing them to third countries.

The Departments remind commenters that the danger to the security of the United States bars are applicable not just during the present COVID–19 public health emergency, but for future pandemics or public health emergencies that meet the thresholds in this rule. Thus, the application of the bars to asylum and withholding of removal will be tailored to accommodate the specific circumstances of those public health emergencies. The application of these bars is designed to prevent the entry or limit the further spread of serious communicable diseases into the United States, which would be exacerbated by lengthy review processes to review claims made by recent entrants to the United States.

5. Other Comments on Proposed Changes

Removal of the Reconsideration of a Negative Fear Determination

Comment: Many commenters, including legal services providers and advocacy groups, expressed concern that proposed 8 CFR 1208.30(g)(2)(iv)(A) would eliminate asylum officers' authority to reconsider negative credible fear determinations that had been affirmed on review by immigration judges, which they described as an important layer of due process for asylum seekers. Multiple commenters reasoned that the ability of the asylum officer to reconsider provides an important safeguard for unrepresented and/or traumatized asylum seekers who were unable to fully express a fear of return during an initial interview and review hearing. Several commenters argued that preventing reconsideration in no way advances the purported health objective of the proposed rule. Another commenter stated that the lack of explanation of such a major change suggests an ''alarming lack of thoroughness or analysis'' in the Departments' promulgation of the proposal.

Response: The Departments appreciate the comments received, and want to state that an inadvertent typographical omission resulted in the elimination of the existing reference to DHS's reconsideration authority at 1208.30(g)(2)(iv)(A). In any event, the Global Asylum Final Rule reinserted the relevant regulatory text at 8 CFR 208.30(g)(2)(i). DHS may continue to reconsider a negative credible fear finding that has been concurred upon by an immigration judge after providing

[104] *See also* Asylum Claims Made by Aliens Arriving From Canada at Land Border Ports-of-Entry, 69 FR 69490, 69492 (Nov. 29, 2004); Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims, 84 FR 64095 (Nov. 20, 2019).

[105] Asylum Claims Made by Aliens Arriving From Canada at Land Border Ports-of-Entry, 69 FR at 69492.

[106] UNHCR, *Legal Considerations Regarding Access to Protection and a Connection Between the Refugee and the Third Country in the Context of Return or Transfer to Safe Third Countries* ¶ 2 (Apr. 2018), *https://www.refworld.org/pdfid/5acb33ad4.pdf.*

[107] *Id.*

notice of its reconsideration to the immigration judge.

Improper Reference to the Third-Country Transit Ban

Comments: Commenters expressed concern regarding the interplay of this rulemaking effort with the interim final rule Asylum Eligibility and Procedural Modifications [108] (''Third-Country Transit IFR''). Specifically, commenters were concerned that that rule had been vacated and enjoined by Federal courts. A few commenters asserted that the Departments failed to justify why a proposed rule focused on an eligibility bars based on public health would address an unrelated eligibility bar. One commenter asserted that the Departments should eliminate provisions that reference the Third-Country Transit IFR or provide additional justification for how and why the provisions remain pertinent. Another commenter argued that the reference to the IFR is improper because its legitimacy is under review in federal courts, has been vacated by at least one, and that the Departments provided no notice that the third-country transit ''ban'' is again being considered for incorporation as a regulation.

Response: The Departments recently promulgated the Third-Country Transit Final Rule, Asylum Eligibility and Procedural Modifications, 85 FR 82260 (December 17, 2020), which responded to comments received on the Third-Country Transit IFR and made minor changes for clarity and correction of typographical errors, and promulgated the Global Asylum Final Rule. As these rules supersede the Third-Country Transit IFR, this Security Bars and Processing final rule modifies the NPRM's proposed changes to the Third-Country Transit IFR's regulatory text to reflect the text of the now-operative Global Asylum Final Rule. This also serves to resolve any possible concerns regarding modifying the text of a regulation subject to a preliminary injunction.

Due Process Concerns

Comment: Numerous commenters expressed concern about the NPRM's impact on due process. A religious organization alleged generally that the rule would deprive aliens of the opportunity to be heard before a judge. A legal services provider remarked that immigration proceedings must conform to the Fifth Amendment's due process requirement and stated that legal scholars have observed that expedited removal proceedings do not afford asylum seekers with important due process protections such as access to counsel. The commenter said the Supreme Court had previously noted its ''discomfort'' with the minimal due process protections, given the severe consequence of deportation, and the commenter argued the proposal would further diminish due process protections by denying asylum seekers access to the court and the BIA.

One commenter alleged, without elaboration, that the rule ''circumvents mandatory procedural rights enshrined in the removal process.'' Another commenter stated that the Due Process Clause requires that agencies implement procedures for access to ''a statutory right to apply for asylum'' fairly and consistently, and argued that the NPRM would contravene this requirement by ''throw[ing] the procedures for accessing asylum protections into chaos.''

One commenter argued that constitutional due process rights extend to aliens and that they are especially important in asylum cases, where the consequences of adverse decisions are severe and could result in deportation, torture, or death. The commenter claimed further that the rule attempts to evade these protections and statutory asylum procedures and apply arbitrary, unlawful indicia of dangerousness without justification.

An advocacy group wrote that UNHCR guidance requires that asylum applicants be afforded due process. Similarly, an international agency commented that ''UNHCR's position is that it is contrary to international law to deprive asylum seekers of access to a full examination of the substance of their claim based on an exclusionary ground.'' The commenter reasoned that screening interviews are inadequate to assess the factual and legal issues surrounding asylum, especially given the lack of legal assistance, translation, and time to recover from trauma that an applicant may face.

Response: The rule does not violate constitutional or statutory due process protections. The Supreme Court recently ruled in *United States* v. *Thuraissigiam* [109] (in the context of reversing a Ninth Circuit decision that had declared the expedited removal statute's limitation on federal habeas review as unconstitutional for suspending the writ of habeas corpus and violating due process) that:

> While aliens who have established connections in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for an alien's lawful entry into this country and that, as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause. *See Nishimura Ekiu* v. *United States,* 142 U.S. 651, 660 . . . (1892). Respondent attempted to enter the country illegally and was apprehended just 25 yards from the border. He therefore has no entitlement to procedural rights other than those afforded by statute.[110]
>
> [R]espondent contends that IIRIRA violates his right to due process by precluding judicial review of his allegedly flawed credible-fear proceeding. . . . The Ninth Circuit agreed, holding that respondent ''had a constitutional right to expedited removal proceedings that conformed to the dictates of due process.'' . . .
>
> [T]he dissent [is in] correct in defending the Ninth Circuit's holding. That holding is contrary to more than a century of precedent. In 1892, the Court wrote that as to ''foreigners who have never been naturalized, nor acquired any domicil or residence within the United States, nor even been admitted into the country pursuant to law,'' ''the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.'' *Nishimura Ekiu,* 142 U.S. at 660. . . . Since then, the Court has often reiterated this important rule. *See, e.g., Knauff,* 338 U.S. at 544 . . . (''Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned''); *Mezei,* 345 U.S. at 212 . . . (same); *Landon* v. *Plasencia,* 459 U.S. 21, 32 . . . (1982) (''This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative'').
>
> Respondent argues that this rule does not apply to him because he was not taken into custody the instant he attempted to enter the country (as would have been the case had he arrived at a lawful port of entry). Because he succeeded in making it 25 yards into U.S. territory before he was caught, he claims the right to be treated more favorably. The Ninth Circuit agreed with this argument. We reject it. It disregards the reason for our century-old rule regarding the due process rights of an alien seeking initial entry. That rule rests on fundamental propositions: ''[T]he power to admit or exclude aliens is a sovereign prerogative,'' *id.,* at 32 . . ; the Constitution gives ''the political department of the government'' plenary authority to decide which aliens to

[108] 84 FR 33829 (July 16, 2019).

[109] 140 S. Ct. at 1959.

[110] *Id.* at 1963–64.

admit, *Nishimura Ekiu,* 142 U.S. at 659 . . ; and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted, see *Knauff,* 338 U.S. at 544 . . . .

This rule would be meaningless if it became inoperative as soon as an arriving alien set foot on U.S. soil. When an alien arrives at a port of entry—for example, an international airport—the alien is on U.S. soil, but the alien is not considered to have entered the country for the purposes of this rule. On the contrary, aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are ''treated'' for due process purposes ''as if stopped at the border.'' *Mezei,* 345 U.S. at 215 . . ; see *Leng May Ma* v. *Barber,* 357 U.S. 185, 188–190 . . . (1958); *Kaplan* v. *Tod,* 267 U.S. 228, 230–231 . . . (1925). The same must be true of an alien like respondent. As previously noted, an alien who tries to enter the country illegally is treated as an ''applicant for admission,'' § 1225(a)(1), and an alien who is detained shortly after unlawful entry cannot be said to have ''effected an entry,'' *Zadvydas* v. *Davis,* 533 U.S. 678 . . . (2001). Like an alien detained after arriving at a port of entry, an alien like respondent is ''on the threshold.'' *Mezei,* 345 U.S. at 212 . . . . The rule advocated by respondent and adopted by the Ninth Circuit would undermine the ''sovereign prerogative'' of governing admission to this country and create a perverse incentive to enter at an unlawful rather than a lawful location. *Plasencia,* 459 U.S. at 32 . . . .

For these reasons, an alien in respondent's position has only those rights regarding admission that Congress has provided by statute.[111]

Due process most fundamentally requires notice and an opportunity to be heard.[112] Contrary to commenters' assertions, this rule does not deprive aliens of a hearing before an immigration judge. As the Departments noted in the NPRM, if an alien subject to expedited removal is unable to establish during a credible fear screening the requisite possibility of eligibility for asylum or withholding of removal because of the danger to the security of the United States eligibility bars, the asylum officer's determination is reviewable by an immigration judge, as would be the officer's determination that the alien has not established it to be more likely than not that he or she would be tortured in the prospective country of removal.

If, based on this review, the alien is placed in asylum-and-withholding-only proceedings, the alien will have an opportunity to raise whether he or she was correctly identified as subject to the bars, as well as other claims. If an immigration judge determines that the alien was incorrectly determined to be subject to the bars, and the alien has otherwise established the requisite fear of persecution or torture, then the alien will be able to seek asylum and withholding of removal. And the alien can appeal the immigration judge's decision in these proceedings to the BIA and then seek review from a federal court of appeals.

As discussed above, a commenter argued that the NPRM uses public health as a pretext to deny asylum because the Departments provide for immigration judge review, which can take several days, in which time the alien may spread or contract a dangerous virus while in DHS custody. Other commenters faulted the Departments for a process they claim to be too swift. When read together, commenters faulted the Departments for providing a review process that presents significant risk of spreading a disease during a pandemic because of lengthy review, while at the same time violating due process because the review process is too short. The Departments disagree with the premise of each assertion, but note that these competing arguments illustrate the balance that the Departments are striving to achieve with this rule—mitigating risk of harm while providing due process protections.[113] The rule balances the interests of public safety with that of due process.

As discussed, the Departments disagree that the rule heightens the credible fear standard regarding potential eligibility for asylum. As noted, it clarifies the Departments' understanding of danger to the security of the United States bars. It does not alter the statutory credible fear standard of ''significant possibility.''

The Departments disagree that this rule will not be applied fairly and consistently, that it deprives aliens of a ''statutory right to apply for asylum,'' or that it will throw procedures for accessing asylum into chaos. This rule applies equally and fairly to all aliens who enter or attempt to enter the United States, whether at the southern border, the northern border, or any of the more than 300 land, air and sea POEs. Further, aliens' right to apply for asylum is, where applicable, limited by the expedited removal process, which prohibits the filing of an asylum application and a full hearing on that application where the alien is unable to establish the requisite fear of persecution or torture. It is not clear from the comment how or why the asylum system would be thrown into chaos. The Departments therefore cannot address the claim.

The Departments also disagree that the rule violates due process on the basis that it does not conform to UNHCR guidance and that screening interviews are inadequate. The Departments are not bound by UNHCR guidance or supposed ''international norms.'' Further, the Departments have many years of combined experience in implementing the credible fear screening and review process, and believe the current infrastructure and personnel are well positioned to implement this final rule.

Comment: Several commenters argued that applying danger to the security of the United States bars at the credible fear screening stage would deprive asylum seekers of a full, fair and meaningful opportunity to have their asylum claims adjudicated because the credible fear screening stage does not include due process protections. Other commenters remarked that asylum seekers with meritorious claims would be denied the opportunity to testify and present their case before a judge if asylum officers determine they are a danger to national security on public health grounds, even if they are not actually infected with COVID–19 or another contagious disease.

A legal services provider described the procedural safeguards of section 240 proceedings, including increased opportunity for administrative and judicial review, and faulted the proposal for conflating threshold eligibility and questions of a claim's ultimate merits that are more appropriate for section 240 proceedings.

Another legal services provider stated that the proposal would deny asylum seekers due process by making it easier to deport those ''branded as diseased'' before they can access legal counsel to help establish the merits of their claims to asylum.

One commenter remarked that the proposal would increase the evidentiary burden on asylum seekers early in the process and would increase the likelihood that vulnerable individuals

[111] *Id.* at 1981–83.

[112] *LaChance* v. *Erickson,* 522 U.S. 262, 266 (1998) (''The core of due process is the right to notice and a meaningful opportunity to be heard.'').

[113] *Landon* v. *Plasencia,* 459 U.S. 21, 34 (1982) (''In evaluating the procedures in any case, the courts must consider the interest at stake for the individual, the risk of an erroneous deprivation of the interest through the procedures used as well as the probable value of additional or different procedural safeguards, and the interest of the government in using the current procedures rather than additional or different procedure.'').

are returned to countries where they risk persecution or torture, and argued that asylum seekers' right to avoid being returned to countries where their lives would be in danger outweighs the administrative efficiencies cited as justification for the proposal.

A legal services provider argued that applying the danger to the security of the United States bars at the credible fear stage would lead to ''tremendous due process concerns'' because asylum seekers would be forced to present their cases to asylum officers without access to counsel, after arduous and traumatic journeys to the United States, and after enduring poor conditions in CBP or ICE custody. A professional association agreed and stated that expedited removal proceedings lack important procedural safeguards such as a meaningful opportunity to present evidence to a neutral factfinder, access to legal counsel, the opportunity to receive findings of fact and conclusions of law, and access to administrative or judicial review. A legal services provider stated that asylum seekers must have access to legal counsel in order to ensure an adequate review of the merits of their cases in the current process and suggested legal assistance would be even more important due to changes contained in the NPRM.

Response: The Departments disagree that applying the danger to the security of the United States bars at the credible fear screening violates due process on the grounds that it does not provide a full, fair and meaningful opportunity for an alien to have his or her asylum application adjudicated. As noted above, the Global Asylum Final Rule already took this step. In any event, Congress provided for the credible fear process, and many aliens seeking admission and expressing a fear of return to their home countries are removed each year on the basis that they failed to establish a credible fear.

The Departments recognize that, during a pandemic, aliens with otherwise meritorious claims may be subject to the danger to the security of the United States bars. However, it was Congress's decision to make aliens who there are reasonable grounds for regarding or believing to be a danger to the security of the United States categorically ineligible for asylum and withholding of removal. In any event, aliens who are determined not to have a credible fear of persecution or torture may seek immigration judge review of whether the security bars were properly applied. If an immigration judge finds the bars were improperly applied, and that the alien has established a credible fear, the alien will not be removed, but rather placed into asylum-and-withholding-only proceedings.

The Departments also recognize that an alien may be subject to the danger to the security of the United States bars where he or she is not infected with the relevant communicable disease at the time the determination is made, but disagree that this violates due process or that it requires a heightened evidentiary standard. The bars do not require a positive diagnosis, only that DHS or DOJ have reasonable grounds for regarding the alien as a danger. As noted above, the Attorney General in *Matter of A–H-* ruled that ''reasonable'' in this context ''implied the use of a 'reasonable person' standard'' that was ''substantially less stringent than preponderance of the evidence,'' and instead akin to ''probable cause.'' [114] The standard ''is satisfied if there is information that would permit a reasonable person to believe that the alien may pose a danger to the national security.'' [115] Further, ''[t]he information relied on to support the . . . determination need not meet standards for admissibility of evidence in court proceedings . . . . 'It [i]s enough that the information relied upon by the Government [i]s not 'intrinsically suspect.' '' [116] These standards that have been previously applied to interpretations of the security eligibility bars support application of the bars in instances where each individual alien is not known to be carrying a particular disease. Rather, it is enough, for example, that the prevalence of disease in the countries through which the alien has traveled to reach the United States makes it reasonable to believe that the entry of aliens from that country presents a serious danger of introduction of the disease into the United States.

The Departments reject the assertion that the rule violates due process based on the claim that it prohibits access to counsel prior to the bars' application at credible fear screenings, or that it deprives aliens of a meaningful opportunity to present evidence to a neutral factfinder, to receive findings of fact and conclusions of law, or to access administrative or judicial review. The rule does not alter the ability of aliens to consult with counsel, INA 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv), to present testimony to the asylum officer in an interview conducted in a non-adversarial manner, with the goal of eliciting all relevant and useful information bearing on whether the alien can establish a credible fear of persecution, reasonable possibility of persecution, reasonable possibility of torture, or whether it is more likely than not that the alien will be tortured in the prospective country of removal, INA 235(b)(1)(B)(iii)(II), 8 U.S.C. 1225(b)(1)(B)(iii)(II), 8 CFR 208.30(d), or to request an immigration judge's de novo review of the asylum officer's determination, INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III), 8 CFR 1003.42(d)(1).

Comment: Some commenters emphasized that the NPRM could allow the removal of an applicant seeking deferral of removal to a third country before the adjudication of the case in immigration court by an immigration judge. Some commenters claimed that removing asylum seekers to third countries before their pending asylum claims are adjudicated would unfairly and illegally deprive them of the opportunity to establish eligibility for asylum. A legal services provider said the proposed rule's efforts to effectuate third country removals would deliberately interfere with EOIR's review of the merits of the asylum seeker's claim, who could be deported abruptly prior to their day in court.

Another commenter said the rule would deport thousands of people to likely deaths before they even have a chance to express their fear.

Response: The Departments disagree that the rule allows for the removal of an alien seeking protection from a third country before their asylum claims are adjudicated. The rule provides for removal to a third country only after the alien has been determined by an asylum officer to not have a credible fear of persecution or a reasonable possibility of persecution or torture due to the danger to the security of the United States bars, and only after the alien has had an opportunity for de novo review of that determination by an immigration judge. Thus, the alien's only available form of protection, should the alien be eligible, would be deferral of removal, which only protects the alien from removal to the particular country from which removal has been deferred. 8 CFR 208.17(b)(2). Thus, removal to a third country prior to a full adjudication of the deferral claim does not deprive the alien of protection that would be provided by deferral—removal to that particular country. Rather, it brings efficiency to the process by treating the alien as though he or she has received such protection without the need for a full adjudication of the deferral claim. Under this rule, DHS will provide notice to the alien of the prospective third country, and the alien will have an

[114] 23 I&N Dec. at 788–89 (emphasis added).

[115] *Id.* at 789 (citation omitted).

[116] *Id.* at 789–90.

opportunity to establish that he or she would be more likely than not to be tortured in such third country. Even the current deferral of removal regulations provide that an alien who is granted deferral be informed ''that removal has been deferred only to the country in which it has been determined that the alien is likely to be tortured, and that the alien may be removed at any time to another country where he or she is not likely to be tortured.'' 8 CFR 208.17(b)(2), 1208.17(b)(2).

6. Other Issues Related to the Rule

1. Requests to Extend Comment Period

Comment: Several commenters requested that the Departments extend the 30-day comment period, citing the APA, Executive Order 12866, and instances where rulemakings have been open longer than 60 days. Some commenters claimed that the rule is complex, sweeping, and that it would rewrite fundamental aspects of U.S. asylum law, arguing that the 30-day comment period is therefore insufficient to analyze the impact of the proposed changes and receive proper input from key stakeholders such as public health and medical experts. Several other commenters argued that the 30-day comment period is particularly inadequate given the COVID–19 crisis, which had already taxed the resources and capacity of organizations. Multiple commenters stated that the comment period was inappropriate given the concurrent proposed rule Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 36264 (June 15, 2020) (''Global Asylum NPRM''), which closed for comments on July 15, 2020. Several commenters claimed that there was a lack of urgency in promulgating this final rule given that few asylum interviews are occurring because of the March 20, 2020 CDC order.[117] One commenter asserted that asylees, lawful permanent residents, and U.S citizens who have family members with pending determinations did not provide comment on this rule due to fear of retaliation from the Administration and thus the comment period is missing critical stakeholder input.

Response: The Departments disagree that the comment period was insufficient and decline to extend it. The Departments also disagree with the commenters' characterizations of the rule as complex, sweeping, or rewriting fundamentals of asylum law. The rule is designed to be as narrow as the scope of a given public health emergency, and is only operable under a discrete set of circumstances during such an emergency. The rule merely clarifies that the Departments' understanding of the danger to the security of the United States bars to eligibility for asylum and withholding of removal encompasses public health concerns, restores prosecutorial discretion to DHS, and streamlines the process for screening for potential eligibility for deferral of removal under the CAT regulations. The Departments also disagree that the comment period should have been longer due to the Global Asylum NPRM. This rule is separate and distinct, dealing with a much more limited set of issues.

The APA is silent as to the duration of the public comment period and does not establish a minimum duration.[118] Executive Order 12866 encourages, but does not require, agencies to provide at least 60 days for the public to comment on significant rules. Federal courts have presumed 30 days to be a reasonable comment period length. For example, the D.C. Circuit has stated that ''[w]hen substantial rule changes are proposed, a 30-day comment period is generally the shortest time period sufficient for interested persons to meaningfully review a proposed rule and provide informed comment.'' [119] The Departments believe that the 32-day comment period for this rule provided an adequate opportunity for public input, and decline to extend the period. Contrary to commenters' claims that this rule lacks urgency, the duration of the comment period is a reflection of the urgency with which the Departments believe they must address public health concerns given the ongoing pandemic and risk of future pandemics.

The sufficiency of the 32-day comment period for this rule is supported by the over 5,000 public comments received. The public, including attorneys, advocacy groups, religious, community, and social organizations, law firms, federal, state and local entities and elected officials provided a great number of detailed and informative comments. Given the quantity and quality of the comments received in response to the proposed rule, and other publicly available information regarding the rule, the Departments believe that the 32-day comment period was sufficient. The Departments recognize that the comment period was open during the ongoing COVID–19 pandemic, but disagrees that it should be extended on that basis. Over 5,000 comments were successfully submitted and accepted online, not requiring in-person transmission of comments or even use of the U.S. Postal Service.

The Departments reject the assertion that some members of the public were unable to provide comments due to their immigration status. One commenter asserted, without evidence, that asylees, lawful permanent residents, and U.S citizens who have family members with pending determinations did not provide comment on this rule due to fear of retaliation from the Administration and thus the comment period is missing critical stakeholder input. The Departments solicited comments from all interested persons as part of this rulemaking. The Departments neither solicited nor required persons to provide information about their immigration status in order to submit a comment, and the Department would have no way of knowing the status of any commenter unless volunteered. In the NPRM, the Departments cautioned commenters that ''all comments received are considered part of the public record and made available for public inspection . . . . Such information includes personally identifiable information (such as a person's name, address, or any other data that might personally identify that individual) that the commenter voluntarily submits.'' [120]

2. Rulemaking Process/APA Concerns

Comment: Approximately 20 submissions expressed concerns that the NPRM does not comply with the APA. Multiple commenters argued that it is arbitrary and capricious because it does not meet the Departments' statutory, non-refoulement, and constitutional mandates to protect asylum seekers' rights or because it raises the burden of proof on asylum; fails to consider other factors that could mitigate the risk of COVID–19 infection; uses COVID–19 as a pretext to exclude applicants from countries where COVID–19 is prevalent, but less prevalent than in the United States; fails to demonstrate that the Departments engaged in reasoned, data-driven decision making; and was written in a piecemeal and duplicative fashion, which demonstrates an intent to evade comprehensive evaluation and comment.

[117] Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 FR 17060, 17067 (Mar. 20, 2020).

[118] 5 U.S.C. 553(c).

[119] *Nat'l Lifeline Ass'n* v. *Fed. Commc'ns Comm'n,* 921 F.3d 1102, 1117 (D.C. Cir. 2019) (*citing Petry* v. *Block,* 737 F.2d 1193, 1201 (D.C. Cir. 1984)).

[120] Security Bars and Processing, 85 FR at 41201.

One commenter stated that the timing of this rule merits very close scrutiny given the recent publication of the Global Asylum NPRM, asserting that this demonstrates apparent bad faith by attempting a ''second bite at the apple'' and that the Departments' public health rationale should not be granted deference.

A legal services provider claimed that the rule is arbitrary and capricious because it ''ignores the significant reliance interests of [the legal service provider] and organizations like it.'' Namely, the organization stated that it has developed processes and educational material for asylum seekers and for its staff and volunteers based on asylum law ''as it currently exists,'' and that it ''trains its staff, volunteers, and pro bono attorneys on asylum law using curricula that have been standardized and perfected.'' It argued that the rule ''would require [the organization] to expend significant resources to revise, reprint, and retrain all of this existing materials and procedures, to the detriment of [the organization] and the communities it serves.''

Response: The Departments also disagree with commenters' claim that the Departments purposefully separated their asylum-related policy goals into separate regulations in order to prevent the public from being able to meaningfully review and provide comment. Each of the Departments' rules stand on their own, include explanations of their basis and purpose, and allow for public comment, as required by the APA.[121]

The Departments also disagree that the promulgation of this rule is arbitrary and capricious or that it violates the APA. As discussed previously, the APA requires agencies to engage in ''reasoned decision making'' [122] and directs that agency action be set aside if it is arbitrary or capricious, 5 U.S.C. 706(2)(A). However, this is a ''narrow standard of review'' and ''a court is not to substitute its judgment for that of the agency,'' [123] but is instead to assess only whether the decision was ''based on a consideration of the relevant factors and whether there has been a clear error of judgment.'' [124] Arbitrary and capricious review is ''highly deferential, presuming the agency action to be valid.'' [125] It is ''reasonable for the [agency] to rely on its experience'' to arrive at conclusions, even if those conclusions are not supported with ''empirical research.'' [126] Moreover, the agency need only articulate ''a rational connection between the facts found and the choice made.'' [127]

Under this deferential standard, and contrary to commenters' claims, the Departments have provided reasoned explanations for the changes in this rule more than sufficient to satisfy the APA's procedural requirements. The NPRM and final rule describe each provision in detail and provides an explanation for each change from current law or from the NPRM. The Departments explained that these changes are intended to mitigate the risk of a dangerous communicable disease being brought to, or further spread within, the United States.

The Departments disagree that the rule exceeds statutory authority. This rule clarifies that existing statutory limitations on asylum and withholding eligibility may include emergency public health concerns. This falls squarely within the Departments' statutory authority.

The Departments also disagree that the rule raises the burden of proof on asylum seekers beyond the international standard. First, the rule continues to apply the statutory standard of credible fear of persecution, defined as a significant possibility that an alien could establish eligibility for asylum. Second, the ultimate standard for statutory withholding of removal and protection under the CAT regulations—intended by Congress to meet the United States' non-refoulement obligations under the Refugee protocol and CAT—remains the same at ''more likely than not.''

Contrary to commenters' assertions, the Departments did consider and implement other factors that could mitigate risk of COVID–19 infection.

The Departments also reject as unfounded the assertion that the rule uses COVID–19 as a pretext to exclude applicants from countries where COVID–19 is prevalent, but less prevalent than in the United States. The rule is not limited to the COVID–19 pandemic, and is intended to allow the Departments to respond quickly and effectively to unknown future health emergencies that meet the criteria it defines. Additionally, the rule applies equally to all countries or regions outside the United States where a ''disease is prevalent or epidemic,'' but does not require that the disease be ''less prevalent'' in the United States at the time the determination is made. Due to inconsistencies in reporting standards, lack of reporting, or intentional misreporting, it can be difficult to gauge at any given time whether a disease is more prevalent than in the United States. Moreover, the Departments have a duty to ensure the security of the United States without regard to whether the pandemic is more prevalent or less prevalent elsewhere.

Recently, the number of COVID–19 cases has been overwhelming in countries where a significant number of asylum seekers originate from or travel through. The vast majority of inadmissible aliens seeking asylum originate from or travel through areas where COVID–19 is widespread, such as Latin America. The World Bank recently noted that ''Latin America and Caribbean is the region hardest hit by the COVID–19 Pandemic'' [128] and it was recently reported that ''Latin America and the Caribbean marked 10 million cases. . . . and with more than 360,000 deaths, the region is the worst hit in terms of fatalities, according to official figures.'' [129]

As of December 15, 2020, Mexico had 1,277,494 cumulative COVID–19 cases, including 166,733 new cases in October, 182,705 new cases in November, and 115,967 new cases in December (as of December 15).[130] Areas along the U.S. southwest border are also seeing a high number of positive COVID–19 cases. For example, in Sonora, Mexico, there have been 47,476 confirmed cases (and [*3,759*] deaths) as of December 15, 2020, including 4,075 new cases in October, 5,373 new cases in November, and 2,090 new cases in December (as of December 15).).[131]

The Departments disagree that this rulemaking is piecemeal or duplicative, and reject the assertion that the NPRM was intended to evade comprehensive evaluation and comment, or that the

[121] *Little Sisters of the Poor Saints Peter & Paul Home* v. *Pennsylvania,* 140 S. Ct. 2367, 2386 (2020) (explaining that the APA provides the ''maximum procedural requirements'' that an agency must follow in order to promulgate a rule).

[122] *Michigan* v. *EPA,* 576 U.S. 743, 750 (2015), *quoting Allentown Mack Sales & Service, Inc.* v. *NLRB,* 522 U.S. 359 (1998).

[123] *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 513 (2009).

[124] *Citizens to Preserve Overton Park, Inc.* v. *Volpe,* 401 U.S. 402, 416 (1971).

[125] *Sacora,* 628 F.3d at 1068.

[126] *Id.* at 1069.

[127] *Motor Vehicle Mfrs. Ass'n of U.S., Inc.* v. *State Farm Mut. Auto Ins. Co.,* 463 U.S. 29, 43 (1983).

[128] World Bank, Press Release: *Latin America and the Caribbean Must Seek to Contain the Costs from COVID–19 While Waiting for a Vaccine,* Oct. 9, 2020, *available at https://www.worldbank.org/en/news/press-release/2020/10/09/latin-america-caribbean-contain-costs-covid19.*

[129] Abhaya Srivastava, *India Infections Top Seven Million . . . ,* Int. Bus. Times, Oct. 11, 2020.

[130] Government of Mexico, COVID–19 Tracking Map, Graph of Confirmed Cases, *https://datos.covid-19.conacyt.mx/#DOView* (last visited December 17, 2020).

[131] Government of Mexico, COVID–19 Tracking Map https://datos.covid-19.conacyt.mx/#COMNac and *h*ttps://datos.covid-19.conacyt.mx/fHDMap/ (last visited December 17, 2020).

timing of this rulemaking in conjunction with the Global Asylum NPRM evidences bad faith. Though there is some overlap in function, these separate rulemakings had different goals and responded to separate emergencies. Namely, the Global Asylum NPRM sought to provide ''much-needed guidance on the many critical, yet undefined, statutory terms related to asylum applications [in a manner that] not only improves the efficiency of the system as a whole, but allows adjudicators to focus resources more effectively on potentially meritorious claims rather than on meritless ones.'' [132]

As discussed, the Security Bars NPRM sought to ensure the security of the United States during a pandemic. Further, the Covid–19 pandemic post-dates the Global Asylum NPRM. The Departments note that in November of 2019, the Global Asylum NPRM was listed in the Fall 2019 Unified Agenda, approximately 2 months before the first reported cases of Covid–19 in the United States.[133] Finally, as stated above, this final rule is narrowly tailored to apply under a discrete set of circumstances generally limited in duration, whereas the Global Asylum NPRM applied much more broadly and on a permanent basis (as does the Global Asylum Final Rule). The Departments provided more than sufficient notice of both rules, and the public has had ample opportunity to participate in the rulemaking process.

The Departments disagree that this final rule is arbitrary and capricious or that it ''ignores the significant reliance interests of [the legal service provider] and organizations like it.'' Given the narrow application of this rule to public health emergencies involving communicable diseases that necessitate a response by the federal agencies with primary jurisdiction over our immigration system, and the infrequency of such responses in the past, it cannot be said that there is a longstanding prior policy that may have engendered serious reliance interests. When an agency changes course, it must ''be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account.' '' [134]

As prior to the COVID–19 public health emergency, the Departments did not have a policy in place to guide the immigration system's operations during public health emergencies involving communicable diseases, there are no reliance interests to consider. Rather, individuals or organizations will rely—during future public health emergencies—upon the steps the Government takes now. Given that the United States has significantly limited travel and admission during times of other emergencies, such as in response to national security threats from international terrorism,[135] it is predictable that it would take similar, expected measures limiting travel and admission in response to a global pandemic.

The commenter asserts, in essence, that it relied on the agency's prior policy when it developed processes and educational material for asylum seekers and for its staff and volunteers based on asylum law ''as it currently exists.'' It argued that the rule ''would require [it] to expend significant resources to revise, reprint, and retrain all of this existing materials and procedures, to the detriment of [the organization] and the communities it serves.'' However, the United States' asylum law is frequently in flux because it can be amended by statute, regulation, policy, adjudication and by ever-evolving case law in decisions issued by the Attorney General, the BIA, Circuit Courts of Appeals and by the U.S. Supreme Court. As just one example, as the Departments stated in Global Asylum NPRM, ''[t]he definition of 'particular social group' has been the subject of considerable litigation and is a product of evolving case law, making it difficult for EOIR's immigration judges and Board members, as well as DHS asylum officers, to uniformly apply the framework.'' [136]

It is not reasonable for an organization to assume that asylum law will remain static and not change in the future when developing processes or education materials. The logical result of the commenter's argument would be that any law firm or legal aid organization with a specialized practice would have a legally recognized reliance interest in maintaining the status quo of the law that concerns their clients. While the Departments appreciate the efforts of legal service providers to assist and educate the public, the interests raised by the commenter are not those that may raise serious reliance interests under the APA.[137]

Finally, to the extent that such organizations have a reliance interest based on their processes and educational materials, it is far outweighed by the clear imperative to prevent the entry into the United States, or the further spread within the country, of a deadly contagious disease.

Reconciliation With Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 36264 (July 15, 2020)

Comment: Multiple commenters stated that this NPRM was not reconciled with the Global Asylum NPRM. Commenters argued that the Global Asylum NPRM proposed changes that were inconsistent with the changes outlined in the Security Bars and Processing NPRM. The commenters stated that the Security Bars NPRM acknowledged the conflict but did not indicate how the two rules would be reconciled and reasoned that without knowledge of how the rules would be reconciled; the public was not able to understand the full implications and adequately comment on the NPRM. Some commenters stated that the overlapping and inconstant language across the two notices of proposed rulemaking demonstrated resulted in a waste of government and public time and resources.

Response: The Departments drafted the Security Bars NPRM to reflect the regulatory framework at the time of publication. The Global Asylum Final Rule has since been promulgated. 85 FR 80274 (December 11, 2020). The Security Bars and Processing Final Rule reflects the changes made to the regulatory framework by the Global Asylum Final Rule, except to the extent that the Security Bars Final Rule further modifies that framework. Certain of the provisions of the Security Bars NPRM have been rendered moot by the Global Asylum Final Rule. For instance, the Global Asylum Final Rule provided that all mandatory bars to eligibility for asylum and withholding of removal shall be applied at the credible fear stage, so there is no longer a need to

[132] Global Asylum Final Rule, 85 FR at 80284.

[133] CDC, Press Release: *First Travel-related Case of 2019 Novel Coronavirus Detected in United States* (Jan 21, 2020), *available at https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html* (last visited Nov. 12, 2020).

[134] *Dept. of Homeland Sec.* v. *Regents of Univ. of Cal.,* 140 S.Ct. 1891, 1913 (2020).

[135] *See* Proclamation No. 9645, Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats, 82 FR 45161 (Sept. 24, 2017).

[136] Global Asylum NPRM, 85 FR at 36278.

[137] Some courts believe that such interests of organizational plaintiffs establish standing, but that is a separate matter. *See East Bay Sanctuary Covenant* v. *Trump,* 950 F.3d 1242, 1265–67 (2020). Article III of the Constitution limits the federal judicial power to the adjudication of ''Cases'' and ''Controversies.'' U.S. CONST. art. III, sec. 2, cl. 1. This is effectuated through the doctrine of Article III standing. *Spokeo* v. *Robins,* 136 S. Ct. 1540, 1547 (2016); *Havens Realty Corp.* v. *Coleman,* 455 U.S. 363, 378–79 (1982). An organization can also have third-party standing. *See Kowalksi* v. *Tesmer,* 543 U.S. 125, 129–30 (2004).

take that action specifically for the danger to the security of the United States eligibility bar. As to the provisions of the Security Bars NPRM that were not implemented by the Global Asylum Final Rule, the Security Bars Final Rule makes appropriate modifications to the post-Global Asylum regulatory framework to implement the provisions (as modified from the NPRM in certain instances).

Additionally, as discussed, the Global Asylum Final Rule provided that aliens who establish a credible fear of persecution, a reasonable possibility of persecution, or a reasonable possibility of torture and accordingly receive a positive fear determination will appear before an immigration judge for ''asylum-and-withholding-only'' proceedings under 8 CFR 208.2(c)(1) and 8 CFR 1208.2(c)(1). Aliens receiving positive fear determinations under the Security Bars Final Rule will be placed in such asylum-and-withholding only proceedings rather than section 240 proceedings (as they would have under the NPRM), unless they are removed to third countries.

3. Severability

Comment: One commenter appreciated the ''spirit'' of the Departments' proposed severability clause, but stated that the clause was unnecessary because, in the commenter's view, none of the rule's provisions should be adopted.

Response: The relevant severability clause was added by the Global Asylum Final Rule.[138] A severability clause is a standard legal provision that allows Congress and the Executive Branch to sever certain provisions of a law or rule, if a court finds that they are unconstitutional or unlawful, without nullifying the entire law or rule. Those provisions that are unaffected by a legal ruling can be implemented by an agency without requiring a new round of rulemaking simply to effectuate provisions that are not subject to a court ruling. The Departments believe that each of the provisions in the final rule function sensibly independently of the other provisions, and thus, to protect the rule's goals, the provisions are severable so that, if necessary, the regulations can continue to function without a stricken provision.

4. Effective Date

Comment: A number of submissions expressed concern about the rule's effective date. One commenter stated that the NPRM did not indicate whether it would apply to those who submitted asylum applications before its provisions became effective, and argued that doing so would violate the well-settled presumption against retroactivity and have serious impacts for asylum seekers. The commenter also expressed concern that retroactive application would result in removal to a third country for those who have previously filed for CAT protection based on existing laws. Another commenter stated that applying the rule to those with pending applications would unduly harm thousands of asylum seekers, especially *pro se* applicants, by creating waste and inefficiencies and by increasing asylum adjudication backlogs. Both commenters asserted that retroactive application of law is permitted only where expressly permitted by Congress, which they argue does not apply here.

Response: The Departments disagree that this rule is being applied retroactively. Contrary to the commenters' claims, and as previously stated in the NPRM, the amendments made by this proposed rule would apply to aliens who enter the United States after the effective date, except that the amendments would not apply to aliens who had, before the date of an applicable joint Secretary of Homeland Security and Attorney General designation of an area or areas of the world as to which it is necessary for the public health that certain aliens who were present there be regarded as a danger to the security of the United States, (1) filed asylum and withholding applications, or (2) indicated a fear of return in expedited removal proceedings.'' The final rule retains this prospective application.

Authority of Acting Secretary

Comment: Several commenters commented that Chad Wolf, the Acting Secretary of Homeland Security, is serving in violation of the Federal Vacancies Reform Act (''FVRA'') and lacked the authority to issue the NPRM. A legal services provider and individual made the same argument with respect to Chad Mizelle, the Senior Official Performing the Duties of the General Counsel of DHS. An attorney quoted FVRA and commented that under any timeline Acting Secretary Wolf's tenure has exceeded the 210-day limit in FVRA, and that no exception to the 210-limit applies here. The commenter said that ignoring FVRA is no ''mere technicality,'' and that doing so violates the constitutional principal that the President must appoint principal officers with the advice and consent of the Senate.

A legal services provider presented a timeline of the line of succession of Acting Secretaries, arguing that Christopher Krebs, Director of the Cybersecurity and Infrastructure Security Agency, rather than Kevin McAleenan, should have succeeded Ms. Nielsen as Acting Secretary. The commenter also argued that Mr. McAleenan exceeded the 210-day limit provided by the FVRA, and thus that Mr. Wolf has no valid claim to the office of Acting Secretary.

Response: As indicated in the proposed rule at section VI. H, Chad Wolf, the Acting Secretary of Homeland Security, reviewed and approved the proposed rule and delegated the signature authority to Mr. Mizelle. Secretary Wolf is validly acting as Secretary of Homeland Security. On April 9, 2019, then-Secretary Nielsen, who was Senate confirmed, used the authority provided by 6 U.S.C. 113(g)(2) to establish the order of succession for the Secretary of Homeland Security. This change to the order of succession applied to any vacancy. This exercise of the authority to establish an order of succession for DHS pursuant to 6 U.S.C. 113(g)(2) superseded the FVRA and the order of succession found in Executive Order 13753, 81 FR 90667 (Dec. 9, 2016). As a result of this change, and pursuant to 6 U.S.C. 113(g)(2), Kevin K. McAleenan, who was Senate-confirmed as the Commissioner of CBP, was the next successor and served as Acting Secretary without time limitation. Acting Secretary McAleenan subsequently amended the Secretary's order of succession pursuant to 6 U.S.C. 113(g)(2), placing the Under Secretary for Strategy, Policy, and Plans position third in the order of succession, below the positions of the Deputy Secretary and Under Secretary for Management. Because the Deputy Secretary and Under Secretary for Management positions were vacant when Mr. McAleenan resigned, Mr. Wolf, as the Senate-confirmed Under Secretary for Strategy, Policy, and Plans, was the next successor and began serving as the Acting Secretary.

Further, because he has been serving as the Acting Secretary pursuant to an order of succession established under 6 U.S.C. 113(g)(2), the FVRA's prohibition on a nominee's acting service while his or her nomination is pending does not apply, and Mr. Wolf remains the Acting Secretary notwithstanding President Trump's September 10 transmission to the Senate of Mr. Wolf's nomination to serve as DHS Secretary. *Compare* 6 U.S.C. 113(a)(1)(A) (cross-referencing the FVRA without the ''notwithstanding'' caveat), *with id.*

[138] 85 FR at 80284.

113(g)(1)–(2) (noting the FVRA provisions and specifying, in contrast, that section 113(g) provides for acting secretary service ''notwithstanding'' those provisions); *see also* 5 U.S.C. 3345(b)(1)(B) (restricting acting officer service under section 3345(a), in particular, by an official whose nomination has been submitted to the Senate for permanent service in that position).

That said, there have been recent challenges to whether Mr. Wolf's service is invalid, resting on the erroneous contention that the orders of succession issued by former Secretary Nielsen and former Acting Secretary McAleenan were invalid. The Departments believe those challenges are not based on an accurate view of the law. But even if those contentions are legally correct—meaning that neither former Secretary Nielsen nor former Acting Secretary McAleenan issued a valid order of succession—under 6 U.S.C. 113(g)(2)—then the FVRA would have applied, and Executive Order 13753 would have governed the order of succession for the Secretary of Homeland Security from the date of former Secretary Nielsen's resignation.

The FVRA provides an alternative basis for an official to exercise the functions and duties of the Secretary temporarily in an acting capacity. In that alternate scenario, under the authority of the FVRA, Mr. Wolf would have been ineligible to serve as the Acting Secretary of DHS after his nomination was submitted to the Senate, 5 U.S.C. 3345(b)(1)(B), and Peter Gaynor, the Administrator of the Federal Emergency Management Agency (''FEMA''), would have—by operation of Executive Order 13753—become eligible to exercise the functions and duties of the Secretary temporarily in an acting capacity. This is because Executive Order 13753 pre-established the President's succession order for DHS when the FVRA applies. Mr. Gaynor would have been the most senior official eligible to exercise the functions and duties of the Secretary under that succession order, and thus would have become the official eligible to act as Secretary once Mr. Wolf's nomination was submitted to the Senate. 5 U.S.C. 3346(a)(2). Then, in this alternate scenario in which, as assumed above, there was no valid succession order under 6 U.S.C. 113(g)(2), the submission of Mr. Wolf's nomination to the Senate would have restarted the FVRA's time limits. 5 U.S.C. 3346(a)(2).

Out of an abundance of caution, and to minimize any disruption to DHS and to the Administration's goal of maintaining homeland security, on November 14, 2020, with Mr. Wolf's nomination still pending in the Senate, Mr. Gaynor exercised the authority of Acting Secretary that he would have had (in the absence of any governing succession order under 6 U.S.C. 113(g)(2)) to designate a new order of succession under 6 U.S.C. 113(g)(2) (the ''Gaynor Order'').[139] In particular, Mr. Gaynor issued an order of succession with the same ordering of positions listed in former Acting Secretary McAleenan's November 2019 order. The Gaynor Order thus placed the Under Secretary for Strategy, Policy, and Plans above the FEMA Administrator in the order of succession. Once the Gaynor Order was executed, it superseded any authority Mr. Gaynor may have had under the FVRA and confirmed Mr. Wolf's authority to continue to serve as the Acting Secretary. Hence, regardless of whether Mr. Wolf already possessed authority pursuant to the November 8, 2019, order of succession effectuated by former Acting Secretary McAleenan (as the Departments have previously concluded), the Gaynor Order provides an alternative basis for concluding that Mr. Wolf currently serves as the Acting Secretary.[140]

On November 16, 2020, Acting Secretary Wolf ratified any and all actions involving delegable duties that he took between November 13, 2019, through November 16, 2020, including the NPRM that is the subject of this rulemaking.

Under section 103(a)(1) of the Act, 8 U.S.C. 1103(a)(1), the Secretary is charged with the administration and enforcement of the INA and all other immigration laws (except for the powers, functions, and duties of the President, the Attorney General, and certain consular, diplomatic, and Department of State officials). The Secretary is also authorized to delegate his or her authority to any officer or employee of the agency and to designate other officers of the Department to serve as Acting Secretary. INA 103, 8 U.S.C. 1103, and 6 U.S.C. 113(g)(2). The Homeland Security Act further provides that every officer of the Department ''shall perform the functions specified by law for the official's office or prescribed by the Secretary.'' 6 U.S.C. 113(f). Thus, the designation of the signature authority from Acting Secretary Wolf to Mr. Mizelle is validly within the Acting Secretary's authority.

VII. Provisions of the Final Rule

The Departments have considered and responded to the comments received in response to the proposed rule. The Departments are now issuing this final rule to finalize the NPRM.

This final rule makes the following changes to the regulatory provisions in the proposed rule, some of which were noted by commenters, and to certain regulatory provisions not addressed in the proposed rule as necessitated by the intervening promulgation of the Global Asylum Final Rule.

1. 208.13

As discussed earlier, the final rule clarifies that the bar it establishes to asylum eligibility (implementing the Departments' understanding of the INA's danger to the security of the United States bars) is ''categorical'' in the following manner.

First, if a communicable disease has triggered an ongoing declaration of a public health emergency under Federal law, such as under section 319 of the Public Health Service Act, 42 U.S.C. 247d, or section 564 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3, then an alien is ineligible for asylum on the basis of there being reasonable grounds for regarding the alien as a danger to the security of the United States if the alien

(A) exhibits symptoms indicating that he or she is afflicted with the disease,

[139] Mr. Gaynor signed an order that established an identical order of succession on September 10, 2020, the day Mr. Wolf's nomination was submitted, but it appears he signed that order before the nomination was received by the Senate. To resolve any concern that his September 10 order was ineffective, Mr. Gaynor signed a new order on November 14, 2020. Prior to Mr. Gaynor's new order, the U.S. District Court for the District of New York issued an opinion concluding that Mr. Gaynor did not have authority to act as Secretary, relying in part on the fact that DHS did not notify Congress of Administrator Gaynor's service, as required under 5 U.S.C. 3349(a). *Batalla Vidal* v. *Wolf,* No. 16CV4756NGGVMS, 2020 WL 6695076, at *9 (E.D.N.Y. Nov. 14, 2020). The Departments disagree that the FVRA's notice requirement affects the validity of an acting officer's service; nowhere does section 3349 indicate that agency reporting obligations are tied to an acting officer's ability to serve.

[140] On October 9, 2020, the U.S. District Court for the District of Columbia issued an opinion indicating that it is likely that section 113(g)(2) orders can be issued by only Senate-confirmed secretaries of DHS and, thus, that Mr. Gaynor likely had no authority to issue a section 113(g)(2) succession order. *Nw. Immigrant Rights Project* v. *United States Citizenship & Immigration Servs.,* No. CV 19–3283 (RDM), 2020 WL 5995206, at *24 (D.D.C. Oct. 8, 2020). This decision is incorrect because the authority in section 113(g)(2) allows ''the Secretary'' to designate an order of succession, 6 U.S.C. 113(g)(2), and an ''acting officer is vested with the same authority that could be exercised by the officer for whom he acts.'' *In re Grand Jury Investigation,* 916 F.3d 1047, 1055 (D.C. Cir. 2019). The Acting Secretary of DHS is accordingly empowered to exercise the authority of ''the Secretary'' of DHS to ''designate [an] order of succession.'' 6 U.S.C. 113(g)(2). In addition, this is the only district court opinion to have reached such a conclusion about the authority of the Acting Secretary, and the Departments are contesting that determination.

per guidance issued by the Secretary or the Attorney General, as appropriate, or

(B) has come into contact with the disease within the number of days equivalent to the longest known incubation and contagion period, per guidance issued by the Secretary or the Attorney General, as appropriate.

Second, if, regarding a communicable disease of public health significance as defined at 42 CFR 34.2(b), the Secretary and the Attorney General, in consultation with the Secretary of Health and Human Services, have jointly

(A) Determined that the physical presence in the United States of aliens who are coming from a country or countries (or one or more subdivisions or regions thereof), or have embarked at a place or places, where such disease is prevalent or epidemic (or had come from that country or countries (or one or more subdivisions or regions thereof), or had embarked at that place or places, during a period in which the disease was prevalent or epidemic there) would cause a danger to the public health in the United States, and

(B) Designated the foreign country or countries (or one or more subdivisions or regions thereof), or place or places, and the period of time or circumstances under which they jointly deem it necessary for the public health that aliens or classes of aliens described in [paragraph] (A) who are still within the number of days equivalent to the longest known incubation and contagion period for the disease be regarded as a danger to the security of the United States, including any relevant exceptions as appropriate,

Then, an alien or class of aliens are ineligible for asylum on the basis of there being reasonable grounds for regarding the alien or class of aliens as a danger to the security of the United States if the alien or class of aliens are described in (A) and are regarded as a danger to the security of the United States as provided for in (B).

Finally, the rule uses the more precise term ''communicable'' disease'' rather than ''communicable or infectious'' disease.[141]

2. 208.16(d)(2)

Also as discussed earlier, the final rule clarifies that the bar it establishes to eligibility for withholding of removal is ''categorical'' in the following manner.

First, if a communicable disease has triggered an ongoing declaration of a public health emergency under Federal law, such as under section 319 of the Public Health Service Act, 42 U.S.C. 247d, or section 564 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3, then an alien is ineligible for withholding of removal on the basis of there being reasonable grounds for regarding the alien as a danger to the security of the United States if the alien

(A) exhibits symptoms indicating that he or she is afflicted with the disease, per guidance issued by the Secretary or the Attorney General, as appropriate, or

(B) has come into contact with the disease within the number of days equivalent to the longest known incubation and contagion period, per guidance issued by the Secretary or the Attorney General, as appropriate.

Second, if, regarding a communicable disease of public health significance as defined at 42 CFR 34.2(b), the Secretary and the Attorney General, in consultation with the Secretary of Health and Human Services, have jointly

(A) Determined that the physical presence in the United States of aliens who are coming from a country or countries (or one or more subdivisions or regions thereof), or have embarked at a place or places, where such disease is prevalent or epidemic (or had come from that country or countries (or one or more subdivisions or regions thereof), or had embarked at that place or places, during a period in which the disease was prevalent or epidemic there) would cause a danger to the public health in the United States, and

(B) Designated the foreign country or countries (or one or more subdivisions or regions thereof), or place or places, and the period of time or circumstances under which they jointly deem it necessary for the public health that aliens or classes of aliens described in [paragraph] (A) who are still within the number of days equivalent to the longest known incubation and contagion period for the disease be regarded as a danger to the security of the United States, including any relevant exceptions as appropriate,

Then, an alien or class of aliens are ineligible for withholding of removal on the basis of there being reasonable grounds for regarding the alien or class of aliens as a danger to the security of the United States if the alien or class of aliens are described in (A) and are regarded as a danger to the security of the United States as provided for in (B).

3. 208.16(f)

As discussed, the Departments include language clarifying that aliens must be notified of the identity of a prospective third country of removal.

4. 208.30(e)(1)

As the Departments explained earlier, we acknowledge the ambiguity that may have been created from the proposed amendment to section 208.30(e)(1). The proposed language was simply designed to clarify that when an asylum officer creates a written record of his or her determination following a credible fear interview, it should, as applicable, include a written record of their determination as to whether the alien has demonstrated that it is more likely than not that he or she would be tortured in the country of removal. The Departments have revised the language of the proposed amendment to section 208.30(e)(1) (now found at 208.30(e)(4) following the promulgation of the Global Asylum Final Rule) to make it clearer that the written record of determination should include, as applicable, whether the alien has established that it is more likely than not that he or she would be tortured in the prospective country of removal.

5. 208.30(e)(5)(i)

First, the final rule places the contents of 208.30(e)(5)(i)(B) into 208.30(e)(5)(iv) to reflect the fact that pursuant to the Global Asylum Final Rule, all the mandatory bars to eligibility for asylum and withholding of removal apply at the credible fear stage.

Second, under the NPRM, the introductory text to 208.30(e)(5)(i)(B) discussed the situation where an alien would be able to establish a credible fear of persecution but for the fact that he or she was subject to the mandatory bars to eligibility for asylum under section 208(b)(2)(A)(iv) of the Act and to withholding of removal under section 241(b)(3)(B)(iv) of the Act, but nevertheless establishes that it is more likely than not that he or she would be tortured in the prospective country of removal. However, 208.30(e)(5)(i)(B)(3) discussed the opposite situation, where an alien fails to establish that it is more likely than not that he or she would be tortured in the prospective country of removal. Section 208.30(e)(5)(iv)(A) as restructured in the final rule eliminates this awkward construction.

Third, as the Department explained earlier, the final rule strikes the phrase ''affirmatively establish'', and replaces it with ''establish'', in the context of describing what an alien needs to do to demonstrate that he or she is more likely than not to be tortured in a prospective country of removal during a screening for potential eligibility for deferral of removal. The adverb

[141] *See* footnote 1. The Departments also make this change elsewhere to the regulatory text in the NPRM.

''affirmatively'' was included in the NPRM to make clear that an alien has the burden of proof to establish that he or she would be more likely than not to be tortured in a prospective third country of removal. As ''affirmatively'' may cause confusion and is not necessary to clarify the burden of proof, which clearly rests with the alien, the final rule deletes the word ''affirmatively'' from the regulatory text in the final rule.

Fourth, the Departments agree that an alien should be informed of the identity of a prospective third country of removal, provided with an opportunity to raise a fear of torture if removed to that country, and to have that fear assessed to determine whether he or she has established that they are more likely than not to be tortured in that third country of removal. That was always the Departments' intent, and the Departments accordingly include language in the final rule making it clear.

6. 208.30(e)(5)(iii)

As mentioned earlier, the Departments recently promulgated the Third-Country Transit Final Rule and the Global Asylum Final Rule. As these rules supersede the Third-Country Transit IFR, the final rule modifies the NPRM's proposed changes to the Third-Country Transit IFR's regulatory text to reflect the now-operative text. Also, the final rule deletes the adverb ''affirmatively'' as in 208.30(e)(5)(iv).

As an alien typically does not formally request withholding of removal in the context of expedited removal proceedings, the rule also clarifies that aliens should be advised of the possibility of being removed to a third country at the time they are determined to be subject to the mandatory bar to eligibility for withholding of removal under section 241(b)(3)(B)(iv) of the Act and under the regulations issued pursuant to the legislation implementing the Convention Against Torture, and clarifies that such aliens should be given the opportunity to proceed to removal pursuant to section 241(b) of the Act.

Finally, the language in the NPRM relied on the definition of a ''reasonable fear of persecution'' found at 8 CFR 208.31(c), which did not require an alien to demonstrate, in order to establish a reasonable fear, that he or she was not subject to the bars to eligibility for withholding of removal contained in section 241(b)(3)(B) of the INA, 8 U.S.C. 1231(b)(3)(B). However, the final rule relies on the definition of a ''reasonable possibility of persecution'', as added by the Global Asylum Final Rule. An alien is required to demonstrate, in order to establish a reasonable possibility of persecution, that he or she is not subject to these bars to eligibility for withholding of removal. 8 CFR 208.30(e)(2). The final rule makes conforming changes reflecting this fact.

7. 208.30(e)(5)(iv)

As mentioned, the final rule places the contents of 208.30(e)(5)(i)(B) into 208.30(e)(5)(iv) to reflect the fact that pursuant to the Global Asylum Final Rule, all the mandatory bars to eligibility for asylum and withholding of removal apply at the credible fear stage.

As mentioned above, as an alien typically does not formally request withholding of removal in the context of expedited removal proceedings, the rule clarifies that aliens should be advised of the possibility of being removed to a third country at the time they are determined to be subject to the mandatory bar to eligibility for withholding of removal under section 241(b)(3)(B)(iv) of the Act and under the regulations issued pursuant to the legislation implementing the Convention Against Torture, and clarifies that such aliens should be given the opportunity to proceed to removal pursuant to section 241(b) of the Act.

Finally, as the Departments noted earlier, the utilization of the ''more likely than not'' standard in deferral screenings only applies to aliens determined to be ineligible for asylum and withholding of removal pursuant to the danger to the security of the United States eligibility bars, or ineligible for asylum pursuant to the Third-Country Transit Final Rule. Aliens determined by asylum officers to be ineligible for asylum or withholding pursuant to the other mandatory bars will continue to be screened for deferral of removal under the reasonable possibility of torture standard, as provided by the Global Asylum Final Rule. Thus, for aliens determined to be ineligible for asylum and withholding of removal pursuant to the danger to the security of the United States eligibility bars, or ineligible for asylum pursuant to the Third-Country Transit Final Rule, immigration judges will review the asylum officers' determinations on a de novo basis as to whether aliens have established they are more likely than not to be tortured, just as in reviewing credible fear of persecution and reasonable possibility of persecution and torture determinations.

8. 208.30(f)

The final rule makes a clarifying change to reflect the new ''more likely than not'' screening standard for potential eligibility for deferral of removal.

As the Departments noted earlier, the restoration of DHS's discretionary ability to remove certain aliens to third countries only applies to aliens determined to be ineligible for asylum and withholding of removal pursuant to the danger to the security of the United States eligibility bars, or ineligible for asylum pursuant to the Third-Country Transit Final Rule. Aliens determined by asylum officers to be ineligible for asylum or withholding pursuant to the other mandatory bars will continue to be screened for deferral of removal under the reasonable possibility of torture standard, as provided by the Global Asylum Final Rule, and placed in immigration court for asylum-and-withholding-only removal proceedings should they establish such a reasonable possibility. Aliens will not be removed to a third country without having first been provided an opportunity to demonstrate that they are more likely than not to be tortured in that country.

9. 208.30(g)

The final rule makes a clarifying change to reflect the new ''more likely than not'' screening standard for potential eligibility for deferral of removal.

10. 235.6

The final rule makes a clarifying change to reflect the new screening standard for potential eligibility for deferral of removal.

11. 1003.42

The final rule makes a clarifying change to reflect the new screening standard for potential eligibility for deferral of removal.

12. 1208.13

The final rule makes changes analogous to those made to 208.13.

13. 1208.16

The final rule makes changes analogous to those made to 208.16.

14. 1208.16(f)

The final rule makes changes analogous to those made to 208.16(f). As the Departments noted earlier, the restoration of DHS's discretionary ability to remove certain aliens to third countries only applies to aliens determined to be ineligible for asylum and withholding of removal pursuant to the danger to the security of the United

States eligibility bars (or ineligible for asylum pursuant to the Third-Country Transit Final Rule). Aliens determined by asylum officers to be ineligible for asylum or withholding pursuant to the other mandatory bars will continue to be screened for deferral of removal under the reasonable possibility of torture standard, as provided by the Global Asylum Final Rule, and placed in immigration court for asylum-and-withholding-only removal proceedings should they establish such a reasonable possibility. Aliens will not be removed to a third country without having first been provided an opportunity to demonstrate that they are more likely than not to be tortured in that country.

15. 1208.30(g)

The final rule makes clarifying changes to reflect the new screening standard for potential eligibility for deferral of removal and the ability of DHS to exercise its prosecutorial discretion to remove certain aliens to third countries.

As the Departments noted earlier, the utilization of the ''more likely than not'' standard in deferral screenings only applies to aliens determined to be ineligible for asylum and withholding of removal pursuant to the danger to the security of the United States eligibility bars (or ineligible for asylum pursuant to the Third-Country Transit Final Rule). Aliens determined by asylum officers to be ineligible for asylum or withholding of removal pursuant to the other mandatory bars will continue to be screened for deferral of removal under the reasonable possibility of torture standard, as provided by the Global Asylum Final Rule.

16. 1235.6

The final rule makes a clarifying change to reflect the new screening standard for potential eligibility for deferral of removal.

VIII. Regulatory Requirements

A. Regulatory Flexibility Act

The Departments have reviewed this rule in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* and have determined that this rule will not have a significant economic impact on a substantial number of small entities. The rule does not regulate ''small entities'' as that term is defined in 5 U.S.C. 601(6). Only individuals, rather than entities, are eligible to apply for asylum and related forms of relief, and only individuals are placed in immigration proceedings.

B. Unfunded Mandates Reform 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 one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Congressional Review Act

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

D. Executive Order 12866, Executive Order 13563, and Executive Order 13771

This rule amends existing regulations to clarify that the statutory ''danger to the security of the United States'' bars to eligibility for asylum and withholding of removal under INA sections 208 and 241 and 8 CFR 208.13 and 1208.13 and 8 CFR 208.16 and 1208.16, apply in certain contexts involving public health crises caused by communicable diseases so that aliens can be expeditiously removed, as appropriate.

The rule further allows DHS to exercise its prosecutorial discretion regarding how to process individuals subject to expedited removal who are determined to be ineligible for asylum and withholding of removal in the United States on certain grounds, including being reasonably regarded as a danger to the security of the United States, but who nevertheless establish that it is more likely than not that they will be tortured in the prospective country of removal. It provides DHS with the option to either place such aliens into asylum and withholding only proceedings, or remove them to countries with respect to which the aliens have not established that it is more likely than not that they would be tortured. Finally, the rule modifies the process for evaluating the eligibility for deferral of removal of aliens who are ineligible for withholding of removal because they are reasonably regarded as or believed to be a danger to the security of the United States.

In some cases, asylum officers and immigration judges will need to spend additional time during the credible fear process to determine whether an alien is ineligible for asylum or withholding of removal based on being reasonably regarded as a danger to the security of the United States and whether an alien is more likely than not to be tortured in a prospective country of removal. However, the overall impact on the time spent making (and, in the case of immigration judges, reviewing) screening determinations will be minimal. Additionally, the Departments do not expect the changes to increase the adjudication time for immigration court proceedings. The Departments note that the changes may result in fewer positive credible fear determinations and fewer asylum and withholding and deferral of removal grants during periods of public health crises, but will have no effect at times public health conditions do not trigger a security bar designation under this rule.

Because cases are inherently fact-specific, and because there may be multiple bases for denying relief or protection, neither DOJ nor DHS can quantify precisely the expected decrease in positive credible fear determinations and grants of relief and protection. The full extent of the impacts on this population is unclear and will depend on the specific circumstances and personal characteristics of each alien, and neither DOJ nor DHS collects such data at such a level of granularity. Finally, the changes may also result in fewer aliens being placed in asylum-and-withholding-only proceedings to the extent that DHS exercises its discretion to remove aliens to third countries. However, as these will be discretionary decisions, it is not possible to quantify the reduction.

This rule is a significant regulatory action under Executive Order 12866, though not an economically significant regulatory action. Accordingly, the Office of Management and Budget has reviewed this regulation.

E. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Departments believe that this rule will not have sufficient federalism implications to warrant the

preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

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

G. Paperwork Reduction Act

This rule does not create new, or revisions to existing, ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

H. Signature for DHS

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

List of Subjects

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 235

Inspection of Persons Applying for Admission.

8 CFR Part 1003

Executive Office for Immigration Review.

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1235

Inspection of Persons Applying for Admission.

Regulatory Amendments

Department of Homeland Security

Accordingly, for the reasons set forth in the preamble, the Acting Secretary of Homeland Security amends 8 CFR parts 208 and 235 as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229; 8 CFR part 2; Pub. L. 115–218.

■ 2. Amend § 208.13 by adding paragraph (c)(10) to read as follows:

§ 208.13 Establishing asylum eligibility.

* * * * *

(c) * * *

(10) *Aliens who pose a danger to the security of the United States*—(i) *Public health emergencies.* If a communicable disease has triggered an ongoing declaration of a public health emergency under Federal law, such as under section 319 of the Public Health Service Act, 42 U.S.C. 247d, or section 564 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3, then an alien is ineligible for asylum under section 208 of the Act on the basis of there being reasonable grounds for regarding the alien as a danger to the security of the United States under section 208(b)(2)(A)(iv) of the Act if the alien:

(A) Exhibits symptoms indicating that he or she is afflicted with the disease, per guidance issued by the Secretary or the Attorney General, as appropriate, or

(B) Has come into contact with the disease within the number of days equivalent to the longest known incubation and contagion period for the disease, per guidance issued by the Secretary or the Attorney General, as appropriate.

(ii) *Danger to the public health caused by an epidemic outside of the United States.* If, regarding a communicable disease of public health significance as defined at 42 CFR 34.2(b), the Secretary and the Attorney General, in consultation with the Secretary of Health and Human Services, have jointly—

(A) Determined that the physical presence in the United States of aliens who are coming from a country or countries (or one or more subdivisions or regions thereof), or have embarked at a place or places, where such disease is prevalent or epidemic (or had come from that country or countries (or one or more subdivisions or regions thereof), or had embarked at that place or places, during a period in which the disease was prevalent or epidemic there) would cause a danger to the public health in the United States; and

(B) Designated the foreign country or countries (or one or more subdivisions or regions thereof), or place or places, and the period of time or circumstances under which they jointly deem it necessary for the public health that aliens or classes of aliens described in paragraph (c)(10)(ii)(A) of this section who are still within the number of days equivalent to the longest known incubation and contagion period for the disease be regarded as a danger to the security of the United States under section 208(b)(2)(A)(iv) of the Act, including any relevant exceptions as appropriate, then—

(C) An alien or class of aliens are ineligible for asylum under section 208 of the Act on the basis of there being reasonable grounds for regarding the alien or class of aliens as a danger to the security of the United States under section 208(b)(2)(A)(iv) of the Act if the alien or class of aliens are described in (c)(10)(ii)(A) of this section and are regarded as a danger to the security of the United States as provided for in paragraph (c)(10)(ii)(B) of this section.

(iii) The grounds for mandatory denial described in paragraphs (c)(10)(i) and (ii) of this section shall not apply to an alien who is applying for asylum or withholding of removal in the United States upon return from Canada to the United States and pursuant to the Agreement Between the Government of the United States and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries.

■ 3. Amend § 208.16 by revising paragraphs (d)(2) and (f) to read as follows:

§ 208.16 Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention Against Torture.

* * * * *

(d) * * *

(2) *Mandatory denials*—(i) *In general.* Except as provided in paragraph (d)(3) of this section, an application for withholding of removal under section 241(b)(3) of the Act or under the regulations issued pursuant to the legislation implementing the Convention Against Torture shall be denied if the applicant falls within section 241(b)(3)(B) of the Act or, for applications for withholding of deportation adjudicated in proceedings commenced prior to April 1, 1997, within section 243(h)(2) of the Act as it appeared prior to that date. For purposes of section 241(b)(3)(B)(ii) of the Act, or section 243(h)(2)(B) of the Act as it appeared prior to April 1, 1997, an alien who has been convicted of a particularly serious crime shall be considered to constitute a danger to the community. If the evidence indicates the applicability of one or more of the grounds for denial of withholding enumerated in the Act, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(ii) *Public health emergencies.* If a communicable disease has triggered an ongoing declaration of a public health emergency under Federal law, such as under section 319 of the Public Health Service Act, 42 U.S.C. 247d, or section 564 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3, then an alien is ineligible for withholding of removal under section 241(b)(3) of the Act and under the regulations issued pursuant to the legislation implementing the Convention Against Torture on the basis of there being reasonable grounds for regarding the alien as a danger to the security of the United States under section 241(b)(3)(B)(iv) of the Act if the alien

(A) Exhibits symptoms indicating that he or she is afflicted with the disease, per guidance issued by the Secretary or the Attorney General, as appropriate, or

(B) Has come into contact with the disease within the number of days equivalent to the longest known incubation and contagion period for the disease, per guidance issued by the Secretary or the Attorney General, as appropriate.

(iii) Danger to the Public Health Caused by an Epidemic Outside of the United States. If, regarding a communicable disease of public health significance as defined at 42 CFR 34.2(b), the Secretary and the Attorney General, in consultation with the Secretary of Health and Human Services, have jointly

(A) Determined that the physical presence in the United States of aliens who are coming from a country or countries (or one or more subdivisions or regions thereof), or have embarked at a place or places, where such disease is prevalent or epidemic (or had come from that country or countries (or one or more subdivisions or regions thereof), or had embarked at that place or places, during a period in which the disease was prevalent or epidemic there) would cause a danger to the public health in the United States, and

(B) Designated the foreign country or countries (or one or more subdivisions or regions thereof), or place or places, and the period of time or circumstances under which they jointly deem it necessary for the public health that aliens or classes of aliens described in paragraph (d)(2)(ii)(A) of this section who are still within the number of days equivalent to the longest known incubation and contagion period for the disease be regarded as a danger to the security of the United States under section 241(b)(3)(B)(iv) of the Act, including any relevant exceptions as appropriate, then—

(C) An alien or class of aliens are ineligible for withholding of removal under section 241(b)(3) of the Act and under the regulations issued pursuant to the legislation implementing the Convention Against Torture on the basis of there being reasonable grounds for regarding the alien or class of aliens as a danger to the security of the United States under section 241(b)(3)(B)(iv) of the Act if the alien or class of aliens are described in paragraph (d)(2)(ii)(A) of this section and are regarded as a danger to the security of the United States as provided for in paragraph (d)(2)(ii)(B) of this section.

(iv) The grounds for mandatory denial described in paragraphs (d)(2)(ii) and (iii) of this section shall not apply to an alien who is applying for asylum or withholding of removal in the United States upon return from Canada to the United States and pursuant to the Agreement Between the Government of the United States and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries.

* * * * *

(f) *Removal to third country.* (1) Nothing in this section or § 208.17 shall prevent the Department from removing an alien requesting protection to a third country other than a country to which removal is currently withheld or deferred.

(2) If an alien requests withholding or deferral of removal to his or her home country or another specific country, nothing in this section or § 208.17 precludes the Department from removing the alien to a third country prior to a determination or adjudication of the alien's initial request for withholding or deferral of removal if, after being notified of the identity of the prospective third country of removal and provided an opportunity to demonstrate that he or she is more likely than not to be tortured in that third country, the alien fails to establish that they are more likely than not to be tortured there. However, such a removal shall be executed only if the alien was:

(i) Advised at the time of requesting withholding or deferral of removal of the possibility of being removed to a third country prior to a determination or adjudication of the same under the conditions set forth in this paragraph; and

(ii) Provided, but did not accept, an opportunity to withdraw the request for withholding or deferral of removal in order to prevent such removal and, instead, proceed to removal pursuant to section 241(b) of the Act, as appropriate.

■ 4. Amend § 208.30 by revising paragraph (e)(4)(e)(5)(i)(A) and (B) and (e)(5)(iii), adding paragraph (e)(5)(iv), and revising paragraphs (f) introductory text, (f)(1), and (g)(1) to read as follows:

§ 208.30 Credible fear determinations involving stowaways and applicants for admission who are found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act, whose entry is limited or suspended under section 212(f) or 215(a)(1) of the Act, or who failed to apply for protection from persecution in a third country where potential relief is available while en route to the United States.

* * * * *

(e) * * *

(4) In all cases, the asylum officer will create a written record of his or her determination, including a summary of the material facts as stated by the alien, any additional facts relied on by the officer, and the officer's determination of whether, in light of such facts, the alien has established a credible fear of persecution, reasonable possibility of persecution, reasonable possibility of torture or that it is more likely than not that he or she would be tortured in the prospective country of removal. In determining whether the alien has a credible fear of persecution, as defined in section 235(b)(1)(B)(v) of the Act, a reasonable possibility of persecution or torture, or that it is more likely than not that he or she would be tortured in the prospective country of removal, the asylum officer shall consider whether the alien's case presents novel or unique issues that merit consideration in a full hearing before an immigration judge.

(5)(i)(A) Except as provided in paragraphs (e)(5)(ii) through (iv) or paragraph (e)(6) or (7) of this section, if an alien would be able to establish a credible fear of persecution but for the fact that the alien is subject to one or more of the mandatory bars to applying for asylum or being eligible for asylum contained in section 208(a)(2)(B)–(D) and (b)(2) of the Act, including any bars established by regulation under section 208(b)(2)(C) of the Act, then the asylum officer will enter a negative credible fear of persecution determination with respect to the alien's eligibility for asylum.

(B) If an alien described in paragraph (e)(5)(i)(A) of this section is able to establish either a reasonable possibility of persecution (including by establishing that he or she is not subject to one or more of the mandatory bars to eligibility for withholding of removal contained in section 241(b)(3)(B) of the Act) or a reasonable possibility of torture, then the asylum officer will enter a positive reasonable possibility of persecution or torture determination, as

applicable. The Department of Homeland Security shall place the alien in asylum-and-withholding-only proceedings under 8 CFR 1208.2(c)(1) for full consideration of the alien's claim for withholding of removal under section 241(b)(3) of the Act or withholding or deferral of removal under the regulations issued pursuant to the implementing legislation for the Convention Against Torture.

* * * * *

(iii) If the alien is found to be an alien described as ineligible for asylum in § 208.13(c)(4), then the asylum officer shall enter a negative credible fear determination with respect to the alien's application for asylum. If the alien—

(A) Establishes, respectively, a reasonable possibility of persecution (including by establishing that he or she is not subject to one or more of the mandatory bars to eligibility for withholding of removal contained in section 241(b)(3)(B) of the Act) or torture; or

(B) Would be able to establish a reasonable possibility of persecution but for the fact that he or she is subject to the mandatory bar to eligibility for withholding of removal under section 241(b)(3)(B)(iv) of the Act, but nevertheless establishes that it is more likely than not that he or she would be tortured in the prospective country of removal, the Department of Homeland Security may, in the unreviewable discretion of the Secretary, either place the alien in asylum-and-withholding-only proceedings under 8 CFR 208.2(c)(1) for full consideration of the alien's claim for asylum under section 208 of the Act, withholding of removal under section 241(b)(3) of the Act or withholding or deferral of removal under the regulations issued pursuant to the implementing legislation for the Convention Against Torture, or remove the alien to a third country.

(*1*) If the Department places the alien in asylum-and-withholding-only proceedings under 8 CFR 208.2(c)(1), then the immigration judge shall review all issues de novo, including whether the alien has established that it is more likely than not that he or she would be tortured in the prospective country of removal.

(*2*) If the Department decides to remove the alien to a third country, it shall do so in a manner consistent with section 241 of the Act and § 241.15, including by not removing the alien to a third country in which, after being notified of the identity of the prospective third country of removal the alien has established during an interview with an asylum officer that he or she is more likely than not to be tortured in that country. Further, such a removal to a third country shall be executed only if the alien was:

(*i*) Advised at the time of being determined to be subject to the mandatory bar to eligibility for withholding of removal under section 241(b)(3)(B)(iv) of the Act and under the regulations issued pursuant to the legislation implementing the Convention Against Torture of the possibility of being removed to a third country prior to a determination or adjudication of the same under the conditions set forth in this paragraph, and

(*ii*) Provided, but did not accept, an opportunity to proceed to removal pursuant to section 241(b) of the Act, as appropriate.

(C) If an alien fails to establish a reasonable possibility of persecution or torture and is unable, during an interview with the asylum officer, to establish that it is more likely than not that he or she would be tortured in the prospective country of removal, then the asylum officer will provide the alien with a written notice of decision that will be subject to immigration judge review consistent with paragraph (g) of this section,

(iv)(A) Except as provided in paragraphs (e)(5)(ii) and (iii) or paragraph (e)(6) or (7) of this section, if an alien would be able to establish a credible fear of persecution or a reasonable possibility of persecution but for the fact that the alien is subject to the mandatory bars to being eligible for asylum contained in section 208(b)(2)(A)(iv) of the Act and to withholding of removal contained in section 241(b)(3)(B)(iv) of the Act:

(*1*) If the alien fails to establish, during an interview with the asylum officer, that it is more likely than not that he or she would be tortured in the prospective country of removal, then the asylum officer will provide the alien with a written notice of decision that will be subject to immigration judge review consistent with paragraph (g) of this section;

(*2*) If the alien establishes that it is more likely than not that he or she would be tortured in the prospective country of removal, the Department of Homeland Security may, in the unreviewable discretion of the Secretary, either place the alien in asylum-and-withholding-only proceedings under 8 CFR 208.2(c)(1) for full consideration of the alien's claim for asylum under section 208 of the Act, withholding of removal under section 241(b)(3) of the Act or withholding or deferral of removal under the regulations issued pursuant to the implementing legislation for the Convention Against Torture, or remove the alien to a third country.

(*i*) If the Department places the alien in asylum-and-withholding-only proceedings under 8 CFR 208.2(c)(1), then the IJ shall review all issues de novo, including whether the alien has established that it is more likely than not that he or she would be tortured in the prospective country of removal.

(*ii*) If the Department decides to remove the alien to a third country, it shall do so in a manner consistent with section 241 of the Act and § 241.15, including by not removing the alien to a third country in which, after being notified of the identity of the proposed third country of removal, the alien has established that he or she would be more likely than not to be tortured. Further, such a removal shall be executed only if the alien was advised at the time of being determined to be subject to the mandatory bar to eligibility for withholding of removal under section 241(b)(3)(B)(iv) of the Act and under the regulations issued pursuant to the legislation implementing the Convention Against Torture of the possibility of being removed to a third country prior to a determination or adjudication of the same under the conditions set forth in this paragraph (e)(5)(iv) and provided with, but did not accept, an opportunity to proceed to removal pursuant to section 241(b) of the Act, as appropriate.

(f) *Procedures for a positive fear determination.* If, pursuant to paragraph (e) of this section, an alien stowaway or an alien subject to expedited removal establishes either a credible fear of persecution, reasonable possibility of persecution, a reasonable possibility of torture, or that it is more likely than not that they would be tortured in the prospective country of removal:

(1) Except as provided in paragraphs (e)(5)(iii) through (iv) of this section, DHS shall issue a Notice of Referral to Immigration Judge for asylum-and-withholding-only proceedings under 8 CFR 208.2(c)(1).

* * * * *

(g) * * *

(1) If, pursuant to paragraphs (e) and (f) of this section, an alien does not establish a credible fear of persecution, reasonable possibility of persecution, reasonable possibility of torture, or that he or she is more likely than not to be tortured in the prospective country of removal, DHS shall provide the alien with a written notice of decision and inquire whether the alien wishes to have an immigration judge review the

negative determination, in accordance with section 235(b)(1)(B)(iii)(III) of the Act and this § 208.30. The alien must indicate whether he or she desires such review on a Record of Negative Fear Finding and Request for Review by Immigration Judge. If the alien refuses to make an indication, DHS shall consider such a response as a decision to decline review.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 5. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2004 Comp., p. 278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1365b, 1379, 1731–32; Title VII of Public Law 110–229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); Public Law 112–54; Public Law 115–218.

■ 6. Amend § 235.6 by revising paragraph (a)(2)(i) to read as follows:

§ 235.6 Referral to immigration judge.

(a) * * *

(2) * * *

(i) If an asylum officer determines that the alien has not established a credible fear of persecution, reasonable possibility of persecution, reasonable possibility of torture, or that it is more likely than not that the alien would be tortured in the prospective country of removal, and the alien requests a review of that determination by an immigration judge; or

* * * * *

Department of Justice

Accordingly, for the reasons set forth in the preamble, and by the authority vested in the Director, Executive Office for Immigration Review, by the Attorney General Order Number 4910–2020, the Department amends parts 1003, 1208, and 1235 of title 8 of the Code of Federal Regulations as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 7. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Public Law 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Public Law 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Public Law 106–554, 114 Stat. 2763A–326 to –328.

■ 8. Amend § 1003.42 by revising paragraph (d)(1) to read as follows:

§ 1003.42 Review of credible fear determination.

* * * * *

(d) * * *

(1) The immigration judge shall make a de novo determination as to whether there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim, whether the alien is subject to any mandatory bars to applying for asylum or being eligible for asylum under section 208(a)(2)(B)–(D) and (b)(2) of the Act, including any bars established by regulation under section 208(b)(2)(C) of the Act, and such other facts as are known to the immigration judge, that the alien could establish his or her ability to apply for or be granted asylum under section 208 of the Act. The immigration judge shall make a de novo determination as to whether there is a reasonable possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim, whether the alien is subject to any mandatory bars to eligibility for withholding of removal under section 241(b)(3)(B) of the Act, and such other facts as are known to the immigration judge, that the alien would be persecuted on account of his or her race, religion, nationality, membership in a particular social group, or political opinion in the country of removal, consistent with the criteria in 8 CFR 1208.16(b). The immigration judge shall also make de novo determinations as to whether there is a reasonable possibility that the alien would be tortured in the country of removal and whether it is more likely than not that the alien would be tortured in the country of removal, in both instances taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the immigration judge, consistent with the criteria in 8 CFR 1208.16(c), 8 CFR 1208.17, and 8 CFR 1208.18.

* * * * *

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 9. The authority citation for part 1208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229; Public Law 115–218.

■ 10. Amend § 1208.13 by adding paragraph (c)(10) to read as follows:

§ 1208.13 Establishing asylum eligibility.

* * * * *

(c) * * *

(10)(i) *Public health emergencies.* If a communicable disease has triggered an ongoing declaration of a public health emergency under Federal law, such as under section 319 of the Public Health Service Act, 42 U.S.C. 247d, or section 564 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3, then an alien is ineligible for asylum under section 208 of the Act on the basis of there being reasonable grounds for regarding the alien as a danger to the security of the United States under section 208(b)(2)(A)(iv) of the Act if the alien—

(A) Exhibits symptoms indicating that he or she is afflicted with the disease, per guidance issued by the Secretary or the Attorney General, as appropriate, or

(B) Has come into contact with the disease within the number of days equivalent to the longest known incubation and contagion period for the disease, per guidance issued by the Secretary or the Attorney General, as appropriate.

(ii) *Danger to the public health caused by an epidemic outside of the United States.* If, regarding a communicable disease of public health significance as defined at 42 CFR 34.2(b), the Secretary and the Attorney General, in consultation with the Secretary of Health and Human Services, have jointly—

(A) Determined that the physical presence in the United States of aliens who are coming from a country or countries (or one or more subdivisions or regions thereof), or have embarked at a place or places, where such disease is prevalent or epidemic (or had come from that country or countries (or one or more subdivisions or regions thereof), or had embarked at that place or places, during a period in which the disease was prevalent or epidemic there) would cause a danger to the public health in the United States, and

(B) Designated the foreign country or countries (or one or more subdivisions or regions thereof), or place or places, and the period of time or circumstances under which they jointly deem it necessary for the public health that aliens or classes of aliens described in paragraph (c)(1)(ii)(A) of this section who are still within the number of days equivalent to the longest known incubation and contagion period for the disease be regarded as a danger to the security of the United States under section 208(b)(2)(A)(iv) of the Act, including any relevant exceptions as appropriate, then—

(C) An alien or class of aliens are ineligible for asylum under section 208

of the Act on the basis of there being reasonable grounds for regarding the alien or class of aliens as a danger to the security of the United States under section 208(b)(2)(A)(iv) of the Act if the alien or class of aliens are described in paragraph (c)(10)(ii)(A) of this section and are regarded as a danger to the security of the United States as provided for in paragraph (c)(10)(ii)(B) of this section.

(iii) The grounds for mandatory denial described in paragraphs (c)(10)(i) and (ii) of this section shall not apply to an alien who is applying for asylum or withholding of removal in the United States upon return from Canada to the United States and pursuant to the Agreement Between the Government of the United States and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries.

■ 11. Amend § 1208.16 by revising paragraphs (d)(2) and (f) to read as follows:

§ 1208.16 Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention Against Torture.

* * * * *

(d) * * *

(2) *Mandatory denials*—(i) *In general.* Except as provided in paragraph (d)(3) of this section, an application for withholding of removal under section 241(b)(3) of the Act or under the regulations issued pursuant to the legislation implementing the Convention Against Torture shall be denied if the applicant falls within section 241(b)(3)(B) of the Act or, for applications for withholding of deportation adjudicated in proceedings commenced prior to April 1, 1997, within section 243(h)(2) of the Act as it appeared prior to that date. For purposes of section 241(b)(3)(B)(ii) of the Act, or section 243(h)(2)(B) of the Act as it appeared prior to April 1, 1997, an alien who has been convicted of a particularly serious crime shall be considered to constitute a danger to the community. If the evidence indicates the applicability of one or more of the grounds for denial of withholding enumerated in the Act, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(ii) *Public health emergencies.* If a communicable disease has triggered an ongoing declaration of a public health emergency under Federal law, such as under section 319 of the Public Health Service Act, 42 U.S.C. 247d, or section 564 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3, then an alien is ineligible for withholding of removal under section 241(b)(3) of the Act and under the regulations issued pursuant to the legislation implementing the Convention Against Torture on the basis of there being reasonable grounds for regarding the alien as a danger to the security of the United States under section 241(b)(3)(B)(iv) of the Act if the alien—

(A) Exhibits symptoms indicating that he or she is afflicted with the disease, per guidance issued by the Secretary or the Attorney General, as appropriate; or

(B) Has come into contact with the disease within the number of days equivalent to the longest known incubation and contagion period for the disease, per guidance issued by the Secretary or the Attorney General, as appropriate.

(iii) *Danger to the public health caused by an epidemic outside of the United States.* If, regarding a communicable disease of public health significance as defined at 42 CFR 34.2(b), the Secretary and the Attorney General, in consultation with the Secretary of Health and Human Services, have jointly—

(A) Determined that the physical presence in the United States of aliens who are coming from a country or countries (or one or more subdivisions or regions thereof), or have embarked at a place or places, where such disease is prevalent or epidemic (or had come from that country or countries (or one or more subdivisions or regions thereof), or had embarked at that place or places, during a period in which the disease was prevalent or epidemic there) would cause a danger to the public health in the United States; and

(B) Designated the foreign country or countries (or one or more subdivisions or regions thereof), or place or places, and the period of time or circumstances under which they jointly deem it necessary for the public health that aliens or classes of aliens described in paragraph (d)(2)(iii)(A) of this section who are still within the number of days equivalent to the longest known incubation and contagion period for the disease be regarded as a danger to the security of the United States under section 241(b)(3)(B)(iv) of the Act, including any relevant exceptions as appropriate, then—

(C) An alien or class of aliens are ineligible for withholding of removal under section 241(b)(3) of the Act and under the regulations issued pursuant to the legislation implementing the Convention Against Torture on the basis of there being reasonable grounds for regarding the alien or class of aliens as a danger to the security of the United States under section 241(b)(3)(B)(iv) of the Act if the alien or class of aliens are described in paragraph (d)(2)(iii)(A) of this section and are regarded as a danger to the security of the United States as provided for in paragraph (d)(2)(iii)(B) of this section.

(iv) The grounds for mandatory denial described in paragraphs (d)(2)(ii) and (iii) of this section shall not apply to an alien who is applying for asylum or withholding of removal in the United States upon return from Canada to the United States and pursuant to the Agreement Between the Government of the United States and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries)

* * * * *

(f) *Removal to third country.* (1) Nothing in this section or § 1208.17 shall prevent the Department of Homeland Security from removing an alien requesting protection to a third country other than a country to which removal is currently withheld or deferred.

(2) If an alien requests withholding or deferral of removal to the applicable home country or another specific country, nothing in this section or § 1208.17 precludes the Department of Homeland Security from removing the alien to a third country prior to a determination or adjudication of the alien's initial request for withholding or deferral of removal if, after being notified of the identity of the prospective third country of removal and provided an opportunity to demonstrate that he or she is more likely than not to be tortured in that third country, the alien fails to establish that they are more likely than not to be tortured there. However, such a removal shall be executed only if the alien was:

(i) Advised at the time of requesting withholding or deferral of removal of the possibility of being removed to a third country prior to a determination or adjudication of the same under the conditions set forth in this paragraph, and

(ii) Provided, but did not accept, an opportunity to withdraw the request for withholding or deferral of removal in order to prevent such removal and, instead, proceed to removal pursuant to section 241(b) of the Act, as appropriate.

■ 12. Amend § 1208.30 by revising paragraphs (e), (g)(1)(ii), (g)(2)(i), and (g)(2)(iv)(A) and (B) to read as follows:

§ 1208.30 Credible fear determinations of persecution, reasonable possibility of persecution, and reasonable possibility of torture determinations involving stowaways and applicants for admission who are found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act, whose entry is limited or suspended under section 212(f) or 215(a)(1) of the Act, or who failed to apply for protection from persecution in a third country where potential relief is available while en route to the United States.

* * * * *

(e) *Determination.* For the standards and procedures for asylum officers in conducting credible fear of persecution, reasonable possibility of persecution, and reasonable possibility of torture interviews, and interviews to determine whether an alien has established that he or she is more likely than not to be tortured in the prospective country of removal, and in making positive and negative fear determinations, see 8 CFR 208.30. The immigration judges will review such determinations as provided in paragraph (g) of this section and 8 CFR 1003.42.

* * * * *

(g) * * *

(1) * * *

(ii) If the alien is determined to be an alien described as ineligible for asylum in 8 CFR 208.13(c)(4) or 8 CFR 1208.13(c)(4) and is determined to lack a reasonable possibility of persecution or torture under 8 CFR 208.30(e)(5)(iii), the immigration judge shall first review de novo the determination that the alien is described as ineligible for asylum in 8 CFR 208.13(c)(4) or 8 CFR 1208.13(c)(4). If the immigration judge finds that the alien is not described as ineligible for asylum in 8 CFR 208.13(c)(4) or 8 CFR 1208.13(c)(4), then, except as provided in 8 CFR 208.30(e)(iv), the immigration judge shall vacate the order of the asylum officer, and DHS may commence asylum-and-withholding-only proceedings under 8 CFR 1208.2(c)(1). If the immigration judge concurs with the determination that the alien is an alien described as ineligible for asylum in 8 CFR 208.13(c)(4) or 8 CFR 1208.13(c)(4), the immigration judge will then review the asylum officer's negative decision regarding reasonable possibility made under 8 CFR 208.30(e)(5) and regarding whether the alien has established that it is more likely than not that he or she would be tortured in the prospective country of removal, consistent with paragraph (g)(2) of this section, except that the immigration judge will review the fear of persecution or torture findings under the reasonable possibility standard, and the determination that the alien has not established that he or she is more likely than not to be tortured in the prospective country of removal under the more likely than not standard, instead of the credible fear of persecution standard described in paragraph (g)(2).

(2) * * *

(i) The asylum officer's negative decision regarding a credible fear of persecution, reasonable possibility of persecution, reasonable possibility of torture, and whether the alien has established that he or she is more likely than not to be tortured in the prospective country of removal shall be subject to review by an immigration judge upon the applicant's request, in accordance with section 235(b)(1)(B)(iii)(III) of the Act. If the alien refuses to make an indication, DHS will consider such a response as a decision to decline review.

* * * * *

(iv) * * *

(A) If the immigration judge concurs with the determination of the asylum officer that the alien has not established a credible fear of persecution, reasonable possibility of persecution, reasonable possibility of torture, or that he or she is more likely than not to be tortured in the prospective country of removal, except as provided in § 208.30(e)(5)(iii) and (iv), the case shall be returned to DHS for removal of the alien. The immigration judge's decision is final and may not be appealed.

(B) If the immigration judge finds that the alien, other than an alien stowaway, establishes a credible fear of persecution, reasonable possibility of persecution, reasonable possibility of torture, or that he or she is more likely than not to be tortured in the prospective country of removal, the immigration judge shall, except as provided in § 208.30(e)(5)(iii) and (iv), vacate the Notice and Order of Expedited Removal and DHS may commence asylum-and-withholding-only proceedings under 8 CFR 1208.2(c)(1), during which time the alien may file an application for asylum and for withholding of removal in accordance with 8 CFR 1208.4(b)(3)(i). Such application shall be considered de novo in all respects by an immigration judge regardless of any determination made under this paragraph.

* * * * *

PART 1235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 13. The authority citation for part 1235 continues to read as fol1ows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32; Title VII of Public Law 110–229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); Public Law 115–218.

■ 14. Amend § 1235.6 by revising paragraph (a)(2)(i) to read as follows:

§ 1235.6 Referral to immigration judge.

(a) * * *

(2) * * *

(i) If an asylum officer determines that an alien does not have a credible fear of persecution, reasonable possibility of persecution, reasonable possibility of torture, or has not established that he or she is more likely than not to be tortured in the prospective country of removal, and the alien requests a review of that determination by an immigration judge; or

* * * * *

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel.

James R. McHenry III,

Director, Executive Office for Immigration Review, Department of Justice.

[FR Doc. 2020–28436 Filed 12–22–20; 8:45 am]

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Federal Register

Vol. 85, No. 247

Wednesday, December 23, 2020

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

76949–77342 1
77343–77984 2
77985–78196 3
78197–78698 4
78699–78938 7
78939–79116 8
79117–79378 9
79379–79776 10
79777–80580 11
80581–81084 14
81085–81336 15
81337–81776 16
81777–82290 17
82291–82870 18
82871–83404 21
83405–83738 22
83739–84198 23

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

376 81781
3474 82037

3 CFR

Proclamations:
10121 77343
10122 78193
10123 78195
10124 79375
10125 79377
10126 81329
10127 82871

Executive Orders:
13618 79379
13960 78939
13961 79379
13962 79777
13963 81331
13964 81333
13965 81337
13966 81777
13967 83739
13968 83745

Administrative Orders:
Memorandums:
Memorandum of August 12, 2016 (revoked by Memorandum of December 10, 2020) 81775
Memorandum of December 3, 2020 78945
Memorandum of December 3, 2020 78947
Memorandum of December 9, 2020 81755
Memorandum of December 10, 2020 817753
Notices:
Notice of December 16, 2020 82869
Space Policy Directive–6 of December 16, 2020 8287

5 CFR

Proposed Rules:
351 81839
430 81839
2641 77014

6 CFR

19 82037

Proposed Rules:
5 80667

7 CFR

16 82037
301 81085
407 79779
457 79779
984 79383
3565 77985

Proposed Rules:
930 81425

8 CFR

208 ..... 80274, 82260, 84160
214 82750
235 80274
274a 82750
1003 ..... 80274, 81588, 81598, 82750
1103 ..... 81698, 82750
1208 ..... 80274, 81698, 82260, 82750, 84160
1216 82750
1235 ..... 80274, 84160
1240 ..... 81588, 81598, 82750
1244 82750
1245 82750

Proposed Rules:
103 77016
235 77016
1001 78240
1003 78240
1208 78240
1214 78240
1240 78240
1245 78240
1246 78240
1292 78240

9 CFR

201 79779
317 81339
381 81339
416 81340
417 81340
500 81340
590 81340
591 81340

Proposed Rules:
439 80668

10 CFR

430 ..... 79802, 81341, 81359, 81558
431 79802
1021 78197

Proposed Rules:
Ch. I 78046, 81849
26 ..... 81847, 82391
30 82950
40 82950
50 ..... 79434, 81848, 82950
70 82950
72 82950
430 ..... 77017, 78964, 80982
431 ..... 78967, 82952

37 CFR

1.....82917
2.....81123
42.....79120, 82923

38 CFR

50.....82037
61.....82037
62.....82037

Proposed Rules:

36.....79142
38.....82399

39 CFR

20.....83450
111.....83450
501.....78234, 79432
3030.....81124
3040.....81124
3045.....81124
3050.....81124
3055.....81124

40 CFR

9.....78743
19.....83818
50.....82684
52 .....77996, 79129, 80616
60.....78412
63.....77384, 78412
79.....78412
80.....78412
82.....79863
83.....84130
131.....82936
180 .....77999, 78002, 81799, 82939
257.....80626
282.....79872
320.....77384
721.....78743
1042.....78412
1043.....78412
1065.....78412
1090.....78412

Proposed Rules:

52 .....78050, 82995, 83868, 83877
123.....80713
158.....78300
174.....83880
180.....82998, 83880
233.....80713
257 .....78980, 80718, 83478
282.....79972

41 CFR

60–1.....79324
102–34.....82359

42 CFR

2.....80626
10.....80632
23.....81781
51c.....81781, 83822
52i.....81781
56.....81781
57.....81781
63.....81781
124.....81781
405.....78748
411.....77491, 81781
412.....78748, 81781
413.....78748
414.....78770
417.....78748
422.....81781
423.....81781
426.....81781
440.....81781
441.....81781
447.....81781
476.....78748
480.....78748
482.....81781
484.....78748
485.....81781
486.....77898
495.....78748
512.....77404
1001.....77684
1003.....77684
1004.....81781
1008.....81781

Proposed Rules:

431.....82586
435.....82586
438.....82586
440.....82586
457.....82586
1001.....81439

43 CFR

1820.....81141
2560.....79879
5000.....82359
5400.....82359
5420.....82359
5440.....82359
5450.....82359
5460.....82359
5470.....82359
5500.....82359

44 CFR

64.....81142

Proposed Rules:

206.....80719

45 CFR

1.....78770
3.....81781
63.....81781
75.....81781
87.....81781
147.....81097
153.....76979
170.....78236
305.....82037
307.....81781
1050.....82037
1304.....78787
1324.....81781
1325.....81781
1326.....81781
1328.....81781

Proposed Rules:

147.....78572
150.....78572
153.....78572
155.....78572
156.....78572, 82586
158.....78572
170.....82586
184.....78572
1225.....81854

47 CFR

1.....78005
9.....78018
73.....78022, 78028
76.....78237, 81805

Proposed Rules:

54.....78814
64.....83000
73.....83001
97.....78815

48 CFR

302.....81781
326.....81781

Proposed Rules:

2.....78815
3.....78815
7.....78815
13.....78815
15.....78815
17.....78815
52.....78792
227.....78300
252.....78300

49 CFR

26.....80646
106.....83366
107.....83366
171.....78029, 83366
172.....78029, 83366
173.....78029, 83366
174.....78029, 83366
175.....78029, 83366
176.....78029, 83366
177.....83366
178.....78029, 83366
179.....83366
180.....78029, 83366
218.....80544
219.....81290
221.....80544
225.....79130
232.....80544
234.....80648
240.....81290
242.....81290
1002.....83830

Proposed Rules:

13.....83881
192.....81440
195.....81440
214.....79973
236.....82400
270.....83484
271.....83484
385.....80745
391.....80745
571.....78058, 79456
1039.....78075
1108.....78075

50 CFR

17 .....78029, 81144, 81813, 82376
217.....83451
223.....81822
224.....81822
424.....81411
622.....78792, 79135
635 .....77007, 79136, 81837, 83832
648 .....79139, 80661, 81152, 81155, 81421, 82944, 82946
660.....79880
665.....77406, 79928
679 .....77406, 78038, 79139, 81155, 82389, 83473, 83834

Proposed Rules:

17.....77108, 77408
218.....83001
223.....79980
229.....81168
679.....78076, 78096

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List December 22, 2020

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